

SECOND REGULAR SESSION

HOUSE BILL NO. 2139

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GUEST.

Read 1st time February 14, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4732L.01I

AN ACT

To amend chapter 334, RSMo, by adding thereto twelve new sections relating to the professional licensing of clinical laboratory science personnel, with penalty provisions.

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

Section A. Chapter 334, RSMo, is amended by adding thereto twelve new sections, to
2 be known as sections 334.1300, 334.1303, 334.1306, 334.1309, 334.1312, 334.1315, 334.1318,
3 334.1321, 334.1324, 334.1327, 334.1330, and 334.1333, to read as follows:

334.1300. For purposes of sections 334.1300 to 334.1333, the following terms mean:

2 **(1) "Approved national certification examination", a competency based**
3 **certification examination that is administered by a national nonprofit credentialing agency**
4 **approved by the board;**

5 **(2) "Board", the Missouri clinical laboratory science board appointed by the**
6 **governor;**

7 **(3) "Categorical laboratory scientist", an individual eligible under sections**
8 **334.1300 to 334.1333, with oversight by the laboratory director, to perform the functions**
9 **of a clinical laboratory scientist in one or more categories of laboratory testing, such as**
10 **microbiology, virology, clinical chemistry, immunology, hematology, immunochemistry,**
11 **molecular diagnostics, or other areas specified by the board;**

12 **(4) "CLIA", the federal regulations promulgated by the United States Department**
13 **of Health and Human Services implementing the Clinical Laboratory Amendments of 1988**
14 **and includes PL 100-578 and 42 CFR Part 793, as such regulations are amended;**

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.

- 15 (5) "Clinical laboratory", or "laboratory", any site or location in which clinical
16 laboratory tests or examinations are performed;
- 17 (6) "Clinical laboratory assistant" or "clinical laboratory phlebotomist", an
18 individual responsible for obtaining a blood specimen by venipuncture or capillary
19 puncture according to established and approved protocols and also qualified to perform
20 waived or point of care testing under the direction of a clinical laboratory scientist, clinical
21 laboratory technician, laboratory supervisor, or laboratory director;
- 22 (7) "Clinical laboratory scientist", or "medical technologist", an individual eligible
23 under sections 334.1300 to 334.1333 to perform any clinical laboratory test including those
24 that require the exercise of independent judgment. In addition this individual is
25 responsible for, with oversight by the laboratory director, the establishment and
26 implementation of protocols, quality assessment, method development and selection,
27 equipment selection and maintenance, and all activities related to the preanalytic, analytic,
28 and post-analytic phases of testing. The clinical laboratory scientist may also direct,
29 supervise, consult, educate, and perform research functions;
- 30 (8) "Clinical laboratory technician", or "medical laboratory technician", an
31 individual eligible under sections 334.1300 to 334.1333 who is qualified to perform clinical
32 laboratory tests pursuant to established and approved protocols which require limited
33 exercise of independent judgment and which are performed with oversight from a clinical
34 laboratory scientist, laboratory supervisor, or laboratory director;
- 35 (9) "Clinical laboratory test", or "laboratory test", a microbiological, serological,
36 molecular, chemical, biological, hematological, immunological, immuno-hematological,
37 biophysical, or any other test or procedure performed on material derived from or present
38 within a human body which provides information for the diagnosis, prevention, or
39 monitoring of treatment of a clinical condition. Clinical laboratory testing encompasses
40 the preanalytical, analytical, and post-analytical phases of testing;
- 41 (10) "Department", the Missouri department of insurance, financial institutions
42 and professional registration;
- 43 (11) "Director", the director of the division of professional registration;
- 44 (12) "Laboratory director", an individual eligible under CLIA and licensed in this
45 state or board certified by a credentialing agency approved by the board. A laboratory
46 director is responsible for all aspects of laboratory operation and administration including
47 the appointment of personnel who are competent to perform test procedures; recording
48 and reporting test results promptly, accurately, and proficiently; and assuring compliance
49 with the applicable regulations. The laboratory director may delegate the duties to
50 qualified individuals, but shall remain responsible for ensuring that all duties are properly

