

**HOUSE** \_\_\_\_\_ **AMENDMENT NO.** \_\_\_\_\_

**Offered By**

House Committee Substitute for Senate Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 62, In the Title, Lines 2 and 3, by deleting all of said lines and inserting in lieu thereof the following:

"To repeal sections 190.839, 191.227, 198.439, 208.437, 324.043, 334.040, 334.070, 334.090, 334.100, 334.102, 334.103, 334.715, 338.550, 536.063, 536.067, 536.070, 621.045, 621.100, 621.110, and 633.401, RSMo, and to enact in lieu thereof twenty-four new sections relating to health care providers."; and

Further amend said bill, Page 1, Section A, Lines 1 to 3, by deleting all of said lines and inserting in lieu thereof the following:

"Section A. Sections 190.839, 191.227, 198.439, 208.437, 324.043, 334.040, 334.070, 334.090, 334.100, 334.102, 334.103, 334.715, 338.550, 536.063, 536.067, 536.070, 621.045, 621.100, 621.110, and 633.401, RSMo, are repealed and twenty-four new sections enacted in lieu thereof, to be known as sections 190.839, 191.227, 198.439, 208.437, 324.043, 324.045, 334.001, 334.040, 334.070, 334.090, 334.099, 334.100, 334.102, 334.103, 334.108, 334.715, 338.550, 536.063, 536.067, 536.070, 621.045, 621.100, 621.110, and 633.401, to read as follows:"; and

Further amend said bill, Page 3, Section 208.480, Line 2, by inserting after all of said line the following:

"324.043. 1. Except as provided in this section, no disciplinary proceeding against any person or entity licensed, registered, or certified to practice a profession within the division of professional registration shall be initiated unless such action is commenced within three years of the date upon which the licensing, registering, or certifying agency received notice of an alleged violation of an applicable statute or regulation.

2. For the purpose of this section, notice shall be limited to:

(1) A written complaint;

(2) Notice of final disposition of a malpractice claim, including exhaustion of all extraordinary remedies and appeals;

(3) Notice of exhaustion of all extraordinary remedies and appeals of a conviction based upon a criminal statute of this state, any other state, or the federal government;

1 (4) Notice of exhaustion of all extraordinary remedies and appeals in a disciplinary action  
2 by a hospital, state licensing, registering or certifying agency, or an agency of the federal  
3 government.

4 3. For the purposes of this section, an action is commenced when a complaint is filed by  
5 the agency with the administrative hearing commission, any other appropriate agency, or in a  
6 court; or when a complaint is filed by the agency's legal counsel with the agency in respect to an  
7 automatic revocation or a probation violation.

8 4. Disciplinary proceedings based upon repeated negligence shall be exempt from all  
9 limitations set forth in this section.

10 5. Disciplinary proceedings based upon a complaint involving sexual misconduct shall be  
11 exempt from all limitations set forth in this section.

12 6. Any time limitation provided in this section shall be tolled:

13 (1) During any time the accused licensee, registrant, or certificant is practicing exclusively  
14 outside the state of Missouri or residing outside the state of Missouri and not practicing in  
15 Missouri;

16 (2) As to an individual complainant, during the time when such complainant is less than  
17 eighteen years of age;

18 (3) During any time the accused licensee, registrant, or certificant maintains legal action  
19 against the agency; or

20 (4) When a settlement agreement is offered to the accused licensee, registrant, or  
21 certificant, in an attempt to settle such disciplinary matter without formal proceeding pursuant to  
22 section 621.045 until the accused licensee, registrant, or certificant rejects or accepts the  
23 settlement agreement.

24 7. The licensing agency may, in its discretion, toll any time limitation when the accused  
25 applicant, licensee, registrant, or certificant enters into and participates in a treatment program for  
26 chemical dependency or mental impairment.

27 324.045. 1. Notwithstanding any provision of chapter 536, in any proceeding initiated by  
28 the division of professional registration or any board, committee, commission, or office within the  
29 division of professional registration to determine the appropriate level of discipline or additional  
30 discipline, if any, against a licensee of the board, committee, commission, or office within the  
31 division, if the licensee against whom the proceeding has been initiated upon a properly pled  
32 writing filed to initiate the contested case and upon proper notice fails to plead or otherwise  
33 defend against the proceeding, the board, commission, committee, or office within the division  
34 shall enter a default decision against the licensee without further proceedings. The terms of the  
35 default decision shall not exceed the terms of discipline authorized by law for the division, board,  
36 commission, or committee. The division, office, board, commission, or committee shall provide

1 the licensee notice of the default decision in writing.

2 2. Upon motion stating facts constituting a meritorious defense and for good cause shown,  
3 a default decision may be set aside. The motion shall be made within a reasonable time, not to  
4 exceed thirty days after entry of the default decision. "Good cause" includes a mistake or conduct  
5 that is not intentionally or recklessly designed to impede the administrative process.

6 334.001. 1. Notwithstanding any other provision of law to the contrary, the following  
7 information is an open record and shall be released upon request of any person and may be  
8 published on the board's website:

9 (1) The name of a licensee or applicant;

10 (2) The licensee's business address;

11 (3) Registration type;

12 (4) Currency of the license, certificate, or registration;

13 (5) Professional schools attended;

14 (6) Degrees and certifications, including certification by the American Board of Medical  
15 Specialties, the American Osteopathic Association, or other certifying agency approved by the  
16 board by rule;

17 (7) To the extent provided to the board after August 28, 2011, discipline by another state  
18 or administrative agency;

19 (8) Limitations on practice placed by a court of competent jurisdiction;

20 (9) Any final discipline by the board, including the content of the settlement agreement or  
21 order issued; and

22 (10) Whether a discipline case brought by the board is pending in the administrative  
23 hearing commission or any court.

24 2. All other information pertaining to a licensee or applicant not specifically denominated  
25 an open record in subsection 1 of this section is a closed record and confidential.

26 3. The board shall disclose confidential information without charge or fee upon written  
27 request of the licensee or applicant if the information is less than five years old. If the information  
28 requested is more than five years old, the board may charge a fee equivalent to the fee specified by  
29 regulation.

30 4. At its discretion, the board may disclose confidential information, without the consent  
31 of the licensee or applicant, to a licensee or applicant for a license in order to further a board  
32 investigation or to facilitate settlement negotiations with the board, in the course of voluntary  
33 exchange of information with another state's licensing authority, pursuant to a court order, or to  
34 other administrative or law enforcement agencies acting within the scope of their statutory  
35 authority.

36 5. Information obtained from a federal administrative or law enforcement agency shall be

disclosed only after the board has obtained written consent to the disclosure from the federal administrative or law enforcement agency.

6. The board is entitled to the attorney/client privilege and work product privilege to the same extent as any other person.

334.040. 1. Except as provided in section 334.260, all persons desiring to practice as physicians and surgeons in this state shall be examined as to their fitness to engage in such practice by the board. All persons applying for examination shall file a completed application with the board [at least eighty days before the date set for examination upon blanks] upon forms furnished by the board.

2. The examination shall be sufficient to test the applicant's fitness to practice as a physician and surgeon. The examination shall be conducted in such a manner as to conceal the identity of the applicant until all examinations have been scored. In all such examinations an average score of not less than seventy-five percent is required to pass; provided, however, that the board may require applicants to take the Federation Licensing Examination, also known as FLEX, or the United States Medical Licensing Examination (USMLE). If the FLEX examination is required, a weighted average score of no less than seventy-five [percent] is required to pass. Scores from one test administration of the FLEX shall not be combined or averaged with scores from other test administrations to achieve a passing score. The passing score of the United States Medical Licensing Examination shall be determined by the board through rule and regulation. The board shall not issue a permanent license as a physician and surgeon or allow the Missouri state board examination to be administered to any applicant who has failed to achieve a passing score within three attempts on licensing examinations administered in one or more states or territories of the United States, the District of Columbia or Canada. The steps one, two and three of the United States Medical Licensing Examination shall be taken within a seven-year period with no more than three attempts on any step of the examination; however, the board may grant an extension of the seven-year period if the applicant has obtained a MD/PhD degree in a program accredited by the [liaison committee on medical education] Liaison Committee on Medical Education (LCME) and a regional university accrediting body or a DO/PhD degree accredited by the American Osteopathic Association and a regional university accrediting body. The board may waive the provisions of this section if the applicant is licensed to practice as a physician and surgeon in another state of the United States, the District of Columbia or Canada and the applicant has achieved a passing score on a licensing examination administered in a state or territory of the United States or the District of Columbia and no license issued to the applicant has been disciplined in any state or territory of the United States or the District of Columbia[. Prior to waiving the provisions of this section, the board may require the applicant to achieve a passing score on one of the following:

1 (1) The American Specialty Board's certifying examination in the physician's field of  
2 specialization;

3 (2) Part II of the FLEX; or

4 (3) The Federation portion of the State Medical Board's Special Purpose Examination  
5 (SPEX)] and the applicant is certified in the applicant's area of specialty by the American Board of  
6 Medical Specialties, the American Osteopathic Association, or other certifying agency approved  
7 by the board by rule.

