

FIRST REGULAR SESSION

HOUSE BILL NO. 675

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES STEFANICK (Sponsor), STEVENSON, NANCE, BAKER (25),
LEMBKE, PARKER, SKAGGS, MEINERS, DEMPSEY, BROWN (30), COOPER (158),
DOUGHERTY AND VILLA (Co-sponsors).

Read 1st time March 1, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0602L.02I

AN ACT

To repeal sections 192.665, 192.667, 197.200, 197.205, 197.210, 197.215, 197.220, 197.225, 197.230, 197.235, and 334.100, RSMo, and to enact in lieu thereof thirteen new sections relating to health care providers, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 192.665, 192.667, 197.200, 197.205, 197.210, 197.215, 197.220,
2 197.225, 197.230, 197.235, and 334.100, RSMo, are repealed and thirteen new sections enacted
3 in lieu thereof, to be known as sections 192.665, 192.667, 197.200, 197.205, 197.210, 197.215,
4 197.220, 197.225, 197.230, 197.235, 334.100, 334.158, and 334.245, to read as follows:

192.665. As used in this section, section 192.667, and sections 197.150 to 197.165,
2 RSMo, the following terms mean:

3 (1) "Ambulatory surgical center", the same meaning as such term is defined in
4 section 197.200, RSMo;

5 (2) "Charge data", information submitted by health care providers on current charges for
6 leading procedures and diagnoses;

7 [(2)] (3) "Charges by payer", information submitted by [hospitals] **health care providers**
8 on amount billed to Medicare, Medicaid, other government sources and all nongovernment
9 sources combined as one data element;

10 [(3)] (4) "Department", the department of health and senior services;

11 [(4)] (5) "Financial data", information submitted by [hospitals] **health care providers**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 drawn from financial statements which includes the balance sheet, income statement, charity care
13 and bad debt and charges by payer, prepared in accordance with generally accepted accounting
14 principles;

15 [(5)] (6) "Health care provider", hospitals as defined in section 197.020, RSMo, and
16 ambulatory [surgical] **medical treatment** centers as defined in section 197.200, RSMo;

17 [(6)] (7) "Nosocomial infection", as defined by the national Centers for Disease Control
18 and Prevention and applied to infections within hospitals, ambulatory surgical centers, and other
19 facilities;

20 [(7)] (8) "Nosocomial infection incidence rate", a risk-adjusted measurement of new
21 cases of nosocomial infections by procedure or device within a population over a given period
22 of time, with such measurements defined by rule of the department pursuant to subsection 3 of
23 section 192.667 for use by all hospitals, ambulatory surgical centers, and other facilities in
24 complying with the requirements of the Missouri nosocomial infection control act of 2004;

25 [(8)] (9) "Other facility", a type of facility determined to be a source of infections and
26 designated by rule of the department pursuant to subsection 11 of section 192.667;

27 [(9)] (10) "Patient abstract data", data submitted by [hospitals] **health care providers**
28 which includes but is not limited to date of birth, sex, race, zip code, county of residence,
29 admission date, discharge date, principal and other diagnoses, including external causes,
30 principal and other procedures, procedure dates, total billed charges, disposition of the patient
31 and expected source of payment with sources categorized according to Medicare, Medicaid,
32 other government, workers' compensation, all commercial payors coded with a common code,
33 self-pay, no charge and other.

192.667. 1. All health care providers shall at least annually provide to the department
2 charge data as required by the department[. All hospitals shall at least annually provide],
3 **including all** patient abstract data and financial data as required by the department. Hospitals
4 as defined in section 197.020, RSMo, shall report patient abstract data for outpatients and
5 inpatients[. Within one year of August 28, 1992, ambulatory surgical centers as defined in
6 section 197.200, RSMo, shall provide patient abstract data to the department] **and all other**
7 **health care providers shall provide outpatient abstract data as filed on claims forms.** The
8 department shall specify by rule the types of information which shall be submitted and the
9 method of submission.

10 2. The department shall collect data on required nosocomial infection incidence rates
11 from hospitals, ambulatory surgical centers, and other facilities as necessary to generate the
12 reports required by this section. Hospitals, ambulatory surgical centers, and other facilities shall
13 provide such data in compliance with this section.

14 3. No later than July 1, 2005, the department shall promulgate rules specifying the

15 standards and procedures for the collection, analysis, risk adjustment, and reporting of
16 nosocomial infection incidence rates and the types of infections and procedures to be monitored
17 pursuant to subsection 12 of this section. In promulgating such rules, the department shall:

18 (1) Use methodologies and systems for data collection established by the federal Centers
19 for Disease Control and Prevention National Nosocomial Infection Surveillance System, or its
20 successor; and

21 (2) Consider the findings and recommendations of the infection control advisory panel
22 established pursuant to section 197.165, RSMo.

23 4. The infection control advisory panel created by section 197.165, RSMo, shall make
24 a recommendation to the department regarding the appropriateness of implementing all or part
25 of the nosocomial infection data collection, analysis, and public reporting requirements of this
26 act by authorizing hospitals, ambulatory surgical centers, and other facilities to participate in the
27 federal Centers for Disease Control and Prevention's National Nosocomial Infection Surveillance
28 System, or its successor. The advisory panel shall consider the following factors in developing
29 its recommendation:

30 (1) Whether the public is afforded the same or greater access to facility-specific infection
31 control indicators and rates than would be provided under subsections 2, 3, and 6 to 12 of this
32 section;

33 (2) Whether the data provided to the public are subject to the same or greater accuracy
34 of risk adjustment than would be provided under subsections 2, 3, and 6 to 12 of this section;

35 (3) Whether the public is provided with the same or greater specificity of reporting of
36 infections by type of facility infections and procedures than would be provided under subsections
37 2, 3, and 6 to 12 of this section;

38 (4) Whether the data are subject to the same or greater level of confidentiality of the
39 identity of an individual patient than would be provided under subsections 2, 3, and 6 to 12 of
40 this section;

41 (5) Whether the National Nosocomial Infection Surveillance System, or its successor,
42 has the capacity to receive, analyze, and report the required data for all facilities;

43 (6) Whether the cost to implement the nosocomial infection data collection and reporting
44 system is the same or less than under subsections 2, 3, and 6 to 12 of this section.

