

Mr. Speaker: I am instructed by the Senate to inform the House of



8147S11.01F

Representatives that the Senate has taken up and passed

SS SCS HCS HB 265

entitled:

AN ACT

To repeal sections 333.041, 333.042, 333.051, 333.061, 333.091, 333.151, 333.171, 436.405, 436.412, 436.445, 436.450, 436.455, and 436.456, RSMo, and to enact in lieu thereof fourteen new sections relating to professional registration.

WITH SAI,

In which the concurrence of the House is respectfully requested.

Respectfully,

Terry L. Spieler
Secretary of the Senate

MAY 12 2011

SENATE AMENDMENT NO. 1Offered by Dchaaf of BuchananAmend SS SCS HCS H Bill No. 265, Page 1, Section title, Lines 6,

2 of the title, by striking "professional registration" and inserting
3 in lieu thereof the following: "licensure of certain
4 professions"; and

5 Further amend said bill, page 2, section 324.014,
6 line 7, by inserting after all of said line the following:

7 "324.043. 1. Except as provided in this section, no
8 disciplinary proceeding against any person or entity licensed,
9 registered, or certified to practice a profession within the
10 division of professional registration shall be initiated unless
11 such action is commenced within three years of the date upon
12 which the licensing, registering, or certifying agency received
13 notice of an alleged violation of an applicable statute or
14 regulation.

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

- 17 (1) A written complaint;
18 (2) Notice of final disposition of a malpractice claim,
19 including exhaustion of all extraordinary remedies and appeals;
20 (3) Notice of exhaustion of all extraordinary remedies and
21 appeals of a conviction based upon a criminal statute of this
22 state, any other state, or the federal government;

offered 5-10-11
adopted 5-10-11

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

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

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

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

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

18 (1) During any time the accused licensee, registrant, or
19 certificant is practicing exclusively outside the state of
20 Missouri or residing outside the state of Missouri and not
21 practicing in Missouri;

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

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

26 (4) When a settlement agreement is offered to the accused
27 licensee, registrant, or certificant, in an attempt to settle
28 such disciplinary matter without formal proceeding pursuant to
29 section 621.045 until the accused licensee, registrant, or

1 certificant rejects or accepts the settlement agreement.

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

6 324.045. 1. Notwithstanding any provision of chapter 536,
7 in any proceeding initiated by the division of professional
8 registration or any board, committee, commission, or office
9 within the division of professional registration to determine the
10 appropriate level of discipline or additional discipline, if any,
11 against a licensee of the board, committee, commission, or office
12 within the division, if the licensee against whom the proceeding
13 has been initiated upon a properly pled writing filed to initiate
14 the contested case and upon proper notice fails to plead or
15 otherwise defend against the proceeding, the board, commission,
16 committee, or office within the division shall enter a default
17 decision against the licensee without further proceedings. The
18 terms of the default decision shall not exceed the terms of
19 discipline authorized by law for the division, board, commission,
20 or committee. The division, office, board, commission, or
21 committee shall provide the licensee notice of the default
22 decision in writing.

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

29 Further amend said bill, page 13, section 333.171,

1 line 19, by inserting after all of said line the following:

2 "334.001. 1. Notwithstanding any other provision of law to
3 the contrary, the following information is an open record and
4 shall be released upon request of any person and may be published
5 on the board's website:

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

7 (2) The licensee's business address;

8 (3) Registration type;

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

10 (5) Professional schools attended;

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

15 (7) To the extent provided to the board after August 28,
16 2011, discipline by another state or administrative agency;

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

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

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

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

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

1 charge a fee equivalent to the fee specified by regulation.

2 4. At its discretion, the board may disclose confidential
3 information, without the consent of the licensee or applicant, to
4 a licensee or applicant for a license in order to further a board
5 investigation or to facilitate settlement negotiations with the
6 board, in the course of voluntary exchange of information with
7 another state's licensing authority, pursuant to a court order,
8 or to other administrative or law enforcement agencies acting
9 within the scope of their statutory authority.

10 5. Information obtained from a federal administrative or
11 law enforcement agency shall be disclosed only after the board
12 has obtained written consent to the disclosure from the federal
13 administrative or law enforcement agency.

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

17 334.040. 1. Except as provided in section 334.260, all
18 persons desiring to practice as physicians and surgeons in this
19 state shall be examined as to their fitness to engage in such
20 practice by the board. All persons applying for examination
21 shall file a completed application with the board [at least
22 eighty days before the date set for examination upon blanks] upon
23 forms furnished by the board.