8 3. If the board waives the provisions of this section, then the license issued to the  
9 applicant may be limited or restricted to the applicant's board specialty. [Scores from one test  
10 administration shall not be combined or averaged with scores from other test administrations to  
11 achieve a passing score.] The board shall not be permitted to favor any particular school or  
12 system of healing.

13 4. If an applicant has not actively engaged in the practice of clinical medicine or held a  
14 teaching or faculty position in a medical or osteopathic school approved by the American Medical  
15 Association, the Liaison Committee on Medical Education, or the American Osteopathic  
16 Association for any two years in the three year period immediately preceding the filing of his or  
17 her application for licensure, the board may require successful completion of another examination,  
18 continuing medical education, or further training before issuing a permanent license. The board  
19 shall adopt rules to prescribe the form and manner of such reexamination, continuing medical  
20 education, and training.

21 \_\_\_\_\_ 334.070. 1. Upon due application therefor and upon submission by such person of  
22 evidence satisfactory to the board that he or she is licensed to practice in this state, and upon the  
23 payment of fees required to be paid by this chapter, the board shall issue to [him] such person a  
24 certificate of registration. The certificate of registration shall contain the name of the person to  
25 whom it is issued and his or her office address [and residence address], the expiration date, and  
26 the date and number of the license to practice.

27 2. [Every person shall, upon receiving such certificate, cause it to be conspicuously  
28 displayed at all times in every office maintained by him in the state. If he maintains more than  
29 one office in this state, the board shall without additional fee issue to him duplicate certificates of  
30 registration for each office so maintained.] If any registrant shall change the location of his or her  
31 office during the period for which any certificate of registration has been issued, [he] the registrant  
32 shall, within fifteen days thereafter, notify the board of such change [and it shall issue to him  
33 without additional fee a new registration certificate showing the new location].

34 334.090. 1. Each applicant for registration under this chapter shall accompany the  
35 application for registration with a registration fee to be paid to the [director of revenue] board. If

1 the application is filed and the fee paid after the registration renewal date, a delinquent fee shall be  
2 paid; but whenever in the opinion of the board the applicant's failure to register is caused by  
3 extenuating circumstances including illness of the applicant, as defined by rule and regulation, the  
4 delinquent fee may be waived by the board. Whenever any new license is granted to any person  
5 under the provisions of this chapter, the board shall, upon application therefor, issue to such  
6 licensee a certificate of registration covering a period from the date of the issuance of the license  
7 to the next renewal date without the payment of any registration fee.

8 2. The board shall set the amount of the fees which this chapter authorizes and requires by  
9 rules and regulations promulgated pursuant to section 536.021. The fees shall be set at a level to  
10 produce revenue which shall not substantially exceed the cost and expense of administering this  
11 chapter.

12 334.099. 1. The board may initiate a contested hearing to determine if reasonable cause  
13 exists to believe that a licensee or applicant is unable to practice his or her profession with  
14 reasonable skill and safety to the public by reason of medical or osteopathic incompetency, mental  
15 or physical incapacity, or due to the excessive use or abuse of alcohol or controlled substances:

16 (1) The board shall serve notice pursuant to section 536.067 of the contested hearing at  
17 least fifteen days prior to the hearing. Such notice shall include a statement of the reasons the  
18 board believes there is reasonable cause to believe that a licensee or applicant is unable to practice  
19 his or her profession with reasonable skill and safety to the public by reason of medical or  
20 osteopathic incompetency, mental, or physical incapacity, or due to the excessive use or abuse of  
21 alcohol or controlled substances;

22 (2) For purposes of this section and prior to any contested hearing, the board may,  
23 notwithstanding any other law limiting access to medical or other health data, obtain medical data  
24 and health records relating to the licensee or applicant without the licensee's or applicant's  
25 consent, upon issuance of a subpoena by the board. These data and records shall be admissible  
26 without further authentication by either board or licensee at any hearing held pursuant to this  
27 section;

28 (3) After a contested hearing before the board, and upon a showing of reasonable cause to  
29 believe that a licensee or applicant is unable to practice his or her profession with reasonable skill  
30 and safety to the public by reason of medical or osteopathic incompetency, mental, or physical  
31 incapacity, or due to the excessive use or abuse of alcohol or controlled substances the board may  
32 require a licensee or applicant to submit to an examination. The board shall maintain a list of  
33 facilities approved to perform such examinations. The licensee or applicant may propose a  
34 facility not previously approved to the board and the board may accept such facility as an  
35 approved facility for such licensee or applicant by a majority vote;

36 (4) For purposes of this subsection, every licensee or applicant is deemed to have

1 consented to an examination upon a showing of reasonable cause. The applicant or licensee shall  
2 be deemed to have waived all objections to the admissibility of testimony by the provider of the  
3 examination and to the admissibility of examination reports on the grounds that the provider of  
4 the examination's testimony or the examination is confidential or privileged;

5 (5) Written notice of the order for an examination shall be sent to the applicant or licensee  
6 by registered mail, addressed to the licensee or applicant at the licensee's or applicant's last known  
7 address on file with the board, or shall be personally served on the applicant or licensee. The  
8 order shall state the cause for the examination, how to obtain information about approved  
9 facilities, and a time limit for obtaining the examination. The licensee or applicant shall cause a  
10 report of the examination to be sent to the board;

11 (6) The licensee or applicant shall sign all necessary releases for the board to obtain and  
12 use the examination during a hearing and to disclose the recommendations of the examination as  
13 part of a disciplinary order;

14 (7) After receiving the report of the examination ordered in subdivision (3) of this  
15 subsection, the board may hold a contested hearing to determine if by clear and convincing  
16 evidence the licensee or applicant is unable to practice with reasonable skill or safety to the public  
17 by reasons of medical or osteopathic incompetency, reason of mental or physical incapacity, or  
18 due to the excessive use or abuse of alcohol or controlled substances. If the board finds that the  
19 licensee or applicant is unable to practice with reasonable skill or safety to the public by reasons  
20 of medical or osteopathic incompetency, reason of mental or physical incapacity, or excessive use  
21 or abuse of controlled substances, the board shall, after a hearing, enter an order imposing one or  
22 more of the disciplinary measures set forth in subsection 4 of section 334.100; and

23 (8) The provisions of chapter 536 for a contested case, except those provisions or  
24 amendments which are in conflict with this section, shall apply to and govern the proceedings  
25 contained in this subsection and the rights and duties of the parties involved. The person  
26 appealing such an action shall be entitled to present evidence under chapter 536 relevant to the  
27 allegations.

28 2. Failure to submit to the examination when directed shall be cause for the revocation of  
29 the license of the licensee or denial of the application. No license may be reinstated or application  
30 granted until such time as the examination is completed and delivered to the board or the board  
31 withdraws its order.

32 3. Neither the record of proceedings nor the orders entered by the board shall be used  
33 against a licensee or applicant in any other proceeding, except for a proceeding in which the board  
34 or its members are a party or in a proceeding involving any state or federal agency.

35 4. A licensee or applicant whose right to practice has been affected under this section  
36 shall, at reasonable intervals not to exceed twelve months, be afforded an opportunity to

1 demonstrate that he or she can resume the competent practice of his or her profession or should be  
2 granted a license. The board may hear such motion more often upon good cause shown.

3 5. The board shall promulgate rules and regulations to carry out the provisions of this  
4 section.

5 6. For purposes of this section, "examination" means a skills, multidisciplinary, or  
6 substance abuse evaluation.