45 5. Based on the affirmative recommendation of the infection control advisory panel, and
46 provided that the requirements of subsection 12 of this section can be met, the department may
47 or may not implement the federal Centers for Disease Control and Prevention Nosocomial
48 Infection Surveillance System, or its successor, as an alternative means of complying with the
49 requirements of subsections 2, 3, and 6 to 12 of this section. If the department chooses to
50 implement the use of the federal Centers for Disease Control Prevention Nosocomial Infection

51 Surveillance System, or its successor, as an alternative means of complying with the
52 requirements of subsections 2, 3, and 6 to 12 of this section, it shall be a condition of licensure
53 for hospitals and ambulatory surgical centers which opt to participate in the federal program to
54 permit the federal program to disclose facility-specific data to the department as necessary to
55 provide the public reports required by the department. Any hospital or ambulatory surgical
56 center which does not voluntarily participate in the National Nosocomial Infection Surveillance
57 System, or its successor, shall be required to abide by all of the requirements of subsections 2,
58 3, and 6 to 12 of this section.

59 6. The department shall not require the resubmission of data which has been submitted
60 to the department of health and senior services or the department of social services under any
61 other provision of law. The department of health and senior services shall accept data submitted
62 by associations or related organizations on behalf of health care providers by entering into
63 binding agreements negotiated with such associations or related organizations to obtain data
64 required pursuant to section 192.665 and this section. A health care provider shall submit the
65 required information to the department of health and senior services:

66 (1) If the provider does not submit the required data through such associations or related
67 organizations; **or**

68 (2) [If no binding agreement has been reached within ninety days of August 28, 1992,
69 between the department of health and senior services and such associations or related
70 organizations; or

71 (3)] If a binding agreement has expired for more than ninety days.

72 7. Information obtained by the department under the provisions of section 192.665 and
73 this section shall not be public information. Reports and studies prepared by the department
74 based upon such information shall be public information and may identify individual health care
75 providers. The department of health and senior services may authorize the use of the data by
76 other research organizations pursuant to the provisions of section 192.067. The department shall
77 not use or release any information provided under section 192.665 and this section which would
78 enable any person to determine any health care provider's negotiated discounts with specific
79 preferred provider organizations or other managed care organizations. The department shall not
80 release data in a form which could be used to identify a patient. Any violation of this subsection
81 is a class A misdemeanor.

82 8. The department shall undertake a reasonable number of studies and publish
83 information, including at least an annual consumer guide, in collaboration with health care
84 providers, business coalitions and consumers based upon the information obtained pursuant to
85 the provisions of section 192.665 and this section. The department shall allow all health care
86 providers and associations and related organizations who have submitted data which will be used

87 in any report to review and comment on the report prior to its publication or release for general
88 use. The department shall include any comments of a health care provider, at the option of the
89 provider, and associations and related organizations in the publication if the department does not
90 change the publication based upon those comments. The report shall be made available to the
91 public for a reasonable charge.

92 9. Any health care provider which continually and substantially, as these terms are
93 defined by rule, fails to comply with the provisions of this section shall not be allowed to
94 participate in any program administered by the state or to receive any moneys from the state.

95 10. A hospital, as defined in section 197.020, RSMo, aggrieved by the department's
96 determination of ineligibility for state moneys pursuant to subsection 9 of this section may appeal
97 as provided in section 197.071, RSMo. An ambulatory [surgical] **medical treatment** center as
98 defined in section 197.200, RSMo, aggrieved by the department's determination of ineligibility
99 for state moneys pursuant to subsection 9 of this section may appeal as provided in section
100 197.221, RSMo.

101 11. The department of health may promulgate rules providing for collection of data and
102 publication of nosocomial infection incidence rates for other types of health facilities determined
103 to be sources of infections; except that, physicians' offices shall be exempt from reporting and
104 disclosure of infection incidence rates.

105 12. In consultation with the infection control advisory panel established pursuant to
106 section 197.165, RSMo, the department shall develop and disseminate to the public reports based
107 on data compiled for a period of twelve months. Such reports shall be updated quarterly and
108 shall show for each hospital, ambulatory surgical center, and other facility a risk-adjusted
109 nosocomial infection incidence rate for the following types of infection:

- 110 (1) Class I surgical site infections;
- 111 (2) Ventilator-associated pneumonia;
- 112 (3) Central line-related bloodstream infections;
- 113 (4) Other categories of infections that may be established by rule by the department.

114

115 The department, in consultation with the advisory panel, shall be authorized to collect and report
116 data on subsets of each type of infection described in this subsection.

117 13. In the event the provisions of [this act] **sections 192.665 and 192.667** are
118 implemented by requiring hospitals, ambulatory surgical centers, and other facilities to
119 participate in the federal Centers for Disease Control and Prevention National Nosocomial
120 Infection Surveillance System, or its successor, the types of infections to be publicly reported
121 shall be determined by the department by rule and shall be consistent with the infections tracked
122 by the National Nosocomial Infection Surveillance System, or its successor.

123 14. Reports published pursuant to subsection 12 of this section shall be published on the
124 department's Internet web site. The initial report shall be issued by the department not later than
125 December 31, 2006. The reports shall be distributed at least annually to the governor and
126 members of the general assembly.