51 performed. The laboratory director shall be accessible, but he or she is not required to be
52 on-site when laboratory testing is performed;

53 (13) "Point of care testing" or "bedside testing", clinical laboratory testing that is
54 critical to patient care and must be performed immediately at the patient's location. Tests
55 which meet this definition provide clinically relevant information which determines the
56 patient's therapy, are limited to procedures that produce accurate data within a short
57 period of time, meet the current standards of quality in clinical laboratory science, and
58 comply with all standards of accrediting agencies. Point of care testing shall be under the
59 direction, authority, jurisdiction, and responsibility of a person licensed under sections
60 334.1300 to 334.1333;

61 (14) "Temporary license" or "provisional license", a license issued to an applicant
62 eligible to sit for and registered to take the next scheduled certification examination or an
63 applicant who has taken the examination and is awaiting results; or an applicant who
64 meets the educational requirements for the license and is seeking to qualify for the
65 certification examination by completing the supervised clinical laboratory experience
66 required;

67 (15) "Trainee" or "student", an individual who has not fulfilled the educational
68 requirements to take an approved nationally recognized certification examination or who
69 needs to obtain full-time comprehensive experience under supervision.

334.1303. The provisions of sections 334.1300 to 334.1333 shall not apply to the
2 following persons:

3 (1) Licensed health care professionals whose scope of practice includes blood
4 collection or the performance of waived or PPM testing as defined by CLIA;

5 (2) Practitioners holding doctorate degrees in chemical, physical, biological, or
6 clinical laboratory science who are board certified, as defined by CLIA;

7 (3) Clinical laboratory practitioners employed by the federal government or any
8 bureau, division, or agency thereof while in the discharge of the employee's official duties;

9 (4) Clinical laboratory science professionals engaged in teaching or research,
10 provided that the results of any examination performed are not used in health
11 maintenance, diagnosis, or treatment of disease;

12 (5) Students or trainees enrolled in an accredited clinical laboratory science
13 education program, provided that their activities constitute a part of a planned course in
14 the program; that the individual is designated by title as an intern, trainee, or student; and
15 the individual works under the direct supervision of a duly licensed clinical laboratory
16 practitioner who is responsible for reporting test results.

334.1306. 1. No person shall perform clinical laboratory tests or hold himself or herself out as a clinical laboratory scientist, categorical clinical laboratory scientist, clinical laboratory technician, or laboratory assistant or phlebotomist unless such person is licensed under the provisions of sections 334.1300 to 334.1333.

2. All persons collecting blood specimens, processing laboratory specimens, performing or reporting laboratory tests or consulting regarding laboratory tests, or persons who are working as clinical laboratory practitioners, as defined in section 334.1300, who are certified or eligible for certification by an agency acceptable to the board, and who have applied to the board on or before August 28, 2008, and have complied with all necessary requirements for such application may continue to perform the duties until:

(1) The expiration of twelve months after the filing of such application;

(2) The denial of the application by the board; or

(3) The withdrawal of the application.

3. Prior to August 28, 2010, persons not meeting the education, training, and experience qualifications under sections 334.1300 to 334.1333 for any license shall be considered to have met the qualifications of licensure provided they have three years of acceptable experience immediately prior to August 28, 2008, and they submit to the board the job description of the position which the applicant has most recently performed and such job description is attested to by his or her employer. The board shall determine which type of license the applicant is eligible for based on the applicant's previous experience.

4. Effective August 28, 2010, no initial license shall be issued until an applicant meets all of the requirements of sections 334.1300 to 334.1333, and successfully passes a board approved certification examination. This provision shall not apply to the issuance of temporary licenses.

