

SECOND REGULAR SESSION

HOUSE BILL NO. 1665

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BEHNEN.

Read 1st time February 2, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4811L.01I

AN ACT

To repeal sections 335.066, 383.130, 383.133, and 610.120, RSMo, and to enact in lieu thereof four new sections relating to disciplinary actions for certain professions and their records.

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

Section A. Sections 335.066, 383.130, 383.133, and 610.120, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 335.066, 383.130, 383.133,
3 and 610.120, to read as follows:

335.066. 1. The board may refuse to issue any certificate of registration or authority,
2 permit or license required pursuant to sections 335.011 to 335.096 for one or any combination
3 of causes stated in subsection 2 of this section. The board shall notify the applicant in writing
4 of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint
5 with the administrative hearing commission as provided by chapter 621, RSMo.

6 2. The board may cause a complaint to be filed with the administrative hearing
7 commission as provided by chapter 621, RSMo, against any holder of any certificate of
8 registration or authority, permit or license required by sections 335.011 to 335.096 or any person
9 who has failed to renew or has surrendered his or her certificate of registration or authority,
10 permit or license for any one or any combination of the following causes:

11 (1) Use or unlawful possession of any controlled substance, as defined in chapter 195,
12 RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the
13 work of any profession licensed or regulated by sections 335.011 to 335.096;

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.

- 14 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty
15 or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United
16 States, for any offense reasonably related to the qualifications, functions or duties of any
17 profession licensed or regulated pursuant to sections 335.011 to 335.096, for any offense an
18 essential element of which is fraud, dishonesty or an act of violence, or for any offense involving
19 moral turpitude, whether or not sentence is imposed;
- 20 (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of
21 registration or authority, permit or license issued pursuant to sections 335.011 to 335.096 or in
22 obtaining permission to take any examination given or required pursuant to sections 335.011 to
23 335.096;
- 24 (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by
25 fraud, deception or misrepresentation;
- 26 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty
27 in the performance of the functions or duties of any profession licensed or regulated by sections
28 335.011 to 335.096;
- 29 (6) Violation of, or assisting or enabling any person to violate, any provision of sections
30 335.011 to 335.096, or of any lawful rule or regulation adopted pursuant to sections 335.011 to
31 335.096;
- 32 (7) Impersonation of any person holding a certificate of registration or authority, permit
33 or license or allowing any person to use his or her certificate of registration or authority, permit,
34 license or diploma from any school;
- 35 (8) Disciplinary action against the holder of a license or other right to practice any
36 profession regulated by sections 335.011 to 335.096 granted by another state, territory, federal
37 agency or country upon grounds for which revocation or suspension is authorized in this state;
- 38 (9) A person is finally adjudged insane or incompetent by a court of competent
39 jurisdiction;
- 40 (10) Assisting or enabling any person to practice or offer to practice any profession
41 licensed or regulated by sections 335.011 to 335.096 who is not registered and currently eligible
42 to practice pursuant to sections 335.011 to 335.096;
- 43 (11) Issuance of a certificate of registration or authority, permit or license based upon
44 a material mistake of fact;
- 45 (12) Violation of any professional trust or confidence;
- 46 (13) Use of any advertisement or solicitation which is false, misleading or deceptive to
47 the general public or persons to whom the advertisement or solicitation is primarily directed;
- 48 (14) Violation of the drug laws or rules and regulations of this state, any other state or
49 the federal government;

50 (15) Placement on an employee disqualification list or other related restriction or finding
51 pertaining to employment within a health-related profession issued by any state or federal
52 government or agency following final disposition by such state or federal government or agency.

53 3. After the filing of such complaint, the proceedings shall be conducted in accordance
54 with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing
55 commission that the grounds, provided in subsection 2 of this section, for disciplinary action are
56 met, the board may, singly or in combination, censure or place the person named in the complaint
57 on probation on such terms and conditions as the board deems appropriate for a period not to
58 exceed five years, or may suspend, for a period not to exceed three years, or revoke the license,
59 certificate, or permit.

60 4. An individual whose license has been revoked shall wait one year from the date of
61 revocation to apply for relicensure. Relicensure shall be at the discretion of the board after
62 compliance with all the requirements of sections 335.011 to 335.096 relative to the licensing of
63 an applicant for the first time.

64 5. The board may notify the proper licensing authority of any other state concerning the
65 final disciplinary action determined by the board on a license in which the person whose license
66 was suspended or revoked was also licensed of the suspension or revocation.

67 6. Any person, organization, association or corporation who reports or provides
68 information to the board of nursing pursuant to the provisions of sections 335.011 to 335.259 and
69 who does so in good faith shall not be subject to an action for civil damages as a result thereof.