7 334.100. 1. The board may refuse to issue or renew any certificate of registration or  
8 authority, permit or license required pursuant to this chapter for one or any combination of causes  
9 stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons  
10 for the refusal and shall advise the applicant of the applicant's right to file a complaint with the  
11 administrative hearing commission as provided by chapter 621. As an alternative to a refusal to  
12 issue or renew any certificate, registration or authority, the board may, at its discretion, issue a  
13 license which is subject to probation, restriction or limitation to an applicant for licensure for any  
14 one or any combination of causes stated in subsection 2 of this section. The board's order of  
15 probation, limitation or restriction shall contain a statement of the discipline imposed, the basis  
16 therefor, the date such action shall become effective, and a statement that the applicant has thirty  
17 days to request in writing a hearing before the administrative hearing commission. If the board  
18 issues a probationary, limited or restricted license to an applicant for licensure, either party may  
19 file a written petition with the administrative hearing commission within thirty days of the  
20 effective date of the probationary, limited or restricted license seeking review of the board's  
21 determination. If no written request for a hearing is received by the administrative hearing  
22 commission within the thirty-day period, the right to seek review of the board's decision shall be  
23 considered as waived.

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

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

32 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or  
33 nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for  
34 any offense reasonably related to the qualifications, functions or duties of any profession licensed  
35 or regulated pursuant to this chapter, for any offense [an essential element of which is] involving  
36 fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or



1 not sentence is imposed;

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

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

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

13 (b) Attempting, directly or indirectly, by way of intimidation, coercion or deception, to  
14 obtain or retain a patient or discourage the use of a second opinion or consultation;

15 (c) Willfully and continually performing inappropriate or unnecessary treatment,  
16 diagnostic tests or medical or surgical services;

17 (d) Delegating professional responsibilities to a person who is not qualified by training,  
18 skill, competency, age, experience or licensure to perform such responsibilities;

19 (e) Misrepresenting that any disease, ailment or infirmity can be cured by a method,  
20 procedure, treatment, medicine or device;

21 (f) Performing or prescribing medical services which have been declared by board rule to  
22 be of no medical or osteopathic value;

23 (g) Final disciplinary action by any professional medical or osteopathic association or  
24 society or licensed hospital or medical staff of such hospital in this or any other state or territory,  
25 whether agreed to voluntarily or not, and including, but not limited to, any removal, suspension,  
26 limitation, or restriction of the person's license or staff or hospital privileges, failure to renew such  
27 privileges or license for cause, or other final disciplinary action, if the action was in any way  
28 related to unprofessional conduct, professional incompetence, malpractice or any other violation  
29 of any provision of this chapter;

30 (h) Signing a blank prescription form; or dispensing, prescribing, administering or  
31 otherwise distributing any drug, controlled substance or other treatment without sufficient  
32 examination including failing to establish a valid physician-patient relationship pursuant to  
33 section 334.108, or for other than medically accepted therapeutic or experimental or investigative  
34 purposes duly authorized by a state or federal agency, or not in the course of professional practice,  
35 or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or  
36 disease, except as authorized in section 334.104;

1 (i) Exercising influence within a physician-patient relationship for purposes of engaging a  
2 patient in sexual activity;

3 (j) Being listed on any state or federal sexual offender registry;

4 (k) Terminating the medical care of a patient without adequate notice or without making  
5 other arrangements for the continued care of the patient;

6 [(k)] (l) Failing to furnish details of a patient's medical records to other treating physicians  
7 or hospitals upon proper request; or failing to comply with any other law relating to medical  
8 records;

9 [(l)] (m) Failure of any applicant or licensee[, other than the licensee subject to the  
10 investigation,] to cooperate with the board during any investigation;

11 [(m)] (n) Failure to comply with any subpoena or subpoena duces tecum from the board or  
12 an order of the board;

13 [(n)] (o) Failure to timely pay license renewal fees specified in this chapter;

14 [(o)] (p) Violating a probation agreement, order, or other settlement agreement with this  
15 board or any other licensing agency;

16 [(p)] (q) Failing to inform the board of the physician's current residence and business  
17 address;

18 [(q)] (r) Advertising by an applicant or licensee which is false or misleading, or which  
19 violates any rule of the board, or which claims without substantiation the positive cure of any  
20 disease, or professional superiority to or greater skill than that possessed by any other physician.  
21 An applicant or licensee shall also be in violation of this provision if the applicant or licensee has  
22 a financial interest in any organization, corporation or association which issues or conducts such  
23 advertising;

24 (s) Any other conduct that is unethical or unprofessional involving a minor;

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

31 (6) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling  
32 any person to violate, any provision of this chapter or chapter 324, or of any lawful rule or  
33 regulation adopted pursuant to this chapter or chapter 324;

34 (7) Impersonation of any person holding a certificate of registration or authority, permit or  
35 license or allowing any person to use his or her certificate of registration or authority, permit,

1 license or diploma from any school;

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

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

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

20 (11) Issuance of a certificate of registration or authority, permit or license based upon a  
21 material mistake of fact;

22 (12) Failure to display a valid certificate or license if so required by this chapter or any  
23 rule promulgated pursuant to this chapter;

24 (13) Violation of the drug laws or rules and regulations of this state, including but not  
25 limited to any provision of chapter 195, any other state, or the federal government;

26 (14) Knowingly making, or causing to be made, or aiding, or abetting in the making of, a  
27 false statement in any birth, death or other certificate or document executed in connection with the  
28 practice of the person's profession;

29 (15) Knowingly making a false statement, orally or in writing to the board;

30 (16) Soliciting patronage in person or by agents or representatives, or by any other means  
31 or manner, under the person's own name or under the name of another person or concern, actual or  
32 pretended, in such a manner as to confuse, deceive, or mislead the public as to the need or  
33 necessity for or appropriateness of health care services for all patients, or the qualifications of an  
34 individual person or persons to diagnose, render, or perform health care services;

35 [(16)] (17) Using, or permitting the use of, the person's name under the designation of  
36 "Doctor", "Dr.", "M.D.", or "D.O.", or any similar designation with reference to the commercial

1 exploitation of any goods, wares or merchandise;

2 [(17)] (18) Knowingly making or causing to be made a false statement or  
3 misrepresentation of a material fact, with intent to defraud, for payment pursuant to the provisions  
4 of chapter 208 or chapter 630 or for payment from Title XVIII or Title XIX of the federal  
5 Medicare program;

6 [(18)] (19) Failure or refusal to properly guard against contagious, infectious or  
7 communicable diseases or the spread thereof; maintaining an unsanitary office or performing  
8 professional services under unsanitary conditions; or failure to report the existence of an  
9 unsanitary condition in the office of a physician or in any health care facility to the board, in  
10 writing, within thirty days after the discovery thereof;

11 [(19)] (20) Any candidate for licensure or person licensed to practice as a physical  
12 therapist, paying or offering to pay a referral fee or, notwithstanding section 334.010 to the  
13 contrary, practicing or offering to practice professional physical therapy independent of the  
14 prescription and direction of a person licensed and registered as a physician and surgeon pursuant  
15 to this chapter, as a dentist pursuant to chapter 332, as a podiatrist pursuant to chapter 330, as an  
16 advanced practice registered nurse under chapter 335, or any licensed and registered physician,  
17 dentist, podiatrist, or advanced practice registered nurse practicing in another jurisdiction, whose  
18 license is in good standing;

19 [(20)] (21) Any candidate for licensure or person licensed to practice as a physical  
20 therapist, treating or attempting to treat ailments or other health conditions of human beings other  
21 than by professional physical therapy and as authorized by sections 334.500 to 334.620;

22 [(21)] (22) Any person licensed to practice as a physician or surgeon, requiring, as a  
23 condition of the physician-patient relationship, that the patient receive prescribed drugs, devices  
24 or other professional services directly from facilities of that physician's office or other entities  
25 under that physician's ownership or control. A physician shall provide the patient with a  
26 prescription which may be taken to the facility selected by the patient and a physician knowingly  
27 failing to disclose to a patient on a form approved by the advisory commission for professional  
28 physical therapists as established by section 334.625 which is dated and signed by a patient or  
29 guardian acknowledging that the patient or guardian has read and understands that the physician  
30 has a pecuniary interest in a physical therapy or rehabilitation service providing prescribed  
31 treatment and that the prescribed treatment is available on a competitive basis. This subdivision  
32 shall not apply to a referral by one physician to another physician within a group of physicians  
33 practicing together;

34 [(22)] (23) A pattern of personal use or consumption of any controlled substance unless it  
35 is prescribed, dispensed or administered by another physician who is authorized by law to do so;