334.1309. 1. The provisions of sections 334.1300 to 334.1333 shall be administered by the department of insurance, financial institutions and professional registration. The department shall promulgate rules consistent with the provisions of sections 334.1300 to 334.1333 for the administration and enforcement thereof and may prescribe forms, which shall be issued in connection therewith. The rules shall include standards and criteria for licensure and professional conduct and discipline. The department shall consult with the board in promulgating rules. Notice of proposed rulemaking shall be transmitted to the board and the department shall review the board's response and any recommendations made therein. The department shall notify the board in writing with an explanation of its deviations from the board's recommendations and response.

11 **2. The department shall solicit the advice and expert knowledge of the board on any**
12 **matter relating to the administration and enforcement of sections 334.1300 to 334.1333.**

13 **3. The department shall issue to the board a quarterly report of the status of all**
14 **complaints related to the profession received by the department.**

334.1312. 1. There is hereby created within the division of professional registration
2 **a board to be known as the "Clinical Laboratory Science Board". The board shall assist**
3 **the division in administering and enforcing the provisions of sections 334.1300 to 334.1333,**
4 **and shall adopt, publish, and enforce such rules and regulations as is necessary for the**
5 **effective administration and interpretation of sections 334.1300 to 334.1333, and for the**
6 **conduct of the board's business and management of its internal affairs.**

7 **2. At least ninety days prior to the expiration of the term of a board member, and**
8 **as soon as feasible after the occurrence of a vacancy on the board for reasons other than**
9 **the expiration of a term, a list of three licensed and qualified individuals shall be submitted**
10 **to the director of the division of professional registration. The governor may appoint a**
11 **board member to fill the vacancy from the list submitted, or may appoint some other**
12 **qualified licensed laboratorian.**

13 **3. Before assuming their duties, board members shall make and file with the**
14 **secretary of state the oath of office required by the Constitution of Missouri for all civil**
15 **officers of this state.**

16 **4. The board shall approve the types of certifications and approve the credentialing**
17 **bodies that administer the certification exams.**

18 **5. The board shall consist of seven members including the following:**

19 **(1) One physician certified by the American Board of Pathology or American**
20 **Board of Osteopathic Pathology;**

21 **(2) One nonphysician laboratory director;**

22 **(3) One medical physician who is not a laboratory director or a pathologist;**

23 **(4) Two clinical laboratory scientists or medical technologists;**

24 **(5) One clinical laboratory technician or medical laboratory technician; and**

25 **(6) One public member who is not associated with or financially interested in the**
26 **practice appointed by the governor with the advice and consent of the senate.**

27

28 **Within ninety days after August 28, 2008, the governor shall appoint two members for a**
29 **term of two years, two members for a term of three years, and three members for a term**
30 **of four years. As terms of the initial members expire, the governor shall appoint successors**
31 **for terms of four years. A member whose term has expired shall continue to serve on the**
32 **board until such time as a replacement is appointed. Whenever a vacancy occurs on the**

33 board by reason other than the expiration of a term of office, the governor shall appoint
34 a successor of like qualifications for the remainder of the unexpired term. No member
35 shall serve more than the remaining portion of a previous member's unexpired term, plus
36 two consecutive four-year terms of the member's own thereafter. Each member of the
37 board shall be a citizen of the United States, a Missouri resident, and licensed under the
38 provisions of sections 334.1300 to 334.1333; except licensure is not required for the first
39 members appointed under this section. The membership of the board shall reflect the
40 differences in levels of education and work experience with consideration being given to
41 race, gender, and ethnic origins. No more than four members shall be from the same
42 political party. The membership shall be representative of the various geographic regions
43 of the state.

44 6. Each member of the board shall receive as compensation an amount set by the
45 division and shall be reimbursed for necessary and actual expenses incurred in the
46 performance of the member's official duties. The board may appoint, employ, and fix the
47 compensation of a legal counsel and board personnel. The division shall provide all staff
48 for the board.