24 2. The examination shall be sufficient to test the
25 applicant's fitness to practice as a physician and surgeon. The
26 examination shall be conducted in such a manner as to conceal the
27 identity of the applicant until all examinations have been
28 scored. In all such examinations an average score of not less
29 than seventy-five percent is required to pass; provided, however,

1 that the board may require applicants to take the Federation
2 Licensing Examination, also known as FLEX, or the United States
3 Medical Licensing Examination (USMLE). If the FLEX examination
4 is required, a weighted average score of no less than
5 seventy-five [percent] is required to pass. Scores from one test
6 administration of the FLEX shall not be combined or averaged with
7 scores from other test administrations to achieve a passing
8 score. The passing score of the United States Medical Licensing
9 Examination shall be determined by the board through rule and
10 regulation. The board shall not issue a permanent license as a
11 physician and surgeon or allow the Missouri state board
12 examination to be administered to any applicant who has failed to
13 achieve a passing score within three attempts on licensing
14 examinations administered in one or more states or territories of
15 the United States, the District of Columbia or Canada. The steps
16 one, two and three of the United States Medical Licensing
17 Examination shall be taken within a seven-year period with no
18 more than three attempts on any step of the examination; however,
19 the board may grant an extension of the seven-year period if the
20 applicant has obtained a MD/PhD degree in a program accredited by
21 the [liaison committee on medical education] Liaison Committee on
22 Medical Education (LCME) and a regional university accrediting
23 body or a DO/PhD degree accredited by the American Osteopathic
24 Association and a regional university accrediting body. The
25 board may waive the provisions of this section if the applicant
26 is licensed to practice as a physician and surgeon in another
27 state of the United States, the District of Columbia or Canada
28 and the applicant has achieved a passing score on a licensing
29 examination administered in a state or territory of the United

1 States or the District of Columbia and no license issued to the
2 applicant has been disciplined in any state or territory of the
3 United States or the District of Columbia[. Prior to waiving the
4 provisions of this section, the board may require the applicant
5 to achieve a passing score on one of the following:

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

8 (2) Part II of the FLEX; or

9 (3) The Federation portion of the State Medical Board's
10 Special Purpose Examination (SPEX)] and the applicant is
11 certified in the applicant's area of specialty by the American
12 Board of Medical Specialties, the American Osteopathic
13 Association, or other certifying agency approved by the board by
14 rule.

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

22 4. If an applicant has not actively engaged in the practice
23 of clinical medicine or held a teaching or faculty position in a
24 medical or osteopathic school approved by the American Medical
25 Association, the Liaison Committee on Medical Education, or the
26 American Osteopathic Association for any two years in the three
27 year period immediately preceding the filing of his or her
28 application for licensure, the board may require successful
29 completion of another examination, continuing medical education,

1 or further training before issuing a permanent license. The
2 board shall adopt rules to prescribe the form and manner of such
3 reexamination, continuing medical education, and training.

4 334.070. 1. Upon due application therefor and upon
5 submission by such person of evidence satisfactory to the board
6 that he or she is licensed to practice in this state, and upon
7 the payment of fees required to be paid by this chapter, the
8 board shall issue to [him] such person a certificate of
9 registration. The certificate of registration shall contain the
10 name of the person to whom it is issued and his or her office
11 address [and residence address], the expiration date, and the
12 date and number of the license to practice.

13 2. [Every person shall, upon receiving such certificate,
14 cause it to be conspicuously displayed at all times in every
15 office maintained by him in the state. If he maintains more than
16 one office in this state, the board shall without additional fee
17 issue to him duplicate certificates of registration for each
18 office so maintained.] If any registrant shall change the
19 location of his or her office during the period for which any
20 certificate of registration has been issued, [he] the registrant
21 shall, within fifteen days thereafter, notify the board of such
22 change [and it shall issue to him without additional fee a new
23 registration certificate showing the new location].