1            ~~[(23)]~~ (24) Habitual intoxication or dependence on alcohol, evidence of which may  
2 include more than one alcohol-related enforcement contact as defined by section 302.525;

3            (25) Failure to comply with a treatment program or an aftercare program entered into as  
4 part of a board order, settlement agreement or licensee's professional health program;

5            (26) Revocation, suspension, limitation, probation, or restriction of any kind whatsoever  
6 of any controlled substance authority, whether agreed to voluntarily or not, or voluntary  
7 termination of a controlled substance authority while under investigation;

8            ~~[(24)]~~ (27) For a physician to operate, conduct, manage, or establish an abortion facility,  
9 or for a physician to perform an abortion in an abortion facility, if such facility comes under the  
10 definition of an ambulatory surgical center pursuant to sections 197.200 to 197.240, and such  
11 facility has failed to obtain or renew a license as an ambulatory surgical center[;

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

16            (a) In enforcing this subdivision the board shall, after a hearing by the board, upon a  
17 finding of probable cause, require a physician to submit to a reexamination for the purpose of  
18 establishing his or her competency to practice as a physician or surgeon or with a specialty  
19 conducted in accordance with rules adopted for this purpose by the board, including rules to allow  
20 the examination of the pattern and practice of such physician's or surgeon's professional conduct,  
21 or to submit to a mental or physical examination or combination thereof by at least three  
22 physicians, one selected by the physician compelled to take the examination, one selected by the  
23 board, and one selected by the two physicians so selected who are graduates of a professional  
24 school approved and accredited as reputable by the association which has approved and accredited  
25 as reputable the professional school from which the licentiate graduated. However, if the  
26 physician is a graduate of a medical school not accredited by the American Medical Association  
27 or American Osteopathic Association, then each party shall choose any physician who is a  
28 graduate of a medical school accredited by the American Medical Association or the American  
29 Osteopathic Association;

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

35            (c) In addition to ordering a physical or mental examination to determine competency, the  
36 board may, notwithstanding any other law limiting access to medical or other health data, obtain

1 medical data and health records relating to a physician or applicant without the physician's or  
2 applicant's consent;

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

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

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

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

21 4. After the filing of such complaint before the administrative hearing commission, the  
22 proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding  
23 by the administrative hearing commission that the grounds, provided in subsection 2 of this  
24 section, for disciplinary action are met, the board may, singly or in combination, warn, censure or  
25 place the person named in the complaint on probation on such terms and conditions as the board  
26 deems appropriate for a period not to exceed ten years, or may suspend the person's license,  
27 certificate or permit for a period not to exceed three years, or restrict or limit the person's license,  
28 certificate or permit for an indefinite period of time, or revoke the person's license, certificate, or  
29 permit, or administer a public or private reprimand, or deny the person's application for a license,  
30 or permanently withhold issuance of a license or require the person to submit to the care,  
31 counseling or treatment of physicians designated by the board at the expense of the individual to  
32 be examined, or require the person to attend such continuing educational courses and pass such  
33 examinations as the board may direct.

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

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

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

12           334.102. 1. [Upon receipt of information that the holder of any certificate of registration  
13 or authority, permit or license issued pursuant to this chapter may present a clear and present  
14 danger to the public health and safety, the executive secretary or director shall direct that the  
15 information be brought to the board in the form of sworn testimony or affidavits during a meeting  
16 of the board.

17           2. The board may issue an order suspending and/or restricting the holder of a certificate of  
18 registration or authority, permit or license if it believes:

19           (1) The licensee's acts, conduct or condition may have violated subsection 2 of section  
20 334.100; and

21           (2) A licensee is practicing, attempting or intending to practice in Missouri; and

22           (3) Either a licensee is unable by reason of any physical or mental condition to receive and  
23 evaluate information or to communicate decisions to the extent that the licensee's condition or  
24 actions significantly affect the licensee's ability to practice, or another state, territory, federal  
25 agency or country has issued an order suspending or restricting the holder of a license or other  
26 right to practice a profession regulated by this chapter, or the licensee has engaged in repeated acts  
27 of life-threatening negligence as defined in subsection 2 of section 334.100; and

28           (4) The acts, conduct or condition of the licensee constitute a clear and present danger to  
29 the public health and safety.

30           3. (1) The order of suspension or restriction:

31           (a) Shall be based on the sworn testimony or affidavits presented to the board;

32           (b) May be issued without notice and hearing to the licensee;

33           (c) Shall include the facts which lead the board to conclude that the acts, conduct or  
34 condition of the licensee constitute a clear and present danger to the public health and safety; and

35           (2) The board or the administrative hearing commission shall serve the licensee, in person  
36 or by certified mail, with a copy of the order of suspension or restriction and all sworn testimony

1 or affidavits presented to the board, a copy of the complaint and the request for expedited hearing,  
2 and a notice of the place of and the date upon which the preliminary hearing will be held.

3 (3) The order of restriction shall be effective upon service of the documents required in  
4 subdivision (2) of this subsection.

5 (4) The order of suspension shall become effective upon the entry of the preliminary order  
6 of the administrative hearing commission.

7 (5) The licensee may seek a stay order from the circuit court of Cole County from the  
8 preliminary order of suspension, pending the issuance of a final order by the administrative  
9 hearing commission.

10 4. The board shall file a complaint in the administrative hearing commission with a  
11 request for expedited preliminary hearing and shall certify the order of suspension or restriction  
12 and all sworn testimony or affidavits presented to the board. Immediately upon receipt of a  
13 complaint filed pursuant to this section, the administrative hearing commission shall set the place  
14 and date of the expedited preliminary hearing which shall be conducted as soon as possible, but  
15 not later than five days after the date of service upon the licensee. The administrative hearing  
16 commission shall grant a licensee's request for a continuance of the preliminary hearing; however,  
17 the board's order shall remain in full force and effect until the preliminary hearing, which shall be  
18 held not later than forty-five days after service of the documents required in subdivision (2) of  
19 subsection 3.

20 5. At the preliminary hearing, the administrative hearing commission shall receive into  
21 evidence all information certified by the board and shall only hear evidence on the issue of  
22 whether the board's order of suspension or restriction should be terminated or modified. Within  
23 one hour after the preliminary hearing, the administrative hearing commission shall issue its oral  
24 or written preliminary order, with or without findings of fact and conclusions of law, that either  
25 adopts, terminates or modifies the board's order. The administrative hearing commission shall  
26 reduce to writing any oral preliminary order within five business days, but the effective date of the  
27 order shall be the date orally issued.

28 6. The preliminary order of the administrative hearing commission shall become a final  
29 order and shall remain in effect for three years unless either party files a request for a full hearing  
30 on the merits of the complaint filed by the board within thirty days from the date of the issuance  
31 of the preliminary order of the administrative hearing commission.

32 7. Upon receipt of a request for full hearing, the administrative hearing commission shall  
33 set a date for hearing and notify the parties in writing of the time and place of the hearing. If a  
34 request for full hearing is timely filed, the preliminary order of the administrative hearing  
35 commission shall remain in effect until the administrative hearing commission enters an order  
36 terminating, modifying, or dismissing its preliminary order or until the board issues an order of



discipline following its consideration of the decision of the administrative hearing commission pursuant to section 621.110 and subsection 3 of section 334.100.

8. In cases where the board initiates summary suspension or restriction proceedings against a physician licensed pursuant to this chapter, and said petition is subsequently denied by the administrative hearing commission, in addition to any award made pursuant to sections 536.085 and 536.087, the board, but not individual members of the board, shall pay actual damages incurred during any period of suspension or restriction.

9. Notwithstanding the provisions of this chapter or chapter 610 or chapter 621 to the contrary, the proceedings under this section shall be closed and no order shall be made public until it is final, for purposes of appeal.