49 7. The board shall hold an annual meeting at which it shall elect for a one-year
50 term from its membership a chairperson and a secretary, who shall also be treasurer. The
51 board may hold such additional meetings as may be required in the performance of its
52 duties, provided that notice of every meeting shall be given to each member at least three
53 days prior to the date of the meeting. A majority of the board, including at least one
54 officer, shall constitute a quorum for the conducting of business.

55 8. The board shall adopt and revise such rules and regulations as may be necessary
56 to enable it to carry out the provisions of sections 334.1300 to 334.1333.

57 9. The board shall prescribe minimum standards for programs, which provide
58 continuing education for the licensees.

59 10. The board shall provide surveys of such continuing education programs every
60 five years.

61 11. The board shall designate as approved such programs that meet the
62 requirements of sections 334.1300 to 334.1333 and the board shall annually publish a list
63 of such programs.

64 12. The board shall keep a record of all proceedings and make an annual report to
65 the governor and the director.

66 13. The governor may remove a board member for misconduct, incompetence,
67 neglect of the member's official duties, or for other cause.

68 **14. The public member appointed to the board shall, at the time of the person's**
69 **appointment:**

70 **(1) Be a resident of this state for a minimum of one year;**

71 **(2) Be a registered voter;**

72 **(3) Not be licensed under sections 334.1300 to 334.1333 and never been licensed**
73 **under such sections;**

74 **(4) Not be the spouse of a person who has been licensed under sections 334.1300 to**
75 **334.1333;**

76 **(5) Not have a material financial interest in either the providing of professional**
77 **services under sections 334.1300 to 334.1333, or an activity or organization directly related**
78 **to any profession licensed under such sections.**

79

80 **The duties of the public member shall not include the determination of the educational or**
81 **technical requirements to be met for licensure or whether any individual meets such**
82 **technical requirements, or of the technical competence or technical judgment of a licensee**
83 **or a candidate for licensure.**

84 **15. Members of the board shall not be personally liable either jointly or separately**
85 **for any act or acts committed in the performance of official duties as board members.**

86 **16. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
87 **that is created under the authority delegated in this section shall become effective only if**
88 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
89 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
90 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
91 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
92 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
93 **adopted after August 28, 2008, shall be invalid and void.**

334.1315. The board shall review the certification by the board-approved
2 **credentialing agency and determine the type of license and shall recommend to the**
3 **department, if applicable, the issuance of such a license. The following types of licenses**
4 **may be issued:**

5 **(1) Clinical laboratory scientist, also know as medical technologist. The board shall**
6 **issue such a license to an individual who possesses a baccalaureate degree from a regionally**
7 **accredited college or university, has acceptable clinical laboratory experience or training,**
8 **and passes a nationally recognized certification examination authorized by the board;**

9 **(2) Categorical laboratory scientist. The board shall issue a categorical clinical**
10 **laboratory scientist's license to an individual who possesses a baccalaureate degree from**

11 a regionally accredited college or university, has acceptable clinical laboratory experience
12 or training, and passes a nationally recognized certification examination in a recognized
13 discipline of laboratory science authorized by the board. The laboratory discipline will be
14 specified on the license;

15 (3) Clinical laboratory technician, also known as medical laboratory technician.
16 The board shall issue a clinical laboratory technician's license to an individual who
17 possesses an associate's degree from a regionally accredited college or university, has
18 acceptable clinical laboratory experience or training, and passes a nationally recognized
19 certification examination authorized by the board;

20 (4) Clinical laboratory assistant/phlebotomist. The board shall issue a clinical
21 laboratory assistant/phlebotomist's license to an individual who possesses a high school
22 diploma or equivalent, has acceptable experience or training, and passes a nationally
23 recognized certification examination authorized by the board, if available.