24 334.090. 1. Each applicant for registration under this
25 chapter shall accompany the application for registration with a
26 registration fee to be paid to the [director of revenue] board.
27 If the application is filed and the fee paid after the
28 registration renewal date, a delinquent fee shall be paid; but
29 whenever in the opinion of the board the applicant's failure to

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

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

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

21 (1) The board shall serve notice pursuant to section
22 536.067 of the contested hearing at least fifteen days prior to
23 the hearing. Such notice shall include a statement of the
24 reasons the board believes there is reasonable cause to believe
25 that a licensee or applicant is unable to practice his or her
26 profession with reasonable skill and safety to the public by
27 reason of medical or osteopathic incompetency, mental, or
28 physical incapacity, or due to the excessive use or abuse of
29 alcohol or controlled substances;

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

9 (3) After a contested hearing before the board, and upon a
10 showing of reasonable cause to believe that a licensee or
11 applicant is unable to practice his or her profession with
12 reasonable skill and safety to the public by reason of medical or
13 osteopathic incompetency, mental, or physical incapacity, or due
14 to the excessive use or abuse of alcohol or controlled substances
15 the board may require a licensee or applicant to submit to an
16 examination. The board shall maintain a list of facilities
17 approved to perform such examinations. The licensee or applicant
18 may propose a facility not previously approved to the board and
19 the board may accept such facility as an approved facility for
20 such licensee or applicant by a majority vote;

21 (4) For purposes of this subsection, every licensee or
22 applicant is deemed to have consented to an examination upon a
23 showing of reasonable cause. The applicant or licensee shall be
24 deemed to have waived all objections to the admissibility of
25 testimony by the provider of the examination and to the
26 admissibility of examination reports on the grounds that the
27 provider of the examination's testimony or the examination is
28 confidential or privileged;

29 (5) Written notice of the order for an examination shall be

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

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

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

27 (8) The provisions of chapter 536 for a contested case,
28 except those provisions or amendments which are in conflict with
29 this section, shall apply to and govern the proceedings contained

1 in this subsection and the rights and duties of the parties
2 involved. The person appealing such an action shall be entitled
3 to present evidence under chapter 536 relevant to the
4 allegations.

5 2. Failure to submit to the examination when directed shall
6 be cause for the revocation of the license of the licensee or
7 denial of the application. No license may be reinstated or
8 application granted until such time as the examination is
9 completed and delivered to the board or the board withdraws its
10 order.

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

16 4. A licensee or applicant whose right to practice has been
17 affected under this section shall, at reasonable intervals not to
18 exceed twelve months, be afforded an opportunity to demonstrate
19 that he or she can resume the competent practice of his or her
20 profession or should be granted a license. The board may hear
21 such motion more often upon good cause shown.

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

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

26 334.100. 1. The board may refuse to issue or renew any
27 certificate of registration or authority, permit or license
28 required pursuant to this chapter for one or any combination of
29 causes stated in subsection 2 of this section. The board shall

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

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

1 (1) Use of any controlled substance, as defined in chapter
2 195, or alcoholic beverage to an extent that such use impairs a
3 person's ability to perform the work of any profession licensed
4 or regulated by this chapter;

5 (2) The person has been finally adjudicated and found
6 guilty, or entered a plea of guilty or nolo contendere, in a
7 criminal prosecution under the laws of any state or of the United
8 States, for any offense reasonably related to the qualifications,
9 functions or duties of any profession licensed or regulated
10 pursuant to this chapter, for any offense [an essential element
11 of which is] involving fraud, dishonesty or an act of violence,
12 or for any offense involving moral turpitude, whether or not
13 sentence is imposed;

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

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

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

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

5 (c) Willfully and continually performing inappropriate or
6 unnecessary treatment, diagnostic tests or medical or surgical
7 services;

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

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

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

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

28 (h) Signing a blank prescription form; or dispensing,
29 prescribing, administering or otherwise distributing any drug,

1 controlled substance or other treatment without sufficient
2 examination including failing to establish a valid physician-
3 patient relationship pursuant to section 334.108, or for other
4 than medically accepted therapeutic or experimental or
5 investigative purposes duly authorized by a state or federal
6 agency, or not in the course of professional practice, or not in
7 good faith to relieve pain and suffering, or not to cure an
8 ailment; physical infirmity or disease, except as authorized in
9 section 334.104;

10 (i) Exercising influence within a physician-patient
11 relationship for purposes of engaging a patient in sexual
12 activity;

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

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

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

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

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

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

29 [(o)] (p) Violating a probation agreement, order, or other

1 settlement agreement with this board or any other licensing
2 agency;

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

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

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

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

25 (6) Violation of, or attempting to violate, directly or
26 indirectly, or assisting or enabling any person to violate, any
27 provision of this chapter or chapter 324, or of any lawful rule
28 or regulation adopted pursuant to this chapter or chapter 324;