127 15. The Hospital Industry Data Institute shall publish a report of Missouri hospitals' and
128 ambulatory surgical centers' compliance with standardized quality of care measures established
129 by the federal Centers for Medicare and Medicaid Services for prevention of infections related
130 to surgical procedures. If the Hospital Industry Data Institute fails to do so by July 31, 2008, and
131 annually thereafter, the department shall be authorized to collect information from the Centers
132 for Medicare and Medicaid Services or from hospitals and ambulatory surgical centers and
133 publish such information in accordance with subsection 14 of this section.

134 16. The data collected or published pursuant to this section shall be available to the
135 department for purposes of licensing hospitals and ambulatory [surgical] **medical treatment**
136 centers pursuant to chapter 197, RSMo.

137 17. The department shall promulgate rules to implement the provisions of section
138 192.131 and sections 197.150 to 197.160, RSMo. Any rule or portion of a rule, as that term is
139 defined in section 536.010, RSMo, that is created under the authority delegated in this section
140 shall become effective only if it complies with and is subject to all of the provisions of chapter
141 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo,
142 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter
143 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are
144 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed
145 or adopted after August 28, 2004, shall be invalid and void.

197.200. As used in sections 197.200 to 197.240, unless the context clearly indicates
2 otherwise, the following terms mean:

3 (1) **"Ambulatory medical treatment center"**, any public or private establishment
4 **operated primarily for the purpose of performing or providing one or more of the**
5 **following: surgical procedures, childbirths, diagnostic imaging (including computerized**
6 **tomography, magnetic resonance imaging, and/or PET technology), cardiac**
7 **catheterization, lithotripsy, gamma knife treatment, radiation therapy, or endoscopy and**
8 **which does not provide services or other accommodations for patients to stay more than**
9 **twenty-three hours within the establishment; provided, however, that nothing in this**
10 **definition shall be construed to include the offices of dentists currently licensed under**
11 **chapter 332, RSMo. For purposes of this subdivision, "operated primarily for the purpose**
12 **of performing or providing" means at least fifty-one percent of either the volume of**
13 **services provided shall be derived from providing one or more of the services identified in**

14 **this subdivision;**

15 (2) "Ambulatory surgical center", a **subcategory of ambulatory medical treatment**
16 **centers which includes** any public or private establishment operated primarily for the purpose
17 of performing surgical procedures or primarily for the purpose of performing childbirths, and
18 which does not provide services or other accommodations for patients to stay more than
19 twenty-three hours within the establishment[, provided, however, that nothing in this definition
20 shall be construed to include the offices of dentists currently licensed pursuant to chapter 332,
21 RSMo];

22 [(2)] (3) "Dentist", any person currently licensed to practice dentistry pursuant to chapter
23 332, RSMo;

24 [(3)] (4) "Department", the department of health and senior services;

25 [(4)] (5) "Governmental unit", any city, county or other political subdivision of this state,
26 or any department, division, board or other agency of any political subdivision of this state;

27 [(5)] (6) "Person", any individual, firm, partnership, corporation, company, or association
28 and the legal successors thereof;

29 [(6)] (7) "Physician", any person currently licensed to practice medicine pursuant to
30 chapter 334, RSMo;

31 [(7)] (8) "Podiatrist", any person currently licensed to practice podiatry pursuant to
32 chapter 330, RSMo.

197.205. 1. No person or governmental unit acting severally or jointly with any other
2 person or governmental unit shall establish, conduct or maintain an ambulatory [surgical]
3 **medical treatment** center in this state without a license under sections 197.200 to 197.240
4 issued by the department of health and senior services. **The department may establish**
5 **subcategories of licensure for the various types of ambulatory medical treatment centers**
6 **described in section 197.200.**

7 2. Nothing in sections 197.200 to 197.240 shall be construed to impair or abridge the
8 authority of a governmental unit to license ambulatory [surgical] **medical treatment** centers,
9 provided that any ordinance of a governmental unit shall require compliance with all rules,
10 regulations, and standards adopted by the department to implement the provisions of sections
11 197.200 to 197.240.

197.210. 1. Application for a license shall be made to the department upon forms
2 provided by the department and shall contain such information as the department may require.
3 The department of health and senior services may require affirmative evidence of ability to
4 comply with such reasonable standards, rules and regulations as are lawfully prescribed under
5 the provisions of sections 197.200 to 197.240.

6 2. Each application for a license, except applications from governmental units, shall be

7 accompanied by an annual license fee [of two hundred dollars] **established by the department**
8 **of health and senior services. Total licensure fees shall not exceed the reasonable cost of**
9 **enforcing sections 197.200 to 197.240 or the amount specifically appropriated for such**
10 **enforcement, whichever is less.** All license fees shall be deposited in the state treasury to the
11 credit of [general revenue] **the "Ambulatory Medical Treatment Center Fund" which is**
12 **hereby created in the state treasury. The moneys in the fund shall be used solely for the**
13 **purpose of administering the provisions of this act and shall be subject to the provisions**
14 **of section 33.080, RSMo.**

197.215. 1. Upon receipt of an application for a license, the department of health and
2 senior services shall issue a license if the applicant and ambulatory [surgical] **medical treatment**
3 center facilities meet the requirements established under sections 197.200 to 197.240, and have
4 provided affirmative evidence that:

5 (1) Each member of the surgical **or medical** staff is a physician, dentist or podiatrist
6 currently licensed to practice in Missouri;

7 (2) [Surgical procedures shall be performed only by physicians, dentists or podiatrists,
8 who at the time are privileged to perform surgical procedures in at least one licensed hospital in
9 the community in which the ambulatory surgical center is located, thus providing assurance to
10 the public that patients treated in the center shall receive continuity of care should the services
11 of a hospital be required; alternatively, applicant shall submit a copy of a current working
12 agreement with at least one licensed hospital in the community in which the ambulatory surgical
13 center is located, guaranteeing the transfer and admittance of patients for emergency treatment
14 whenever necessary;