334.1318. 1. Licensure applicants who qualify by education, experience, or
2 training, but who have not taken or passed an approved certification examination may be
3 granted a temporary license that will allow that individual to engage in the practice of
4 clinical laboratory science at the appropriate level. The temporary license will be valid for
5 twelve months and may be renewed one time upon failure to pass a board-approved
6 certification examination.

7 2. Internationally trained licensure applicants shall have their transcripts evaluated
8 by a transcript evaluation agency acceptable to the board and submitted directly to a
9 board-approved certification agency. The evaluation shall indicate the applicant's
10 education is equivalent to that which is required for licensure of United State's graduates
11 at the level of licensure being sought. Upon submission of proof to the board of acceptance
12 to sit for the certification examination, the individual may apply for a temporary license
13 in the corresponding category.

334.1321. The board shall recognize a valid license or equivalent issued by another
2 state, provided that the requirements under which that license or equivalent was issued are
3 equivalent to or exceed the standards required under sections 334.1300 to 334.1333.

334.1324. 1. Applications for licensure in clinical laboratory science shall be in
2 writing and submitted to the board on forms provided by the division and furnished to the
3 applicant. The application shall contain the applicant's statements showing the applicant's
4 education, experience, copy of applicant's certification, and such other information as the
5 board may require. Each application shall contain a statement that is made under oath or
6 affirmation that the information contained therein is true and correct to the best

7 knowledge and belief of the applicant, subject to the penalties provided for the making of
8 a false affidavit or declaration. Appropriate fees shall accompany each application.

9 2. The board shall, by rule, establish fees to be paid for application, licensing, and
10 renewal, reinstatement, and record making and record keeping. The board may also
11 establish, by rule, a delinquency fee. The board shall establish fees that are adequate to
12 ensure the continued operation of the board and to fund the proportionate expenses
13 incurred by the department in carrying out its licensure responsibilities and other related
14 responsibilities under sections 334.1300 to 334.1333. Fees shall be based on departmental
15 estimates of the revenue required to implement this part and the provisions of law with
16 respect to the regulation of clinical laboratory personnel.

17 3. Upon receipt of a nonrefundable initial application fee and payment of a license
18 fee, the board shall issue a license for the appropriate license category as a clinical
19 laboratory technician, laboratory assistant/phlebotomist to an individual who meets the
20 qualifications specified in sections 334.1300 to 334.1333 and the rules and regulations
21 promulgated hereunder.

22 4. A license issued under sections 334.1300 to 334.1333 shall expire in two years;
23 the board may, by rule, permit renewal less frequently than every two years and may set
24 license fees accordingly. The division shall mail a renewal notice to the last known address
25 of each licensee prior to the renewal date. The license of any individual who fails to pay
26 the required fee, fails to provide documentation of required continuing education, or fails
27 to provide the board with any information required for renewal within sixty days after the
28 expiration of such license shall be automatically cancelled without notice or further
29 proceedings unless the individual has made application for inactive status or has paid the
30 renewal fee. The license shall be reinstated if, within two years of the renewal date, the
31 applicant submits the required documentation and pays the applicable fees as approved
32 by the board.

33 5. The board shall prescribe by rule the continuing education requirements for
34 renewal of licenses.

35 6. A licensed clinical laboratory science individual may ask to be put on inactive
36 status, provided such individual does not practice clinical laboratory science during such
37 a period that the individual is on inactive status. If the individual desires to maintain such
38 license on an inactive status and in order to avoid lapsing of such license, the individual
39 shall pay the required fee as established by the board for maintaining an inactive license.
40 An inactive license shall be renewed biennially. The board may, as provided by rule,
41 reactivate an inactive license. The board shall prescribe by rule the continuing education
42 requirements as a condition of license reactivation and demonstrated competence.