70 **7. If the board concludes that a nurse has committed an act or is engaging in a**
71 **course of conduct which would be grounds for disciplinary action which constitutes a clear**
72 **and present danger to the public health and safety, the board may file a complaint before**
73 **the administrative hearing commission requesting an expedited hearing and specifying the**
74 **activities which give rise to the danger and the nature of the proposed restriction or**
75 **suspension of the nurse's license. Within fifteen days after service of the complaint on the**
76 **nurse, the administrative hearing commission shall conduct a preliminary hearing to**
77 **determine whether the alleged activities of the nurse appear to constitute a clear and**
78 **present danger to the public health and safety which justify that the nurse's license be**
79 **immediately restricted or suspended. The burden of proving that a nurse is a clear and**
80 **present danger to the public health and safety shall be upon the state board of nursing.**
81 **The administrative hearing commission shall issue its decision immediately after the**
82 **hearing and shall either grant to the board the authority to suspend or restrict the license**
83 **or dismiss the action.**

84 **8. If the administrative hearing commission grants temporary authority to the**
85 **board to restrict or suspend the nurse's license, such temporary authority of the board**

86 shall become final authority if there is no request by the nurse for a full hearing within
87 thirty days of the preliminary hearing. The administrative hearing commission shall, if
88 requested by the nurse named in the complaint, set a date to hold a full hearing under the
89 provisions of chapter 621, RSMo, regarding the activities alleged in the initial complaint
90 filed by the board.

91 **9. If the administrative hearing commission dismisses the action filed by the board**
92 **under subsection 4 of this section, such dismissal shall not bar the board from initiating a**
93 **subsequent action on the same grounds.**

94 **10. If at any time after disciplinary sanctions have been imposed upon the license**
95 **of any person who holds a professional license, permit, certificate, or registration of**
96 **authority under this chapter, the board finds that the licensee, registrant, or permittee has**
97 **violated any disciplinary term previously imposed or agreed to under settlement and the**
98 **licensee has failed to keep the Missouri state board of nursing advised of his or her current**
99 **place of business and residence, then the matter will be considered as a default case and**
100 **the board shall inform the licensee in writing that if he or she fails to file an answer such**
101 **default will be taken against the licensee and the board may impose such additional**
102 **discipline as it would be authorized to impose in an initial disciplinary hearing. In a case**
103 **of default, the respondent will be deemed to have admitted all the factual allegations in the**
104 **formal charges. The board of nursing must serve notice of the hearing by certified, return**
105 **receipt requested mail and by regular mail to the licensee at the licensee's last known**
106 **address as listed with the board and publish notice of the hearing in a local newspaper of**
107 **general circulation available in the area of the licensee's last known address at least ten**
108 **days prior to the hearing.**

 383.130. As used in sections 383.130, 383.133 and 383.500, the following terms shall
2 mean:

3 (1) "Disciplinary action", any final action taken by the board of trustees or similarly
4 empowered officials of a hospital, **home health agency**, or ambulatory surgical center **as such**
5 **terms are defined in chapter 197, RSMo, or any nursing facility, as such term is defined**
6 **in chapter 198, RSMo, or any entity that employs or contracts with licensed health care**
7 **professionals to provide services to individuals or to any hospital, home health agency,**
8 **ambulatory surgical center, or nursing facility** to reprimand, discipline or restrict the practice
9 of a health care professional. [If the health care professional is a physician or surgeon,] Only
10 such reprimands, discipline, or restrictions in response to activities which are also grounds for
11 disciplinary actions [pursuant to section 334.100, RSMo,] **according to the professional**
12 **licensing law for that health care professional** shall be considered disciplinary actions for the
13 purposes of this definition[. If the health care professional is a dentist, only such reprimands,

14 discipline, or restrictions in response to activities which are also grounds for disciplinary actions
15 pursuant to section 332.321, RSMo, shall be considered disciplinary actions for the purposes of
16 this definition];

17 (2) "Health care professional", a physician or surgeon licensed under the provisions of
18 chapter 334, RSMo, a dentist licensed under the provisions of chapter 332, RSMo, or a podiatrist
19 licensed under the provisions of chapter 330, RSMo, or a pharmacist licensed under the
20 provisions of chapter 338, RSMo, a psychologist licensed under the provisions of chapter 337,
21 RSMo, or a nurse licensed under the provisions of chapter 335, RSMo, while acting within their
22 scope of practice;

23 (3) "Hospital", a place devoted primarily to the maintenance and operation of facilities
24 for the diagnosis, treatment or care for not less than twenty-four hours in any week of three or
25 more nonrelated individuals suffering from illness, disease, injury, deformity or other abnormal
26 physical conditions; or a place devoted primarily to provide for not less than twenty-four hours
27 in any week medical or nursing care for three or more nonrelated individuals. The term
28 "hospital" does not include convalescent, nursing, shelter or boarding homes as defined in
29 chapter 198, RSMo;

30 (4) "Licensing authority", the appropriate board or authority which is responsible for the
31 licensing or regulation of the health care professional.