10. The burden of proving the elements listed in subsection 2 of this section shall be upon the state board of registration for the healing arts.] The board may apply to the administrative hearing commission for an emergency suspension or restriction of a licensee for the following causes:

(1) Engaging in sexual conduct, as defined in section 566.010, with a patient who is not the licensee's spouse, regardless of whether the patient consented;

(2) Engaging in sexual misconduct with a minor or person the licensee believes to be a minor. "Sexual misconduct" means any conduct of a sexual nature which would be illegal under state or federal law;

(3) Possession of a controlled substance in violation of chapter 195 or any state or federal law, rule, or regulation, excluding record keeping violations;

(4) Use of a controlled substance without a valid prescription;

(5) The licensee is adjudicated incapacitated or disabled by a court of competent jurisdiction;

(6) Habitual intoxication or dependence upon alcohol or controlled substances or failure to comply with a treatment or aftercare program entered into pursuant to a board order, settlement agreement, or as part of the licensee's professional health program;

(7) A report from a board approved facility or a professional health program stating the licensee is not fit to practice. For purposes of this section, a licensee is deemed to have waived all objections to the admissibility of testimony from the provider of the examination and admissibility of the examination reports. The licensee shall sign all necessary releases for the board to obtain and use the examination during a hearing; or

(8) Any conduct for which the board may discipline that constitutes a serious danger to the health, safety, or welfare of a patient or the public.

2. The board shall submit existing affidavits and existing certified court records together with a complaint alleging the facts in support of the board's request for an emergency suspension

1 or restriction to the administrative hearing commission and shall supply the administrative hearing  
2 commission with the last home or business addresses on file with the board for the licensee.  
3 Within one business day of the filing of the complaint, the administrative hearing commission  
4 shall return a service packet to the board. The service packet shall include the board's complaint  
5 and any affidavits or records the board intends to rely on that have been filed with the  
6 administrative hearing commission. The service packet may contain other information in the  
7 discretion of the administrative hearing commission. Within twenty-four hours of receiving the  
8 packet, the board shall either personally serve the licensee or leave a copy of the service packet at  
9 all of the licensee's current addresses on file with the board. Prior to the hearing, the licensee may  
10 file affidavits and certified court records for consideration by the administrative hearing  
11 commission.

12 3. Within five days of the board's filing of the complaint, the administrative hearing  
13 commission shall review the information submitted by the board and the licensee and shall  
14 determine based on that information if probable cause exists pursuant to subsection 1 of this  
15 section and shall issue its findings of fact and conclusions of law. If the administrative hearing  
16 commission finds that there is probable cause, the administrative hearing commission shall enter  
17 the order requested by the board. The order shall be effective upon personal service or by leaving  
18 a copy at all of the licensee's current addresses on file with the board.

19 4. The administrative hearing commission shall hold a hearing within forty-five days of  
20 the board's filing of the complaint to determine if cause for discipline exists. The administrative  
21 hearing commission may grant a request for a continuance, but shall in any event, hold the hearing  
22 within one hundred twenty days of the board's initial filing. The board shall be granted leave to  
23 amend its complaint if it is more than thirty days prior to the hearing. If less than thirty days, the  
24 board may be granted leave to amend if public safety requires.

25 (1) If no cause for discipline exists, the administrative hearing commission shall issue  
26 findings of fact, conclusions of law, and an order terminating the emergency suspension or  
27 restriction.

28 (2) If cause for discipline exists, the administrative hearing commission shall issue  
29 findings of fact and conclusions of law and order the emergency suspension or restriction to  
30 remain in full force and effect pending a disciplinary hearing before the board. The board shall  
31 hold a hearing following the certification of the record by the administrative hearing commission  
32 and may impose any discipline otherwise authorized by state law.

33 5. Any action under this section shall be in addition to and not in lieu of any discipline  
34 otherwise in the board's power to impose and may be brought concurrently with other actions.

35 6. If the administrative hearing commission does not find probable cause and does not  
36 grant the emergency suspension or restriction, the board shall remove all reference to such

1 emergency suspension or restriction from its public records. Records relating to the suspension or  
2 restriction shall be maintained in the board's files. The board or licensee may use such records in  
3 the course of any litigation to which they are both parties. Additionally, such records may be  
4 released upon a specific, written request of the licensee.

5 7. (1) The board may initiate a hearing before the board, for discipline of any licensee's  
6 license or certificate upon receipt of one of the following:

7 (a) Certified court records of a finding of guilt or plea of guilty or nolo contendere in a  
8 criminal prosecution under the laws of any state or of the United States for any offense involving  
9 the qualifications, functions, or duties of any profession licensed or regulated under this chapter,  
10 for any offense involving fraud, dishonesty, or an act of violence, or for any offense involving  
11 moral turpitude, whether or not sentence is imposed;

12 (b) Evidence of final disciplinary action against the licensee's license, certification or  
13 registration issued by any other state, by any other agency or entity of this state or any other state  
14 or the United States or its territories, or any other country;

15 (c) Evidence of certified court records finding the licensee has been judged incapacitated  
16 or disabled under Missouri law or under the laws of any other state or of the United States or its  
17 territories.

18 (2) The board shall provide the licensee not less than ten days notice of any hearing held  
19 pursuant to chapter 536.

20 (3) Upon a finding that cause exists to discipline a licensee's license the board may  
21 impose any discipline otherwise available when disciplining licensees of that same profession.

22 8. A final decision of the administrative hearing commission or the board shall be subject  
23 to judicial review pursuant to chapter 536.

24 334.103. 1. A license issued under this chapter by the Missouri State Board of  
25 Registration for the Healing Arts shall be automatically revoked at such time as the final trial  
26 proceedings are concluded whereby a licensee has been adjudicated and found guilty, or has  
27 entered a plea of guilty or nolo contendere, in a felony criminal prosecution under the laws of the  
28 state of Missouri, the laws of any other state, or the laws of the United States of America for any  
29 offense reasonably related to the qualifications, functions or duties of their profession, or for any  
30 felony offense[, an essential element of which is] involving fraud, dishonesty or an act of  
31 violence, or for any felony offense involving moral turpitude, whether or not sentence is imposed,  
32 or, upon the final and unconditional revocation of the license to practice their profession in  
33 another state or territory upon grounds for which revocation is authorized in this state following a  
34 review of the record of the proceedings and upon a formal motion of the state board of registration  
35 for the healing arts. The license of any such licensee shall be automatically reinstated if the  
36 conviction or the revocation is ultimately set aside upon final appeal in any court of competent

jurisdiction.

2. Anyone who has been denied a license, permit or certificate to practice in another state shall automatically be denied a license to practice in this state. However, the board of healing arts may set up other qualifications by which such person may ultimately be qualified and licensed to practice in Missouri.

334.108. 1. Prior to prescribing any drug, controlled substance, or other treatment through the internet, a physician shall establish a valid physician-patient relationship. This relationship shall include:

(1) Obtaining a reliable medical history and performing a physical examination of the patient, adequate to establish the diagnosis for which the drug is being prescribed and to identify underlying conditions or contraindications to the treatment recommended or provided;

(2) Having sufficient dialogue with the patient regarding treatment options and the risks and benefits of treatment or treatments;

(3) If appropriate, following up with the patient to assess the therapeutic outcome;

(4) Maintaining a contemporaneous medical record that is readily available to the patient and, subject to the patient's consent, to the patient's other health care professionals; and

(5) Including the electronic prescription information as part of the patient's medical record.

2. The requirements of subsection 1 of this section may be satisfied by the prescribing physician's designee when treatment is provided in:

(1) A hospital as defined in section 197.020;

(2) A hospice program as defined in section 197.250;

(3) Home health services provided by a home health agency as defined in section 197.400;

(4) Accordance with a collaborative practice agreement as defined in section 334.104;

(5) Conjunction with a physician assistant licensed pursuant to section 334.738;

(6) Consultation with another physician who has an ongoing physician-patient relationship with the patient, and who has agreed to supervise the patient's treatment, including use of any prescribed medications; or

(7) On-call or cross-coverage situations.

334.715. 1. The board may refuse to issue or renew any license [any applicant or may suspend, revoke, or refuse to renew the license of any licensee for any one or any combination of the causes provided in section 334.100, or if the applicant or licensee] required under sections 334.700 to 334.725 for one or any combination of causes listed in subsection 2 of this section or any cause listed in section 334.100. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided in chapter 621. As an alternative to a refusal to

1 issue or renew any certificate, registration, or authority, the board may, in its discretion, issue a  
2 license which is subject to reprimand, probation, restriction, or limitation to an applicant for  
3 licensure for any one or any combination of causes listed in subsection 2 of this section or section  
4 334.100. The board's order of reprimand, probation, limitation, or restriction shall contain a  
5 statement of the discipline imposed, the basis therefor, the date such action shall become  
6 effective, and a statement that the applicant has thirty days to request in writing a hearing before  
7 the administrative hearing commission. If the board issues a probationary, limited, or restricted  
8 license to an applicant for licensure, either party may file a written petition with the administrative  
9 hearing commission within thirty days of the effective date of the probationary, limited, or  
10 restricted license seeking review of the board's determination. If no written request for a hearing  
11 is received by the administrative hearing commission within the thirty-day period, the right to  
12 seek review of the board's decision shall be considered waived.