43 **7. A new license to replace any license lost, destroyed, or mutilated may be issued**
44 **subject to the rules of the board upon payment of a fee.**

45 **8. The board shall set by rule the appropriate amount of fees authorized herein.**
46 **The fees shall be set at a level to produce revenue which shall not substantially exceed the**
47 **cost and expense of administering the provisions of sections 334.1300 to 334.1333. All fees**
48 **collected under this section shall be collected by the director who shall then transmit the**
49 **funds to the director of revenue to be deposited in the state treasury to the credit of the**
50 **"Clinical Laboratory Science Fund" which is hereby created. All administrative costs and**
51 **expenses of the board shall be paid from appropriations made for those purposes.**
52 **Notwithstanding provisions of law to the contrary, money in this fund shall not be**
53 **transferred and placed to the credit of the general revenue until the amount in the fund at**
54 **the end of the biennium exceeds three times the amount of the appropriation from the**
55 **clinical laboratory science fund for the preceding fiscal year. The amount, if any, in the**
56 **fund which shall lapse is the amount in the fund which exceeds the appropriate multiple**
57 **of the appropriations from the clinical laboratory science fund for the preceding fiscal**
58 **year.**

334.1327. 1. The board may refuse to issue or renew any license for one or any
2 **combination of reasons stated in this section. The board shall notify the applicant in**
3 **writing of the reasons for the refusal and shall advise the applicant of the right to file a**
4 **complaint with the administrative hearing commission.**

5 **2. The board may cause a complaint to be filed with the administrative hearing**
6 **commission against the holder of any license, or against any person who has failed to renew**
7 **his or her license or who has surrendered his or her license, that may include, but not be**
8 **limited to, any of the following causes:**

9 **(1) Use of fraud, deception, misrepresentation, or bribery in securing a license**
10 **under this section;**

11 **(2) Impersonation of any individual holding a license or allowing any individual to**
12 **use his or her license or diploma from any school;**

13 **(3) Disciplinary action against the holder of a license by another state, territory,**
14 **federal agency, or country upon grounds for which revocation or suspension is authorized**
15 **in this state;**

16 **(4) Issuance of a license based upon a material mistake of fact;**

17 **(5) The person has been adjudicated and found guilty, or entered a plea of guilty**
18 **or nolo contendere, in a criminal prosecution under the laws of any state, or under federal**
19 **law, for any offense reasonably related to the qualifications, functions, or duties of the**
20 **individual who is regulated, for any offense involving an essential element of fraud,**

21 dishonesty, or act of violence, or for any offense involving moral turpitude, elder or child
22 abuse, regardless of whether a sentence is imposed;

23 (6) Demonstrating professional incompetence, misconduct, gross negligence, fraud,
24 misrepresentation or dishonesty in the performance of specimen collection, processing or
25 performance of clinical laboratory testing, or erroneous reporting;

26 (7) Failing to provide information, within sixty days, in response to a written
27 request made by the board;

28 (8) Directly or indirectly giving to or receiving from any person, firm, corporation,
29 partnership, or association any fee, commission, rebate, or other form of compensation for
30 any professional services not actually rendered;

31 (9) A finding by the board that the licensee, after having his or her license placed
32 on probationary status, has violated the terms of probation;

33 (10) Willfully making or filing false records or reports in his or her practice,
34 including but not limited to, false records filed with state agencies or departments;

35 (11) Violating any standard of professional conduct adopted by the board;

36 (12) Engaging in dishonorable, unethical, or unprofessional conduct of a character
37 likely to deceive, defraud, or harm the public;

38 (13) Jeopardizing patient safety by providing professional services while mentally
39 incompetent or under the influence of alcohol, a narcotic or a controlled substance that is
40 in excess of therapeutic amounts, or without valid medical indication;

41 (14) Directly or indirectly contracting to perform clinical laboratory tests in a
42 manner which offers or implies an offer of rebate, fee-splitting inducements or
43 arrangements, or other remuneration;

44 (15) Aiding or assisting another individual in violating any provision of sections
45 334.1300 to 334.1333 or any rule adopted hereunder.