15 (3) **If the applicant provides surgical procedures, childbirths, cardiac**
16 **catheterization, or endoscopy, each member of the applicant's surgical or medical staff is**
17 **a physician, dentist, or podiatrist who has active medical staff privileges in at least one**
18 **hospital in the same community in which the ambulatory medical treatment center is**
19 **located and makes himself or herself available to provide on-call services at the hospital**
20 **on the same basis as other similarly credentialed practitioners; or**

21 (3) **If the applicant provides surgical procedures, childbirths, cardiac**
22 **catheterization, or endoscopy, the applicant possesses and submits a current working**
23 **agreement with at least one hospital in the same community in which the ambulatory**
24 **medical treatment center is located. The agreement shall be subject to the approval of the**
25 **director of the department of health and shall include each of the following elements:**

26 (a) **A specific plan for access to hospital services for those patients that require a**
27 **higher level of care than provided by the center;**

28 (b) **Emergency department access to patient records and physician instructions and**

29 orders;

30 (c) On-call availability of physicians for the center for purposes of treating center
31 patients who present at the hospital emergency room subsequent to obtaining services at
32 the center;

33 (d) Protocols for the transportation of patients from the center to a hospital when
34 a higher level of care is required;

35 (e) Reimbursement to physicians who cover on-call schedules for ambulatory
36 medical treatment center physicians who decline on-call status;

37 (f) Reimbursement to hospitals for direct services rendered to patients of the center
38 who need to be transferred to a hospital while receiving care at the center or to patients
39 who present at a hospital emergency department subsequent to receiving care in the center;
40 and

41 (g) The extent to which physicians, dentists, and podiatrists who provide care in the
42 ambulatory medical treatment center will have staff privileges at a hospital and will be
43 available to provide on-call services;

44 (4) Continuous physician services or registered professional nursing services are
45 provided whenever a patient is in the facility;

46 [(4)] (5) Adequate medical records for each patient are to be maintained.

47 2. If the members of the surgical and medical staff of the ambulatory medical
48 treatment center do not comply with the requirements of subdivision (2) of subsection 1 of
49 this section and a hospital and ambulatory treatment center fail to successfully negotiate
50 an agreement as described in subdivision (3) of subsection 1 of this section, the hospital and
51 ambulatory medical treatment center shall enter into binding arbitration based on the
52 rules of the American Arbitration Association. A panel of three arbitrators shall be
53 appointed to resolve differences and disputes. Each party to the negotiations shall appoint
54 one arbitrator and the two arbitrators selected shall appoint a third arbitrator. In the
55 absence of agreement on a third arbitrator, the department shall appoint the third
56 arbitrator. The panel of arbitrators shall address each of the standards that are required
57 by this section to be included in the proposed agreement between the parties. The decisions
58 of the panel of arbitrators shall be final, legally binding, and enforceable by a court of
59 competent jurisdiction.

60 3. Upon receipt of an application for a license, or the renewal thereof, the department
61 shall issue or renew the license if the applicant and program meet the requirements established
62 under sections 197.200 to 197.240. Each license shall be issued only for the persons and
63 premises named in the application. A license, unless sooner suspended or revoked, shall be
64 issued for a period of one year.

65 [3.] **4.** Each license shall be issued only for the premises, **services**, and persons or
66 governmental units named in the application, and shall not be transferable or assignable except
67 with the written consent of the department. Licenses shall be posted in a conspicuous place on
68 the licensed premises.

69 [4.] **5.** If, during the period in which an ambulatory [surgical] **medical treatment** center
70 license is in effect, the license holder or operator legally transfers operational responsibilities by
71 any process to another person as defined in section 197.200, an application shall be made for the
72 issuance of a new license to become effective on the transfer date.

73 **6. As used in this section, the term "same community" means:**

74 **(a) In a metropolitan statistical area, the same emergency medical services**
75 **catchment area as defined in the department of health and senior services' emergency**
76 **services diversion plan for such area; or**

77 **(b) In a nonmetropolitan county containing a hospital, the boundaries of such**
78 **county; or**

79 **(c) In a nonmetropolitan county with no hospital, a county adjacent to the county**
80 **in which the ambulatory medical treatment center is located.**

81 **7. Facilities licensed as ambulatory surgical centers on the effective date of this**
82 **section shall have the same length of time after the effective date of this section to comply**
83 **with the provisions of this section as is provided to hospitals under section 197.090.**

197.220. The department of health and senior services may deny, suspend or revoke a
2 license in any case in which the department finds that there has been a substantial failure to
3 comply with the requirements of sections 197.200 to 197.240, or in any case in which the
4 director of the department makes a finding that:

5 (1) The applicant, or if the applicant is a firm, partnership or association, any of its
6 members, or if a corporation, any of its officers or directors, or the person designated to manage
7 or supervise the facility, has been finally adjudicated and found guilty, or entered a plea of guilty
8 or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,
9 for any offense reasonably related to the qualifications, functions, or duties of an ambulatory
10 [surgical] **medical treatment** center, or for any offense an essential element of which is fraud,
11 dishonesty, or an act of violence, or for any offense involving moral turpitude, whether or not
12 sentence is imposed;

13 (2) The licensure status or record of the applicant, or if the applicant is a firm,
14 partnership or association, of any of its members, or if a corporation, of any of its officers or
15 directors, or of the person designated to manage or supervise the facility, from any other state,
16 federal district or land, territory or commonwealth of the United States, or of any foreign country
17 where the applicant has done business in a similar capacity indicates that granting a license to

18 the applicant would be detrimental to the interests of the public.