29 (7) Impersonation of any person holding a certificate of

1 registration or authority, permit or license or allowing any
2 person to use his or her certificate of registration or
3 authority, permit, license or diploma from any school;

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

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

20 (10) Assisting or enabling any person to practice or offer
21 to practice any profession licensed or regulated by this chapter
22 who is not registered and currently eligible to practice pursuant
23 to this chapter; or knowingly performing any act which in any way
24 aids, assists, procures, advises, or encourages any person to
25 practice medicine who is not registered and currently eligible to
26 practice pursuant to this chapter. A physician who works in
27 accordance with standing orders or protocols or in accordance
28 with the provisions of section 334.104 shall not be in violation
29 of this subdivision;

1 (11) Issuance of a certificate of registration or
2 authority, permit or license based upon a material mistake of
3 fact;

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

7 (13) Violation of the drug laws or rules and regulations of
8 this state, including but not limited to any provision of chapter
9 195, any other state, or the federal government;

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

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

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

24 [(16)] (17) Using, or permitting the use of, the person's
25 name under the designation of "Doctor", "Dr.", "M.D.", or "D.O.",
26 or any similar designation with reference to the commercial
27 exploitation of any goods, wares or merchandise;

28 [(17)] (18) Knowingly making or causing to be made a false
29 statement or misrepresentation of a material fact, with intent to

1 defraud, for payment pursuant to the provisions of chapter 208 or
2 chapter 630 or for payment from Title XVIII or Title XIX of the
3 federal Medicare program;

4 [(18)] (19) Failure or refusal to properly guard against
5 contagious, infectious or communicable diseases or the spread
6 thereof; maintaining an unsanitary office or performing
7 professional services under unsanitary conditions; or failure to
8 report the existence of an unsanitary condition in the office of
9 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
12 to practice as a physical therapist, paying or offering to pay a
13 referral fee or, notwithstanding section 334.010 to the contrary,
14 practicing or offering to practice professional physical therapy
15 independent of the prescription and direction of a person
16 licensed and registered as a physician and surgeon pursuant to
17 this chapter, as a dentist pursuant to chapter 332, as a
18 podiatrist pursuant to chapter 330, as an advanced practice
19 registered nurse under chapter 335, or any licensed and
20 registered physician, dentist, podiatrist, or advanced practice
21 registered nurse practicing in another jurisdiction, whose
22 license is in good standing;

23 [(20)] (21) Any candidate for licensure or person licensed
24 to practice as a physical therapist, treating or attempting to
25 treat ailments or other health conditions of human beings other
26 than by professional physical therapy and as authorized by
27 sections 334.500 to 334.620;

28 [(21)] (22) Any person licensed to practice as a physician
29 or surgeon, requiring, as a condition of the physician-patient

1 relationship, that the patient receive prescribed drugs, devices
2 or other professional services directly from facilities of that
3 physician's office or other entities under that physician's
4 ownership or control. A physician shall provide the patient with
5 a prescription which may be taken to the facility selected by the
6 patient and a physician knowingly failing to disclose to a
7 patient on a form approved by the advisory commission for
8 professional physical therapists as established by section
9 334.625 which is dated and signed by a patient or guardian
10 acknowledging that the patient or guardian has read and
11 understands that the physician has a pecuniary interest in a
12 physical therapy or rehabilitation service providing prescribed
13 treatment and that the prescribed treatment is available on a
14 competitive basis. This subdivision shall not apply to a
15 referral by one physician to another physician within a group of
16 physicians practicing together;

17 [(22)] (23) A pattern of personal use or consumption of any
18 controlled substance unless it is prescribed, dispensed or
19 administered by another physician who is authorized by law to do
20 so;

21 [(23)] (24) Habitual intoxication or dependence on alcohol,
22 evidence of which may include more than one alcohol-related
23 enforcement contact as defined by section 302.525;

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

27 (26) Revocation, suspension, limitation, probation, or
28 restriction of any kind whatsoever of any controlled substance
29 authority, whether agreed to voluntarily or not, or voluntary

1 termination of a controlled substance authority while under
2 investigation;

3 [(24)] (27) For a physician to operate, conduct, manage, or
4 establish an abortion facility, or for a physician to perform an
5 abortion in an abortion facility, if such facility comes under
6 the definition of an ambulatory surgical center pursuant to
7 sections 197.200 to 197.240, and such facility has failed to
8 obtain or renew a license as an ambulatory surgical center[;