46 3. The determination by a circuit court that a licensee is subject to involuntary
47 admission or judicial admission as provided in the Mental Health and Developmental
48 Disabilities Code operates as an automatic suspension. Only upon a finding by a court that
49 the licensee is no longer subject to an involuntary admission or judicial admission, and the
50 issuance of an order so finding and discharging the licensee, will the suspension be
51 terminated and the licensee be allowed to resume practice.

52 4. The board may refuse to issue a license or may suspend the license of any
53 individual who fails to file a tax return, or to pay the tax, penalty, or interest shown in a
54 filed return, or to pay any final assessment of tax, penalty, or interest, as required by the
55 department of revenue, until such time as the requirements of the department of revenue
56 are satisfied.

334.1330. 1. If any person violates any provision of sections 334.1300 to 334.1333, the board may, in the name of the people of the state through the attorney general of the state petition the courts for an order enjoining such violation or for an order enforcing compliance with sections 334.1300 to 334.1333. Upon the filing of a verified petition, the court may issue a temporary restraining order, without notice or bond, and may preliminarily and permanently enjoin such violation, and if it is established that such person has violated or is violating this injunction, the court may punish the offender for contempt of court. Proceedings under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by sections 334.1300 to 334.1333.

2. If any person functions as clinical laboratory science personnel, or holds himself or herself out as such without having a valid license, then any licensee, any interested party, or any individual injured thereby may, in addition to the board, petition for relief as provided in this section.

3. Whenever in the opinion of the board any individual violates any provision of sections 334.1300 to 334.1333, the board may issue a rule to show cause why an order to cease and desist should not be entered against him or her. The rule shall clearly set forth the grounds relied on by the board and shall provide a period of seven days from the date of the rule to file an answer to the satisfaction of the board. Failure to answer to the satisfaction of the board shall cause an order to cease and desist to be issued forthwith.

4. The department may investigate the actions of any applicant or of any persons holding or claiming to hold a license to engage in the practice of clinical laboratory science. Before refusing to issue or renew a license, the board shall notify the applicant or holder in writing of the nature of the charges and that a hearing will be held on the date designated. Such notice shall be sent at least ten calendar days prior to the date set for the hearing. Such written notice may be served by personal delivery or certified or registered mail to the respondent at the address of his or her last notification to the board. At the time and place fixed in the notice, the board shall proceed to hear the charges and the parties or their counsel shall be accorded ample opportunity to present such statements, testimony, evidence, and argument as may be pertinent to the charges or to the defense thereto. The board may choose to continue such hearing.

5. The department shall preserve, at its expense, a record of all proceedings at the formal hearing of any case involving the refusal to issue or renew a license. The notice of hearing, complaint, and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report of the board, and orders of the department shall be the record of such proceedings.

36 **6. Any circuit court may enter an order requiring the attendance of witnesses and**
37 **their testimony, and the production of documents, papers, files, books, and records in**
38 **connection with any hearing or investigation, upon application of the department or its**
39 **designee. The court may compel obedience to its order by proceedings for contempt.**

40 **7. At the conclusion of the hearing, the board shall present to the director a written**
41 **report of its findings and recommendations. The report shall contain a finding as to**
42 **whether the accused person violated the provisions of sections 334.1300 to 334.1333 or**
43 **failed to comply with the conditions required in such sections. The board shall specify the**
44 **nature of the violation or failure to comply, and shall make its recommendations to the**
45 **director.**

46 **8. The report of findings of fact and conclusions of law and recommendations shall**
47 **be the basis for the department's order for refusal, or for the granting of a license, or for**
48 **other disciplinary action. If the director disagrees in any regard with the report of the**
49 **board, the director may issue an order in contravention thereof. The director shall provide**
50 **a written report to the board on any deviation and shall specify with particularity the**
51 **reasons for such action in the final order. The finding is not admissible in evidence against**
52 **the person in a criminal prosecution brought for the violation of sections 334.1300 to**
53 **334.1333, but the hearing and finding shall not bar a criminal prosecution brought for**
54 **violation of such sections.**