197.225. The department of health and senior services [may] **shall** adopt such reasonable
2 rules, regulations, and standards for the types of services provided as are necessary to carry out
3 the provisions of sections 197.200 to 197.240, and to assure quality patient care and patient
4 safety[, which]. **Such rules shall be consistent with Medicare conditions of participation,**
5 **standards of the joint commission on accreditation of health organizations, where**
6 **appropriate, and standards developed by nationally recognized medical specialty**
7 **accreditation entities, where appropriate, and** shall include, but not be limited to:

8 (1) Construction of the facility including, but not limited to, plumbing, heating, lighting,
9 and ventilation which should insure the health, safety, comfort, and privacy of patients and
10 protection from fire hazard;

11 (2) Number, qualifications, and organization of all personnel, having responsibility for
12 any part of the care provided to the patients;

13 (3) Equipment essential to the health, welfare, and safety of the patients;

14 (4) Facilities, programs, and services to be provided in connection with the care of
15 patients in ambulatory [surgical] **medical treatment** centers; and

16 (5) Procedures for peer review and for receiving and investigating complaints regarding
17 any ambulatory [surgical] **medical treatment** center or any physician, dentist, podiatrist, nurse,
18 assistant, manager, supervisor, or employee practicing or working in any such facility.

197.230. **1.** The department of health and senior services shall make, or cause to be
2 made, such inspections and investigations as it deems necessary; **except that, required**
3 **inspections shall occur with a frequency that is substantially comparable to the frequency**
4 **of inspections of hospitals.** The department may delegate its powers and duties to investigate
5 and inspect ambulatory [surgical] **medical treatment** centers to an official of a political
6 subdivision having a population of at least four hundred fifty thousand if such political
7 subdivision is deemed qualified by the department to inspect and investigate ambulatory
8 [surgical] **medical treatment** centers. The official so designated shall submit a written report
9 of his findings to the department and the department may accept the recommendations of such
10 official if it determines that the facility inspected meets minimum standards established pursuant
11 to sections 197.200 to 197.240.

2. The department of health and senior services shall accept reports of ambulatory
13 **medical treatment center inspections from governmental agencies and recognized**
14 **accrediting organizations in whole or in part for licensure purposes if:**

15 (1) **The inspection is comparable to an inspection performed by the department of**
16 **health and senior services;**

17 (2) **The ambulatory medical treatment center meets minimum licensure standards;**

18 **and**

19 **(3) The inspection is conducted within one year of the date of license renewal.**

20 **3. The department of health and senior services shall attempt to schedule**
21 **inspections and evaluations required by this section so as not to cause an ambulatory**
22 **medical treatment center to be subject to more than one inspection in any twelve-month**
23 **period from the department or any agency or accreditation organization the reports of**
24 **which are accepted for licensure purposes under this section, except for good cause shown.**

197.235. 1. Any person operating, conducting, managing, or establishing an ambulatory
2 [surgical] **medical treatment** center without a license required by sections 197.200 to 197.240
3 is guilty of a class A misdemeanor and, upon conviction, shall be subject to a fine of not more
4 than five hundred dollars. Each day of continuing violation shall constitute a separate offense.

5 2. The attorney general shall represent the department of health and senior services and
6 shall institute an action in the name of the state for injunctive or other relief against any person
7 or governmental unit to restrain or prevent the establishment, conduct, management, or operation
8 of an ambulatory [surgical] **medical treatment** center without a license issued pursuant to the
9 provisions of sections 197.200 to 197.240.

10 3. Any person operating, conducting, managing, or establishing an ambulatory [surgical]
11 **medical treatment** center who, in the course of advertising, promoting, or otherwise publicizing
12 the activities, business, location, or any other matter concerning the operations of said
13 ambulatory [surgical] **medical treatment** center, uses or employs in any manner the words
14 "State, Missouri, State of Missouri, Department of Health and Senior Services, the initials 'Mo.',"
15 or any emblem of the state of Missouri or the department of health and senior services, for the
16 purpose of conveying or in any manner reasonably calculated to convey the false impression that
17 the state of Missouri or any department, agency, bureau, or instrumentality thereof is involved
18 in the business of said ambulatory [surgical] **medical treatment** center, or took part in said
19 advertisement, promotion, publicity, or other statement, shall be subject to a fine of one hundred
20 dollars per day for each day during the period beginning with the day said advertisement,
21 promotion, publication, or statement first appears and ending on the day on which it is
22 withdrawn.

334.100. 1. The board may refuse to issue or renew any certificate of registration or
2 authority, permit or license required pursuant to this chapter for one or any combination of
3 causes stated in subsection 2 of this section. The board shall notify the applicant in writing of
4 the reasons for the refusal and shall advise the applicant of the applicant's right to file a
5 complaint with the administrative hearing commission as provided by chapter 621, RSMo. As
6 an alternative to a refusal to issue or renew any certificate, registration or authority, the board
7 may, at its discretion, issue a license which is subject to probation, restriction or limitation to an

8 applicant for licensure for any one or any combination of causes stated in subsection 2 of this
9 section. The board's order of probation, limitation or restriction shall contain a statement of the
10 discipline imposed, the basis therefor, the date such action shall become effective, and a
11 statement that the applicant has thirty days to request in writing a hearing before the
12 administrative hearing commission. If the board issues a probationary, limited or restricted
13 license to an applicant for licensure, either party may file a written petition with the
14 administrative hearing commission within thirty days of the effective date of the probationary,
15 limited or restricted license seeking review of the board's determination. If no written request
16 for a hearing is received by the administrative hearing commission within the thirty-day period,
17 the right to seek review of the board's decision shall be considered as waived.