13 2. The board may cause a complaint to be filed with the administrative hearing  
14 commission as provided in chapter 621 against any holder of a certificate of registration or  
15 authority, permit, or license required by sections 334.700 to 334.725 or any person who has failed  
16 to renew or has surrendered the person's certification of registration or license for any one or any  
17 combination of the following causes:

18 (1) Violated or conspired to violate any provision of sections 334.700 to 334.725 or any  
19 provision of any rule promulgated pursuant to sections 334.700 to 334.725; or

20 (2) Has been found guilty of unethical conduct as defined in the ethical standards of the  
21 National Athletic Trainers Association or the National Athletic Trainers Association Board of  
22 Certification, or its successor agency, as adopted and published by the committee and the board  
23 and filed with the secretary of state; or

24 (3) Any cause listed in section 334.100.

25 [2. Upon receipt of a written application made in the form and manner prescribed by the  
26 board, the board may reinstate any license which has expired, been suspended or been revoked or  
27 may issue any license which has been denied; provided, that no application for reinstatement or  
28 issuance of license or licensure shall be considered until at least six months have elapsed from the  
29 date of denial, expiration, suspension, or revocation when the license to be reinstated or issued  
30 was denied issuance or renewal or was suspended or revoked for one of the causes listed in  
31 subsection 1 of this section.]

32 3. After the filing of such complaint before the administrative hearing commission, the  
33 proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding  
34 by the administrative hearing commission that the grounds provided in subsection 2 of this section  
35 for disciplinary action are met, the board may, singly or in combination:

36 (1) Warn, censure, or place the person named in the complaint on probation on such terms

1 and conditions as the board deems appropriate for a period not to exceed ten years; or  
2 (2) Suspend the person's license, certificate, or permit for a period not to exceed three  
3 years; or  
4 (3) Administer a public or private reprimand; or  
5 (4) Deny the person's application for a license; or  
6 (5) Permanently withhold issuance of a license or require the person to submit to the care,  
7 counseling, or treatment of physicians designated by the board at the expense of the individual to  
8 be examined; or  
9 (6) Require the person to attend such continuing education courses and pass such  
10 examinations as the board may direct.  
11 4. In any order of revocation, the board may provide that the person shall not apply for  
12 reinstatement of the person's license for a period of time ranging from two to seven years  
13 following the date of the order of revocation. All stay orders shall toll such time period.  
14 5. Before restoring to good standing a license, certificate, or permit issued under this  
15 chapter which has been in a revoked, suspended, or inactive state for any cause for more than two  
16 years, the board may require the applicant to attend such continuing education courses and pass  
17 such examinations as the board may direct."; and

18 Further amend said bill, Page 3, Section 338.550, Line 16, by inserting after all of said line  
19 the following:

20 "536.063. In any contested case:

21 (1) The contested case shall be commenced by the filing of a writing by which the party or  
22 agency instituting the proceeding seeks such action as by law can be taken by the agency only  
23 after opportunity for hearing, or seeks a hearing for the purpose of obtaining a decision reviewable  
24 upon the record of the proceedings and evidence at such hearing, or upon such record and  
25 additional evidence, either by a court or by another agency. Answering, intervening and  
26 amendatory writings and motions may be filed in any case and shall be filed where required by  
27 rule of the agency, except that no answering instrument shall be required unless the notice of  
28 institution of the case states such requirement. Entries of appearance shall be permitted[.];

29 (2) Any writing filed whereby affirmative relief is sought shall state what relief is sought  
30 or proposed and the reason for granting it, and shall not consist merely of statements or charges  
31 phrased in the language of a statute or rule; provided, however, that this subdivision shall not  
32 apply when the writing is a notice of appeal as authorized by law[.];

33 (3) Reasonable opportunity shall be given for the preparation and presentation of evidence  
34 bearing on any issue raised or decided or relief sought or granted. Where issues are tried without  
35 objection or by consent, such issues shall be deemed to have been properly before the agency.  
36 Any formality of procedure may be waived by mutual consent[.];

1 (4) Every writing seeking relief or answering any other writing, and any motion shall state  
2 the name and address of the attorney, if any, filing it; otherwise the name and address of the party  
3 filing it[.];

4 (5) By rule the agency may require any party filing such a writing to furnish, in addition to  
5 the original of such writing, the number of copies required for the agency's own use and the  
6 number of copies necessary to enable the agency to comply with the provisions of this subdivision  
7 hereinafter set forth. The agency shall, without charge therefor, mail one copy of each such  
8 writing, as promptly as possible after it is filed, to every party or his or her attorney who has filed  
9 a writing or who has entered his or her appearance in the case, and who has not theretofore been  
10 furnished with a copy of such writing and shall have requested copies of the writings; provided  
11 that in any case where the parties are so numerous that the requirements of this subdivision would  
12 be unduly onerous, the agency may in lieu thereof (a) notify all parties of the fact of the filing of  
13 such writing, and (b) permit any party to copy such writing[.];

14 (6) When a holder of a license, registration, permit, or certificate of authority issued by  
15 the division of professional registration or a board, commission, or committee of the division of  
16 professional registration against whom an affirmative decision is sought has failed to plead or  
17 otherwise respond in the contested case and adequate notice has been given under section 536.067  
18 upon a properly pled writing filed to initiate the contested case under this chapter, a default  
19 decision shall be entered against the licensee without further proceedings. The default decision  
20 shall grant such relief as requested by the division of professional registration, board, committee,  
21 commission, or office in the writing initiating the contested case as allowed by law. Upon motion  
22 stating facts constituting a meritorious defense and for good cause shown, a default decision may  
23 be set aside. The motion shall be made within a reasonable time, not to exceed thirty days after  
24 entry of the default decision. "Good cause" includes a mistake or conduct that is not intentionally  
25 or recklessly designed to impede the administrative process.

26 536.067. In any contested case:

27 (1) The agency shall promptly mail a notice of institution of the case to all necessary  
28 parties, if any, and to all persons designated by the moving party and to any other persons to  
29 whom the agency may determine that notice should be given. The agency or its clerk or secretary  
30 shall keep a permanent record of the persons to whom such notice was sent and of the addresses to  
31 which sent and the time when sent. Where a contested case would affect the rights, privileges or  
32 duties of a large number of persons whose interests are sufficiently similar that they may be  
33 considered as a class, notice may in a proper case be given to a reasonable number thereof as  
34 representatives of such class. In any case where the name or address of any proper or designated  
35 party or person is not known to the agency, and where notice by publication is permitted by law,  
36 then notice by publication may be given in accordance with any rule or regulation of the agency or

1 if there is no such rule or regulation, then, in a proper case, the agency may by a special order fix  
2 the time and manner of such publication[.];

3 (2) The notice of institution of the case to be mailed as provided in this section shall state  
4 in substance:

5 (a) The caption and number of the case;

6 (b) That a writing seeking relief has been filed in such case, the date it was filed, and the  
7 name of the party filing the same;

8 (c) A brief statement of the matter involved in the case unless a copy of the writing  
9 accompanies said notice;

10 (d) Whether an answer to the writing is required, and if so the date when it must be filed;

11 (e) That a copy of the writing may be obtained from the agency, giving the address to  
12 which application for such a copy may be made. This may be omitted if the notice is  
13 accompanied by a copy of such writing;

14 (f) The location in the Code of State Regulations of any rules of the agency regarding  
15 discovery or a statement that the agency shall send a copy of such rules on request;

16 (3) Unless the notice of hearing hereinafter provided for shall have been included in the  
17 notice of institution of the case, the agency shall, as promptly as possible after the time and place  
18 of hearing have been determined, mail a notice of hearing to the moving party and to all persons  
19 and parties to whom a notice of institution of the case was required to be or was mailed, and also  
20 to any other persons who may thereafter have become or have been made parties to the  
21 proceeding. The notice of hearing shall state:

22 (a) The caption and number of the case;

23 (b) The time and place of hearing;

24 (4) No hearing in a contested case shall be had, except by consent, until a notice of  
25 hearing shall have been given substantially as provided in this section, and such notice shall in  
26 every case be given a reasonable time before the hearing. Such reasonable time shall be at least  
27 ten days except in cases where the public morals, health, safety or interest may make a shorter  
28 time reasonable; provided that when a longer time than ten days is prescribed by statute, no time  
29 shorter than that so prescribed shall be deemed reasonable;

30 (5) When a holder of a license, registration, permit, or certificate of authority issued by  
31 the division of professional registration or a board, commission, or committee of the division of  
32 professional registration against whom an affirmative decision is sought has failed to plead or  
33 otherwise respond in the contested case and adequate notice has been given under this section  
34 upon a properly pled writing filed to initiate the contested case under this chapter, a default  
35 decision shall be entered against the holder of a license, registration, permit, or certificate of  
36 authority without further proceedings. The default decision shall grant such relief as requested by



1 the division of professional registration, board, committee, commission, or office in the writing  
2 initiating the contested case as allowed by law. Upon motion stating facts constituting a  
3 meritorious defense and for good cause shown, a default decision may be set aside. The motion  
4 shall be made within a reasonable time, not to exceed thirty days after entry of the default  
5 decision. "Good cause" includes a mistake or conduct that is not intentionally or recklessly  
6 designed to impede the administrative process.