55 **9. In any case involving the refusal to issue or renew a license, or to discipline a**
56 **licensee, a copy of the board's report shall be served upon the respondent by the**
57 **department, either personally or as provided in sections 334.1300 to 334.1333 for the**
58 **service of the notice of hearing. Within twenty calendar days after such service, the**
59 **respondent may present to the department a motion in writing for a rehearing, which**
60 **motion shall specify the particular grounds therefore. If no motion for rehearing is filed,**
61 **then upon the expiration of the time specified for filing such a motion, or if a motion for**
62 **rehearing is denied, then upon such denial the director may enter an order in accordance**
63 **with recommendations of the reporting service, and pay for a transcript of the record**
64 **within the time for filing a motion for rehearing, the twenty-calendar-day period within**
65 **which such a motion may be filed shall commence upon the delivery of the transcript to the**
66 **respondent.**

67 **10. Whenever the director is not satisfied that substantial justice has been done in**
68 **the revocation, suspension, or refusal to issue or renew a license, the director may order**
69 **a rehearing by the same or other examiners. The director shall have the authority to**
70 **appoint any attorney duly licensed to practice law in this state to serve as the hearing**
71 **officer in any action or refusal to issue or renew a license or discipline a licensee. The**

72 director shall notify the board of any such appointment. The hearing officer shall have full
73 authority to conduct the hearing. The hearing officer shall report the findings of fact,
74 conclusions of law and recommendations to the director. The board shall have sixty days
75 from receipt of the report to review the report of the hearing officer and present its own
76 findings of fact, conclusions of law and recommendations to the director. If the board fails
77 to present its report within the sixty-day period, the director shall issue an order based on
78 the report of the hearing officer. If the director disagrees in any regard with the report of
79 the board or hearing officer, he or she may issue an order in contravention thereof. The
80 director shall provide a written explanation to the board of any such deviation and shall
81 specify with particularity the reasons for such action in the final order. At least two
82 licensed clinical laboratory practitioner members of the board shall be present at all formal
83 hearings on the merits or complaints brought under the provisions of this section.

84 11. At any time after the suspension or revocation of any license, the department
85 may restore the license to the accused person, upon written recommendation of the board,
86 unless after an investigation and a hearing the board determines that restoration is not in
87 the public's interest. Upon revocation or suspension of any license, the licensee shall
88 surrender his or her license to the department and, upon failing to so surrender the license,
89 the department may seize the license. The director may temporarily suspend the license
90 of a clinical laboratory practitioner without a hearing, simultaneously with the institution
91 of proceedings for a hearing of this section, if the director finds that evidence indicates that
92 a clinical laboratory practitioner's continuation in practice would constitute an imminent
93 danger to the public. In the event the director suspends temporarily the license of a clinical
94 laboratory practitioner without a hearing, a hearing by the board shall be held within
95 thirty calendar days after such suspension has occurred.

96 12. All final administrative decisions of the department are subject to judicial
97 review. Notwithstanding any law to the contrary, proceedings for judicial review shall be
98 commenced in the circuit court of the county in which the party applying for review
99 resides; however, if the party is not a resident of this state, the venue shall be in Cole
100 County.

101 13. The department shall not be required to certify any record to the court or file
102 any answer in court or otherwise appear in any court in judicial review proceedings unless
103 there is filed in the court, with the complaint, a receipt from the department
104 acknowledging payment of the costs of furnishing and certifying the record, which costs
105 shall be computed at the actual cost per page of such record. Failure on the part of the
106 plaintiff to file such receipt in court shall be grounds for dismissal of the action.

- 334.1333. Any person who is found to have violated any provision of sections**
2 334.1300 to 334.1333 is guilty of a class A misdemeanor for the first offense and a class D
3 felony for each subsequent offense.

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