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

15 (a) In enforcing this subdivision the board shall, after a
16 hearing by the board, upon a finding of probable cause, require a
17 physician to submit to a reexamination for the purpose of
18 establishing his or her competency to practice as a physician or
19 surgeon or with a specialty conducted in accordance with rules
20 adopted for this purpose by the board, including rules to allow
21 the examination of the pattern and practice of such physician's
22 or surgeon's professional conduct, or to submit to a mental or
23 physical examination or combination thereof by at least three
24 physicians, one selected by the physician compelled to take the
25 examination, one selected by the board, and one selected by the
26 two physicians so selected who are graduates of a professional
27 school approved and accredited as reputable by the association
28 which has approved and accredited as reputable the professional
29 school from which the licentiate graduated. However, if the

1 physician is a graduate of a medical school not accredited by the
2 American Medical Association or American Osteopathic Association,
3 then each party shall choose any physician who is a graduate of a
4 medical school accredited by the American Medical Association or
5 the American Osteopathic Association;

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

13 (c) In addition to ordering a physical or mental
14 examination to determine competency, the board may,
15 notwithstanding any other law limiting access to medical or other
16 health data, obtain medical data and health records relating to a
17 physician or applicant without the physician's or applicant's
18 consent;

19 (d) Written notice of the reexamination or the physical or
20 mental examination shall be sent to the physician, by registered
21 mail, addressed to the physician at the physician's last known
22 address. Failure of a physician to designate an examining
23 physician to the board or failure to submit to the examination
24 when directed shall constitute an admission of the allegations
25 against the physician, in which case the board may enter a final
26 order without the presentation of evidence, unless the failure
27 was due to circumstances beyond the physician's control. A
28 physician whose right to practice has been affected under this
29 subdivision shall, at reasonable intervals, be afforded an

1 opportunity to demonstrate that the physician can resume the
2 competent practice as a physician and surgeon with reasonable
3 skill and safety to patients;

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

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

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

17 4. After the filing of such complaint before the
18 administrative hearing commission, the proceedings shall be
19 conducted in accordance with the provisions of chapter 621. Upon
20 a finding by the administrative hearing commission that the
21 grounds, provided in subsection 2 of this section, for
22 disciplinary action are met, the board may, singly or in
23 combination, warn, censure or place the person named in the
24 complaint on probation on such terms and conditions as the board
25 deems appropriate for a period not to exceed ten years, or may
26 suspend the person's license, certificate or permit for a period
27 not to exceed three years, or restrict or limit the person's
28 license, certificate or permit for an indefinite period of time,
29 or revoke the person's license, certificate, or permit, or

1 administer a public or private reprimand, or deny the person's
2 application for a license, or permanently withhold issuance of a
3 license or require the person to submit to the care, counseling
4 or treatment of physicians designated by the board at the expense
5 of the individual to be examined, or require the person to attend
6 such continuing educational courses and pass such examinations as
7 the board may direct.

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

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

19 7. In any investigation, hearing or other proceeding to
20 determine a licensee's or applicant's fitness to practice, any
21 record relating to any patient of the licensee or applicant shall
22 be discoverable by the board and admissible into evidence,
23 regardless of any statutory or common law privilege which such
24 licensee, applicant, record custodian or patient might otherwise
25 invoke. In addition, no such licensee, applicant, or record
26 custodian may withhold records or testimony bearing upon a
27 licensee's or applicant's fitness to practice on the ground of
28 privilege between such licensee, applicant or record custodian
29 and a patient.

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

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

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

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

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

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

28 3. (1) The order of suspension or restriction:

29 (a) Shall be based on the sworn testimony or affidavits

1 presented to the board;

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

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

8 (2) The board or the administrative hearing commission
9 shall serve the licensee, in person or by certified mail, with a
10 copy of the order of suspension or restriction and all sworn
11 testimony or affidavits presented to the board, a copy of the
12 complaint and the request for expedited hearing, and a notice of
13 the place of and the date upon which the preliminary hearing will
14 be held.

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

18 (4) The order of suspension shall become effective upon the
19 entry of the preliminary order of the administrative hearing
20 commission.