7 536.070. In any contested case:

8 (1) Oral evidence shall be taken only on oath or affirmation[.];

9 (2) Each party shall have the right to call and examine witnesses, to introduce exhibits, to  
10 cross-examine opposing witnesses on any matter relevant to the issues even though that matter  
11 was not the subject of the direct examination, to impeach any witness regardless of which party  
12 first called him or her to testify, and to rebut the evidence against him[.] or her;

13 (3) A party who does not testify in his or her own behalf may be called and examined as if  
14 under cross-examination[.];

15 (4) Each agency shall cause all proceedings in hearings before it to be suitably recorded  
16 and preserved. A copy of the transcript of such a proceeding shall be made available to any  
17 interested person upon the payment of a fee which shall in no case exceed the reasonable cost of  
18 preparation and supply[.];

19 (5) Records and documents of the agency which are to be considered in the case shall be  
20 offered in evidence so as to become a part of the record, the same as any other evidence, but the  
21 records and documents may be considered as a part of the record by reference thereto when so  
22 offered[.];

23 (6) Agencies shall take official notice of all matters of which the courts take judicial  
24 notice. They may also take official notice of technical or scientific facts, not judicially  
25 cognizable, within their competence, if they notify the parties, either during a hearing or in writing  
26 before a hearing, or before findings are made after hearing, of the facts of which they propose to  
27 take such notice and give the parties reasonable opportunity to contest such facts or otherwise  
28 show that it would not be proper for the agency to take such notice of them[.];

29 (7) Evidence to which an objection is sustained shall, at the request of the party seeking to  
30 introduce the same, or at the instance of the agency, nevertheless be heard and preserved in the  
31 record, together with any cross-examination with respect thereto and any rebuttal thereof, unless it  
32 is wholly irrelevant, repetitious, privileged, or unduly long[.];

33 (8) Any evidence received without objection which has probative value shall be  
34 considered by the agency along with the other evidence in the case. The rules of privilege shall be  
35 effective to the same extent that they are now or may hereafter be in civil actions. Irrelevant and  
36 unduly repetitious evidence shall be excluded[.];

1 (9) Copies of writings, documents and records shall be admissible without proof that the  
2 originals thereof cannot be produced, if it shall appear by testimony or otherwise that the copy  
3 offered is a true copy of the original, but the agency may, nevertheless, if it believes the interests  
4 of justice so require, sustain any objection to such evidence which would be sustained were the  
5 proffered evidence offered in a civil action in the circuit court, but if it does sustain such an  
6 objection, it shall give the party offering such evidence reasonable opportunity and, if necessary,  
7 opportunity at a later date, to establish by evidence the facts sought to be proved by the evidence  
8 to which such objection is sustained[.];

9 (10) Any writing or record, whether in the form of an entry in a book or otherwise, made  
10 as a memorandum or record of an act, transaction, occurrence or event, shall be admissible as  
11 evidence of the act, transaction, occurrence or event, if it shall appear that it was made in the  
12 regular course of any business, and that it was the regular course of such business to make such  
13 memorandum or record at the time of such act, transaction, occurrence, or event or within a  
14 reasonable time thereafter. All other circumstances of the making of such writing or record,  
15 including lack of personal knowledge by the entrant or maker, may be shown to affect the weight  
16 of such evidence, but such showing shall not affect its admissibility. The term "business" shall  
17 include business, profession, occupation and calling of every kind[.];

18 (11) The results of statistical examinations or studies, or of audits, compilations of  
19 figures, or surveys, involving interviews with many persons, or examination of many records, or  
20 of long or complicated accounts, or of a large number of figures, or involving the ascertainment of  
21 many related facts, shall be admissible as evidence of such results, if it shall appear that such  
22 examination, study, audit, compilation of figures, or survey was made by or under the supervision  
23 of a witness, who is present at the hearing, who testifies to the accuracy of such results, and who  
24 is subject to cross-examination, and if it shall further appear by evidence adduced that the witness  
25 making or under whose supervision such examination, study, audit, compilation of figures, or  
26 survey was made was basically qualified to make it. All the circumstances relating to the making  
27 of such an examination, study, audit, compilation of figures or survey, including the nature and  
28 extent of the qualifications of the maker, may be shown to affect the weight of such evidence but  
29 such showing shall not affect its admissibility[.];

30 (12) Any party or the agency desiring to introduce an affidavit in evidence at a hearing in  
31 a contested case may serve on all other parties (including, in a proper case, the agency) copies of  
32 such affidavit in the manner hereinafter provided, at any time before the hearing, or at such later  
33 time as may be stipulated. Not later than seven days after such service, or at such later time as  
34 may be stipulated, any other party (or, in a proper case, the agency) may serve on the party or the  
35 agency who served such affidavit an objection to the use of the affidavit or some designated  
36 portion or portions thereof on the ground that it is in the form of an affidavit; provided, however,

1 that if such affidavit shall have been served less than eight days before the hearing such objection  
2 may be served at any time before the hearing or may be made orally at the hearing. If such  
3 objection is so served, the affidavit or the part thereof to which objection was made, may not be  
4 used except in ways that would have been permissible in the absence of this subdivision;  
5 provided, however, that such objection may be waived by the party or the agency making the  
6 same. Failure to serve an objection as aforesaid, based on the ground aforesaid, shall constitute a  
7 waiver of all objections to the introduction of such affidavit, or of the parts thereof with respect to  
8 which no such objection was so served, on the ground that it is in the form of an affidavit, or that  
9 it constitutes or contains hearsay evidence, or that it is not, or contains matters which are not, the  
10 best evidence, but any and all other objections may be made at the hearing. Nothing herein  
11 contained shall prevent the cross-examination of the affiant if he or she is present in obedience to  
12 a subpoena or otherwise and if he or she is present, he or she may be called for cross-examination  
13 during the case of the party who introduced the affidavit in evidence. If the affidavit is admissible  
14 in part only it shall be admitted as to such part, without the necessity of preparing a new affidavit.  
15 The manner of service of such affidavit and of such objection shall be by delivering or mailing  
16 copies thereof to the attorneys of record of the parties being served, if any, otherwise, to such  
17 parties, and service shall be deemed complete upon mailing; provided, however, that when the  
18 parties are so numerous as to make service of copies of the affidavit on all of them unduly  
19 onerous, the agency may make an order specifying on what parties service of copies of such  
20 affidavit shall be made, and in that case a copy of such affidavit shall be filed with the agency and  
21 kept available for inspection and copying. Nothing in this subdivision shall prevent any use of  
22 affidavits that would be proper in the absence of this subdivision.

23 621.045. 1. The administrative hearing commission shall conduct hearings and make  
24 findings of fact and conclusions of law in those cases when, under the law, a license issued by any  
25 of the following agencies may be revoked or suspended or when the licensee may be placed on  
26 probation or when an agency refuses to permit an applicant to be examined upon his or her  
27 qualifications or refuses to issue or renew a license of an applicant who has passed an examination  
28 for licensure or who possesses the qualifications for licensure without examination:

29 Missouri State Board of Accountancy  
30 Missouri State Board for Architects, Professional Engineers, Professional Land Surveyors  
31 and Landscape Architects  
32 Board of Barber Examiners  
33 Board of Cosmetology  
34 Board of Chiropody and Podiatry  
35 Board of Chiropractic Examiners  
36 Missouri Dental Board

1 Board of Embalmers and Funeral Directors  
2 Board of Registration for the Healing Arts  
3 Board of Nursing  
4 Board of Optometry  
5 Board of Pharmacy  
6 Missouri Real Estate Commission  
7 Missouri Veterinary Medical Board  
8 Supervisor of Liquor Control  
9 Department of Health and Senior Services  
10 Department of Insurance, Financial Institutions and Professional Registration  
11 Department of Mental Health  
12 Board of Private Investigator Examiners.