18 2. The board may cause a complaint to be filed with the administrative hearing
19 commission as provided by chapter 621, RSMo, against any holder of any certificate of
20 registration or authority, permit or license required by this chapter or any person who has failed
21 to renew or has surrendered the person's certificate of registration or authority, permit or license
22 for any one or any combination of the following causes:

23 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic
24 beverage to an extent that such use impairs a person's ability to perform the work of any
25 profession licensed or regulated by this chapter;

26 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty
27 or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,
28 for any offense reasonably related to the qualifications, functions or duties of any profession
29 licensed or regulated pursuant to this chapter, for any offense an essential element of which is
30 fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or
31 not sentence is imposed;

32 (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of
33 registration or authority, permit or license issued pursuant to this chapter or in obtaining
34 permission to take any examination given or required pursuant to this chapter;

35 (4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or
36 unprofessional conduct in the performance of the functions or duties of any profession licensed
37 or regulated by this chapter, including, but not limited to, the following:

38 (a) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by
39 fraud, deception or misrepresentation; willfully and continually overcharging or overtreating
40 patients; or charging for visits to the physician's office which did not occur unless the services
41 were contracted for in advance, or for services which were not rendered or documented in the
42 patient's records;

43 (b) Attempting, directly or indirectly, by way of intimidation, coercion or deception, to

- 44 obtain or retain a patient or discourage the use of a second opinion or consultation;
- 45 (c) Willfully and continually performing inappropriate or unnecessary treatment,
46 diagnostic tests or medical or surgical services;
- 47 (d) Delegating professional responsibilities to a person who is not qualified by training,
48 skill, competency, age, experience or licensure to perform such responsibilities;
- 49 (e) Misrepresenting that any disease, ailment or infirmity can be cured by a method,
50 procedure, treatment, medicine or device;
- 51 (f) Performing or prescribing medical services which have been declared by board rule
52 to be of no medical or osteopathic value;
- 53 (g) Final disciplinary action by any professional medical or osteopathic association or
54 society or licensed hospital or medical staff of such hospital in this or any other state or territory,
55 whether agreed to voluntarily or not, and including, but not limited to, any removal, suspension,
56 limitation, or restriction of the person's license or staff or hospital privileges, failure to renew
57 such privileges or license for cause, or other final disciplinary action, if the action was in any way
58 related to unprofessional conduct, professional incompetence, malpractice or any other violation
59 of any provision of this chapter;
- 60 (h) Signing a blank prescription form; or dispensing, prescribing, administering or
61 otherwise distributing any drug, controlled substance or other treatment without sufficient
62 examination, or for other than medically accepted therapeutic or experimental or investigative
63 purposes duly authorized by a state or federal agency, or not in the course of professional
64 practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical
65 infirmity or disease, except as authorized in section 334.104;
- 66 (i) Exercising influence within a physician-patient relationship for purposes of engaging
67 a patient in sexual activity;
- 68 (j) Terminating the medical care of a patient without adequate notice or without making
69 other arrangements for the continued care of the patient;
- 70 (k) Failing to furnish details of a patient's medical records to other treating physicians
71 or hospitals upon proper request; or failing to comply with any other law relating to medical
72 records;
- 73 (l) Failure of any applicant or licensee, other than the licensee subject to the
74 investigation, to cooperate with the board during any investigation;
- 75 (m) Failure to comply with any subpoena or subpoena duces tecum from the board or
76 an order of the board;
- 77 (n) Failure to timely pay license renewal fees specified in this chapter;
- 78 (o) Violating a probation agreement with this board or any other licensing agency;
- 79 (p) Failing to inform the board of the physician's current residence and business address;

80 (q) Advertising by an applicant or licensee which is false or misleading, or which
81 violates any rule of the board, or which claims without substantiation the positive cure of any
82 disease, or professional superiority to or greater skill than that possessed by any other physician.
83 An applicant or licensee shall also be in violation of this provision if the applicant or licensee
84 has a financial interest in any organization, corporation or association which issues or conducts
85 such advertising;

86 (5) Any conduct or practice which is or might be harmful or dangerous to the mental or
87 physical health of a patient or the public; or incompetency, gross negligence or repeated
88 negligence in the performance of the functions or duties of any profession licensed or regulated
89 by this chapter. For the purposes of this subdivision, "repeated negligence" means the failure,
90 on more than one occasion, to use that degree of skill and learning ordinarily used under the
91 same or similar circumstances by the member of the applicant's or licensee's profession;

92 (6) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling
93 any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted
94 pursuant to this chapter;

95 (7) Impersonation of any person holding a certificate of registration or authority, permit
96 or license or allowing any person to use his or her certificate of registration or authority, permit,
97 license or diploma from any school;

98 (8) Revocation, suspension, restriction, modification, limitation, reprimand, warning,
99 censure, probation or other final disciplinary action against the holder of or applicant for a
100 license or other right to practice any profession regulated by this chapter by another state,
101 territory, federal agency or country, whether or not voluntarily agreed to by the licensee or
102 applicant, including, but not limited to, the denial of licensure, surrender of the license, allowing
103 the license to expire or lapse, or discontinuing or limiting the practice of medicine while subject
104 to an investigation or while actually under investigation by any licensing authority, medical
105 facility, branch of the armed forces of the United States of America, insurance company, court,
106 agency of the state or federal government, or employer;

107 (9) A person is finally adjudged incapacitated or disabled by a court of competent
108 jurisdiction;

109 (10) Assisting or enabling any person to practice or offer to practice any profession
110 licensed or regulated by this chapter who is not registered and currently eligible to practice
111 pursuant to this chapter; or knowingly performing any act which in any way aids, assists,
112 procures, advises, or encourages any person to practice medicine who is not registered and
113 currently eligible to practice pursuant to this chapter. A physician who works in accordance with
114 standing orders or protocols or in accordance with the provisions of section 334.104 shall not be
115 in violation of this subdivision;