383.133. 1. [Beginning on January 1, 1987,] The chief executive officer **or similarly**
2 **empowered official** of any hospital, **home health agency**, or ambulatory surgical center, as such
3 [term is] **terms are** defined in [section 197.200,] **chapter 197, RSMo, any nursing facility, as**
4 **such term is defined in chapter 198, RSMo, or any entity that employs or contracts with**
5 **licensed health care professionals to provide services to individuals or to any hospital,**
6 **home health agency, ambulatory surgical center, or nursing facility** shall report to the
7 appropriate health care professional licensing authority any disciplinary action against any health
8 care professional or the voluntary resignation of any health care professional against whom any
9 complaints or reports have been made which might have led to disciplinary action.

10 2. All reports required by this section shall be submitted within fifteen days of the final
11 disciplinary action and shall contain, but need not be limited to, the following information:

12 (1) The name, address and telephone number of the person making the report;

13 (2) The name, address and telephone number of the person who is the subject of the
14 report;

15 (3) A brief description of the facts which gave rise to the issuance of the report, including
16 the dates of occurrence deemed to necessitate the filing of the report;

17 (4) If court action is involved and known to the reporting agent, the identity of the court,
18 including the date of filing and the docket number of the action.

19 3. Upon request, the licensing authority may furnish a report of any disciplinary action
20 received by it under the provisions of this section to any [of the hospitals or ambulatory surgical
21 centers] **entity** required to report **under this section**. Such licensing authority may also furnish,
22 upon request, a report of disciplinary action taken by the licensing authority to any other
23 administrative or law enforcement agency acting within the scope of its statutory authority.

24 4. There shall be no liability on the part of, and no cause of action of any nature shall
25 arise against any health care professional licensing authority or any [hospital or ambulatory
26 surgical center] **entity** required to report under this section, or any of their agents or employees
27 for any action taken in good faith and without malice in carrying out the provisions of this
28 section.

29 5. Neither a report required to be filed under subsection 2 of this section nor the record
30 of any proceeding shall be used against a health care professional in any other administrative or
31 judicial proceeding.

32 6. Violation of any provision of this section is an infraction.

610.120. 1. Records required to be closed shall not be destroyed; they shall be
2 inaccessible to the general public and to all persons other than the defendant except as provided
3 in this section and section 43.507, RSMo. The closed records shall be available to: criminal
4 justice agencies for the administration of criminal justice pursuant to section 43.500, RSMo,
5 criminal justice employment, screening persons with access to criminal justice facilities,
6 procedures, and sensitive information; to law enforcement agencies for issuance or renewal of
7 a license, permit, certification, or registration of authority from such agency including but not
8 limited to watchmen, security personnel, private investigators, and persons seeking permits to
9 purchase or possess a firearm; those agencies authorized by section 43.543, RSMo, to submit and
10 when submitting fingerprints to the central repository; the sentencing advisory commission
11 created in section 558.019, RSMo, for the purpose of studying sentencing practices in accordance
12 with section 43.507, RSMo; to qualified entities for the purpose of screening providers defined
13 in section 43.540, RSMo; the department of revenue for driver license administration; **the**
14 **division of professional registration**, the division of workers' compensation for the purposes
15 of determining eligibility for crime victims' compensation pursuant to sections 595.010 to
16 595.075, RSMo, department of health and senior services for the purpose of licensing and
17 regulating facilities and regulating in-home services provider agencies and federal agencies for
18 purposes of criminal justice administration, criminal justice employment, child, elderly, or
19 disabled care, and for such investigative purposes as authorized by law or presidential executive
20 order.

21 2. These records shall be made available only for the purposes and to the entities listed
22 in this section. A criminal justice agency receiving a request for criminal history information

23 under its control may require positive identification, to include fingerprints of the subject of the
24 record search, prior to releasing closed record information. Dissemination of closed and open
25 records from the Missouri criminal records repository shall be in accordance with section 43.509,
26 RSMo. All records which are closed records shall be removed from the records of the courts,
27 administrative agencies, and law enforcement agencies which are available to the public and
28 shall be kept in separate records which are to be held confidential and, where possible, pages of
29 the public record shall be retyped or rewritten omitting those portions of the record which deal
30 with the defendant's case. If retyping or rewriting is not feasible because of the permanent nature
31 of the record books, such record entries shall be blacked out and recopied in a confidential book.

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