13 2. If in the future there are created by law any new or additional administrative agencies  
14 which have the power to issue, revoke, suspend, or place on probation any license, then those  
15 agencies are under the provisions of this law.

16 3. The administrative hearing commission is authorized to conduct hearings and make  
17 findings of fact and conclusions of law in those cases brought by the Missouri state board for  
18 architects, professional engineers, professional land surveyors and landscape architects against  
19 unlicensed persons under section 327.076.

20 4. Notwithstanding any other provision of this section to the contrary, after August 28,  
21 1995, in order to encourage settlement of disputes between any agency described in subsection 1  
22 or 2 of this section and its licensees, any such agency shall:

23 (1) Provide the licensee with a written description of the specific conduct for which  
24 discipline is sought and a citation to the law and rules allegedly violated, together with copies of  
25 any documents which are the basis thereof and the agency's initial settlement offer, or file a  
26 contested case against the licensee;

27 (2) If no contested case has been filed against the licensee, allow the licensee at least sixty  
28 days, from the date of mailing, to consider the agency's initial settlement offer and to contact the  
29 agency to discuss the terms of such settlement offer;

30 (3) If no contested case has been filed against the licensee, advise the licensee that the  
31 licensee may, either at the time the settlement agreement is signed by all parties, or within fifteen  
32 days thereafter, submit the agreement to the administrative hearing commission for determination  
33 that the facts agreed to by the parties to the settlement constitute grounds for denying or  
34 disciplining the license of the licensee; and

35 (4) In any contact under this subsection by the agency or its counsel with a licensee who is  
36 not represented by counsel, advise the licensee that the licensee has the right to consult an attorney

1 at the licensee's own expense.

2 5. If the licensee desires review by the administrative hearing commission under  
3 subdivision (3) of subsection 4 of this section at any time prior to the settlement becoming final,  
4 the licensee may rescind and withdraw from the settlement and any admissions of fact or law in  
5 the agreement shall be deemed withdrawn and not admissible for any purposes under the law  
6 against the licensee. Any settlement submitted to the administrative hearing commission shall not  
7 be effective and final unless and until findings of fact and conclusions of law are entered by the  
8 administrative hearing commission that the facts agreed to by the parties to the settlement  
9 constitute grounds for denying or disciplining the license of the licensee.

10 6. When a holder of a license, registration, permit, or certificate of authority issued by the  
11 division of professional registration or a board, commission, or committee of the division of  
12 professional registration against whom an affirmative decision is sought has failed to plead or  
13 otherwise respond in the contested case and adequate notice has been given under sections  
14 536.067 and 621.100 upon a properly pled writing filed to initiate the contested case under this  
15 chapter or chapter 536, a default decision shall be entered against the licensee without further  
16 proceedings. The default decision shall grant such relief as requested by the division of  
17 professional registration, board, committee, commission, or office in the writing initiating the  
18 contested case as allowed by law. Upon motion stating facts constituting a meritorious defense  
19 and for good cause shown, a default decision may be set aside. The motion shall be made within a  
20 reasonable time, not to exceed thirty days after entry of the default decision. "Good cause"  
21 includes a mistake or conduct that is not intentionally or recklessly designed to impede the  
22 administrative process.

23 621.100. 1. Upon receipt of a written complaint from an agency named in section  
24 621.045 in a case relating to a holder of a license granted by such agency, or upon receipt of such  
25 complaint from the attorney general, the administrative hearing commission shall cause a copy of  
26 said complaint to be served upon such licensee in person, or by leaving a copy of the complaint at  
27 the licensee's dwelling house or usual place of abode or last address given to the agency by the  
28 licensee with some person residing or present therein over the age of fifteen, or by certified mail,  
29 together with a notice of the place of and the date upon which the hearing on said complaint will  
30 be held. If service cannot be accomplished [in person or by certified mail] as described in this  
31 section, notice by publication as described in subsection 3 of section 506.160 shall be allowed;  
32 any commissioner is authorized to act as a court or judge would in that section, and any employee  
33 of the commission is authorized to act as a clerk would in that section. In any case initiated upon  
34 complaint of the attorney general, the agency which issued the license shall be given notice of  
35 such complaint and the date upon which the hearing will be held by delivery of a copy of such  
36 complaint and notice to the office of such agency or by certified mail. Such agency may intervene

1 and may retain the services of legal counsel to represent it in such case.

2 2. When a holder of a license, registration, permit, or certificate of authority issued by the  
3 division of professional registration or a board, commission, or committee of the division of  
4 professional registration against whom an affirmative decision is sought has failed to plead or  
5 otherwise respond in the contested case and adequate notice has been given under this section and  
6 section 536.067 upon a properly pled writing filed to initiate the contested case under this chapter  
7 or chapter 536, a default decision shall be entered against the licensee without further  
8 proceedings. The default decision shall grant such relief as requested by the division of  
9 professional registration, board, committee, commission, or office in the writing initiating the  
10 contested case as allowed by law. Upon motion stating facts constituting a meritorious defense  
11 and for good cause shown, a default decision may be set aside. The motion shall be made within a  
12 reasonable time, not to exceed thirty days after entry of the default decision. "Good cause"  
13 includes a mistake or conduct that is not intentionally or recklessly designed to impede the  
14 administrative process.

15 3. In any case initiated under this section, the custodian of the records of an agency may  
16 prepare a sworn affidavit stating truthfully pertinent information regarding the license status of the  
17 licensee charged in the complaint, including only: the name of the licensee; his or her license  
18 number; its designated date of expiration; the date of his or her original Missouri licensure; the  
19 particular profession, practice or privilege licensed; and the status of his or her license as current  
20 and active or otherwise. This affidavit shall be received as substantial and competent evidence of  
21 the facts stated therein notwithstanding any objection as to the form, manner of presentment or  
22 admissibility of this evidence, and shall create a rebuttable presumption of the veracity of the  
23 statements therein; provided, however, that the procedures specified in section 536.070 shall  
24 apply to the introduction of this affidavit in any case where the status of this license constitutes a  
25 material issue of fact in the proof of the cause charged in the complaint.

26 621.110. Upon a finding in any cause charged by the complaint for which the license may  
27 be suspended or revoked as provided in the statutes and regulations relating to the profession or  
28 vocation of the licensee and within one hundred twenty days of the date the case became ready for  
29 decision, the commission shall deliver or transmit by mail to the agency which issued the license  
30 the record and a transcript of the proceedings before the commission together with the  
31 commission's findings of fact and conclusions of law. The commission may make  
32 recommendations as to appropriate disciplinary action but any such recommendations shall not be  
33 binding upon the agency. A copy of the findings of fact, conclusions of law and the commission's  
34 recommendations, if any, shall be delivered or transmitted by mail to the licensee if the licensee's  
35 whereabouts are known, and to any attorney who represented the licensee. Within thirty days  
36 after receipt of the record of the proceedings before the commission and the findings of fact,

1 conclusions of law, and recommendations, if any, of the commission, the agency shall set the  
2 matter for hearing upon the issue of appropriate disciplinary action and shall notify the licensee of  
3 the time and place of the hearing, provided that such hearing may be waived by consent of the  
4 agency and licensee where the commission has made recommendations as to appropriate  
5 disciplinary action. In case of such waiver by the agency and licensee, the recommendations of  
6 the commission shall become the order of the agency. The licensee may appear at said hearing  
7 and be represented by counsel. The agency may receive evidence relevant to said issue from the  
8 licensee or any other source. After such hearing the agency may order any disciplinary measure it  
9 deems appropriate and which is authorized by law. In any case where the commission fails to find  
10 any cause charged by the complaint for which the license may be suspended or revoked, the  
11 commission shall dismiss the complaint, and so notify all parties."; and

12 Further amend said bill by amending the title, enacting clause, and intersectional  
13 references accordingly.  
14