- 116 (11) Issuance of a certificate of registration or authority, permit or license based upon
117 a material mistake of fact;
- 118 (12) Failure to display a valid certificate or license if so required by this chapter or any
119 rule promulgated pursuant to this chapter;
- 120 (13) Violation of the drug laws or rules and regulations of this state, any other state or
121 the federal government;
- 122 (14) Knowingly making, or causing to be made, or aiding, or abetting in the making of,
123 a false statement in any birth, death or other certificate or document executed in connection with
124 the practice of the person's profession;
- 125 (15) Soliciting patronage in person or by agents or representatives, or by any other means
126 or manner, under the person's own name or under the name of another person or concern, actual
127 or pretended, in such a manner as to confuse, deceive, or mislead the public as to the need or
128 necessity for or appropriateness of health care services for all patients, or the qualifications of
129 an individual person or persons to diagnose, render, or perform health care services;
- 130 (16) Using, or permitting the use of, the person's name under the designation of
131 "Doctor", "Dr.", "M.D.", or "D.O.", or any similar designation with reference to the commercial
132 exploitation of any goods, wares or merchandise;
- 133 (17) Knowingly making or causing to be made a false statement or misrepresentation of
134 a material fact, with intent to defraud, for payment pursuant to the provisions of chapter 208,
135 RSMo, or chapter 630, RSMo, or for payment from Title XVIII or Title XIX of the federal
136 Medicare program;
- 137 (18) Failure or refusal to properly guard against contagious, infectious or communicable
138 diseases or the spread thereof; maintaining an unsanitary office or performing professional
139 services under unsanitary conditions; or failure to report the existence of an unsanitary condition
140 in the office of a physician or in any health care facility to the board, in writing, within thirty
141 days after the discovery thereof;
- 142 (19) Any candidate for licensure or person licensed to practice as a physical therapist,
143 paying or offering to pay a referral fee or, notwithstanding section 334.010 to the contrary,
144 practicing or offering to practice professional physical therapy independent of the prescription
145 and direction of a person licensed and registered as a physician and surgeon pursuant to this
146 chapter, as a dentist pursuant to chapter 332, RSMo, as a podiatrist pursuant to chapter 330,
147 RSMo, or any licensed and registered physician, dentist, or podiatrist practicing in another
148 jurisdiction, whose license is in good standing;
- 149 (20) Any candidate for licensure or person licensed to practice as a physical therapist,
150 treating or attempting to treat ailments or other health conditions of human beings other than by
151 professional physical therapy and as authorized by sections 334.500 to 334.620;

152 (21) Any person licensed to practice as a physician or surgeon, **violating section 334.245**
153 **or** requiring, as a condition of the physician-patient relationship, that the patient receive
154 prescribed drugs, devices or other professional services directly from facilities of that physician's
155 office or other entities under that physician's ownership or control. A physician shall provide the
156 patient with a prescription which may be taken to the facility selected by the patient and a
157 physician knowingly failing to disclose to a patient on a form approved by the advisory
158 commission for professional physical therapists as established by section 334.625 which is dated
159 and signed by a patient or guardian acknowledging that the patient or guardian has read and
160 understands that the physician has a pecuniary interest in a physical therapy or rehabilitation
161 service providing prescribed treatment and that the prescribed treatment is available on a
162 competitive basis. This subdivision shall not apply to a referral by one physician to another
163 physician within a group of physicians practicing together;

164 (22) A pattern of personal use or consumption of any controlled substance unless it is
165 prescribed, dispensed or administered by another physician who is authorized by law to do so;

166 (23) Revocation, suspension, limitation or restriction of any kind whatsoever of any
167 controlled substance authority, whether agreed to voluntarily or not;

168 (24) For a physician to operate, conduct, manage, or establish an abortion facility, or for
169 a physician to perform an abortion in an abortion facility, if such facility comes under the
170 definition of an ambulatory [surgical] **medical treatment** center pursuant to sections 197.200
171 to 197.240, RSMo, and such facility has failed to obtain or renew a license as an ambulatory
172 [surgical] **medical treatment** center;

173 (25) Being unable to practice as a physician and surgeon or with a specialty with
174 reasonable skill and safety to patients by reasons of medical or osteopathic incompetency, or
175 because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or as a result of any
176 mental or physical condition. The following shall apply to this subdivision:

177 (a) In enforcing this subdivision the board shall, after a hearing by the board, upon a
178 finding of probable cause, require a physician to submit to a reexamination for the purpose of
179 establishing his or her competency to practice as a physician or surgeon or with a specialty
180 conducted in accordance with rules adopted for this purpose by the board, including rules to
181 allow the examination of the pattern and practice of such physician's or surgeon's professional
182 conduct, or to submit to a mental or physical examination or combination thereof by at least three
183 physicians, one selected by the physician compelled to take the examination, one selected by the
184 board, and one selected by the two physicians so selected who are graduates of a professional
185 school approved and accredited as reputable by the association which has approved and
186 accredited as reputable the professional school from which the licentiate graduated. However,
187 if the physician is a graduate of a medical school not accredited by the American Medical

188 Association or American Osteopathic Association, then each party shall choose any physician
189 who is a graduate of a medical school accredited by the American Medical Association or the
190 American Osteopathic Association;

191 (b) For the purpose of this subdivision, every physician licensed pursuant to this chapter
192 is deemed to have consented to submit to a mental or physical examination when directed in
193 writing by the board and further to have waived all objections to the admissibility of the
194 examining physician's testimony or examination reports on the ground that the examining
195 physician's testimony or examination is privileged;

196 (c) In addition to ordering a physical or mental examination to determine competency,
197 the board may, notwithstanding any other law limiting access to medical or other health data,
198 obtain medical data and health records relating to a physician or applicant without the physician's
199 or applicant's consent;

200 (d) Written notice of the reexamination or the physical or mental examination shall be
201 sent to the physician, by registered mail, addressed to the physician at the physician's last known
202 address. Failure of a physician to designate an examining physician to the board or failure to
203 submit to the examination when directed shall constitute an admission of the allegations against
204 the physician, in which case the board may enter a final order without the presentation of
205 evidence, unless the failure was due to circumstances beyond the physician's control. A
206 physician whose right to practice has been affected under this subdivision shall, at reasonable
207 intervals, be afforded an opportunity to demonstrate that the physician can resume the competent
208 practice as a physician and surgeon with reasonable skill and safety to patients;

209 (e) In any proceeding pursuant to this subdivision neither the record of proceedings nor
210 the orders entered by the board shall be used against a physician in any other proceeding.
211 Proceedings under this subdivision shall be conducted by the board without the filing of a
212 complaint with the administrative hearing commission;

213 (f) When the board finds any person unqualified because of any of the grounds set forth
214 in this subdivision, it may enter an order imposing one or more of the disciplinary measures set
215 forth in subsection 4 of this section.

216 3. Collaborative practice arrangements, protocols and standing orders shall be in writing
217 and signed and dated by a physician prior to their implementation.

218 4. After the filing of such complaint before the administrative hearing commission, the
219 proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon
220 a finding by the administrative hearing commission that the grounds, provided in subsection 2
221 of this section, for disciplinary action are met, the board may, singly or in combination, warn,
222 censure or place the person named in the complaint on probation on such terms and conditions
223 as the board deems appropriate for a period not to exceed ten years, or may suspend the person's

224 license, certificate or permit for a period not to exceed three years, or restrict or limit the person's
225 license, certificate or permit for an indefinite period of time, or revoke the person's license,
226 certificate, or permit, or administer a public or private reprimand, or deny the person's
227 application for a license, or permanently withhold issuance of a license or require the person to
228 submit to the care, counseling or treatment of physicians designated by the board at the expense
229 of the individual to be examined, or require the person to attend such continuing educational
230 courses and pass such examinations as the board may direct.

231 5. In any order of revocation, the board may provide that the person may not apply for
232 reinstatement of the person's license for a period of time ranging from two to seven years
233 following the date of the order of revocation. All stay orders shall toll this time period.

234 6. Before restoring to good standing a license, certificate or permit issued pursuant to this
235 chapter which has been in a revoked, suspended or inactive state for any cause for more than two
236 years, the board may require the applicant to attend such continuing medical education courses
237 and pass such examinations as the board may direct.

238 7. In any investigation, hearing or other proceeding to determine a licensee's or
239 applicant's fitness to practice, any record relating to any patient of the licensee or applicant shall
240 be discoverable by the board and admissible into evidence, regardless of any statutory or
241 common law privilege which such licensee, applicant, record custodian or patient might
242 otherwise invoke. In addition, no such licensee, applicant, or record custodian may withhold
243 records or testimony bearing upon a licensee's or applicant's fitness to practice on the ground of
244 privilege between such licensee, applicant or record custodian and a patient.

**334.158. 1. By July 1, 2006, the state board of registration for the healing arts shall
2 promulgate guidelines and standards for the performance of office-based surgery by
3 physicians and surgeons licensed under this chapter. In developing such guidelines and
4 standards, the board shall consider the findings and recommendations of:**

5 (1) **The Special Committee on Outpatient (Office Based) Surgery of the Federation
6 of State Medical Boards, as approved by the Federation's House of Delegates in April 2002;**

7 (2) **The American College of Surgeons' Guidelines for Optimal Office-Based
8 Surgery;**

9 (3) **The American Medical Association's Core Principles for Office-Based Surgery;**

10 (4) **The American Society of Anesthesiologists' Practice Parameters for Sedation
11 and Analgesia by Non-Anesthesiologists; and**

12 (5) **The American Academy of Dermatology's Guidelines for Care in Office-Based
13 Facilities.**

14 **2. By January 15, 2007, the board shall submit a report to the governor and general
15 assembly which addresses the following topics:**

16 (1) Patient safety standards for and regulatory oversight of office-based surgery in
17 Missouri and other states; and

18 (2) Trends in the development or adoption of recommended standards for office-
19 based surgery by accreditation or regulatory agencies, or medical specialty societies; and

20 (3) The board's recommendations regarding legislative changes necessary to
21 enhance its ability to establish and enforce reasonable quality assurance and accountability
22 measures for office-based surgery.

334.245. 1. Prior to referring a patient to an ambulatory medical treatment center
2 in which a physician has an ownership interest, a physician licensed under this chapter
3 shall disclose to the patient that the physician has such ownership interest. The provisions
4 of this section shall not supersede or supplant other state or federal prohibitions or
5 restrictions on a physician's ownership interest in a health facility or service to which the
6 physician refers a patient. The board shall enforce the requirements of this section either
7 by requiring the completion of acknowledgment forms approved by the board which are
8 dated and signed by the patient or by instituting a system of random verifications of
9 compliance with this requirement.

10 2. For purposes of this section, the term "ownership interest" means a direct or
11 indirect interest held by the physician, the physician's spouse or dependent children as
12 defined in section 105.450, RSMo, through equity, debt, or other means. Ownership
13 interest does not include:

14 (1) Ownership of investment securities which may be purchased on terms generally
15 available to the public and which are:

16 (a) Listed on the New York Stock Exchange, the American Stock Exchange, or any
17 regional exchange in which quotations are published on a daily basis, or foreign securities
18 listed on a recognized foreign, national, or regional exchange in which quotations are
19 published on a daily basis; or

20 (b) Traded under an automated interdealer quotation system operated by the
21 National Association of Securities Dealers; or

22 (2) Ownership of shares in a regulated investment company as defined in Section
23 851(a) of the Internal Revenue Code of 1986, if such company had, at the end of the
24 company's most recent fiscal year or on average during the previous three fiscal years,
25 total assets exceeding seventy-five million dollars.