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

25 4. The board shall file a complaint in the administrative
26 hearing commission with a request for expedited preliminary
27 hearing and shall certify the order of suspension or restriction
28 and all sworn testimony or affidavits presented to the board.
29 Immediately upon receipt of a complaint filed pursuant to this

1 section, the administrative hearing commission shall set the
2 place and date of the expedited preliminary hearing which shall
3 be conducted as soon as possible, but not later than five days
4 after the date of service upon the licensee. The administrative
5 hearing commission shall grant a licensee's request for a
6 continuance of the preliminary hearing; however, the board's
7 order shall remain in full force and effect until the preliminary
8 hearing, which shall be held not later than forty-five days after
9 service of the documents required in subdivision (2) of
10 subsection 3.

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

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

29 7. Upon receipt of a request for full hearing, the

1 administrative hearing commission shall set a date for hearing
2 and notify the parties in writing of the time and place of the
3 hearing. If a request for full hearing is timely filed, the
4 preliminary order of the administrative hearing commission shall
5 remain in effect until the administrative hearing commission
6 enters an order terminating, modifying, or dismissing its
7 preliminary order or until the board issues an order of
8 discipline following its consideration of the decision of the
9 administrative hearing commission pursuant to section 621.110 and
10 subsection 3 of section 334.100.

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

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

22 10. The burden of proving the elements listed in subsection
23 2 of this section shall be upon the state board of registration
24 for the healing arts.] The board may apply to the administrative
25 hearing commission for an emergency suspension or restriction of
26 a licensee for the following causes:

27 (1) Engaging in sexual conduct, as defined in section
28 566.010, with a patient who is not the licensee's spouse,
29 regardless of whether the patient consented;

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

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

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

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

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

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

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

28 2. The board shall submit existing affidavits and existing
29 certified court records together with a complaint alleging the

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

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

29 4. The administrative hearing commission shall hold a

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

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

13 (2) If cause for discipline exists, the administrative
14 hearing commission shall issue findings of fact and conclusions
15 of law and order the emergency suspension or restriction to
16 remain in full force and effect pending a disciplinary hearing
17 before the board. The board shall hold a hearing following the
18 certification of the record by the administrative hearing
19 commission and may impose any discipline otherwise authorized by
20 state law.

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

24 7. If the administrative hearing commission does not find
25 probable cause and does not grant the emergency suspension or
26 restriction, the board shall remove all reference to such
27 emergency suspension or restriction from its public records.
28 Records relating to the suspension or restriction shall be
29 maintained in the board's files. The board or licensee may use

1 such records in the course of any litigation to which they are
2 both parties. Additionally, such records may be released upon a
3 specific, written request of the licensee.

4 8. (1) The board may initiate a hearing before the board,
5 for discipline of any licensee's license or certificate upon
6 receipt of one of the following:

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

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

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

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

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

29 9. A final decision of the administrative hearing

1 commission or the board shall be subject to judicial review
2 pursuant to chapter 536.

3 334.103. 1. A license issued under this chapter by the
4 Missouri State Board of Registration for the Healing Arts shall
5 be automatically revoked at such time as the final trial
6 proceedings are concluded whereby a licensee has been adjudicated
7 and found guilty, or has entered a plea of guilty or nolo
8 contendere, in a felony criminal prosecution under the laws of
9 the state of Missouri, the laws of any other state, or the laws
10 of the United States of America for any offense reasonably
11 related to the qualifications, functions or duties of their
12 profession, or for any felony offense[, an essential element of
13 which is] involving fraud, dishonesty or an act of violence, or
14 for any felony offense involving moral turpitude, whether or not
15 sentence is imposed, or, upon the final and unconditional
16 revocation of the license to practice their profession in another
17 state or territory upon grounds for which revocation is
18 authorized in this state following a review of the record of the
19 proceedings and upon a formal motion of the state board of
20 registration for the healing arts. The license of any such
21 licensee shall be automatically reinstated if the conviction or
22 the revocation is ultimately set aside upon final appeal in any
23 court of competent jurisdiction.

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

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

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

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

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

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

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

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

23 (1) A hospital as defined in section 197.020;

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

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

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

29 (5) Conjunction with a physician assistant licensed

1 pursuant to section 334.738;

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

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

7 334.715. 1. The board may refuse to issue or renew any
8 license [any applicant or may suspend, revoke, or refuse to renew
9 the license of any licensee for any one or any combination of the
10 causes provided in section 334.100, or if the applicant or
11 licensee] required under sections 334.700 to 334.725 for one or
12 any combination of causes listed in subsection 2 of this section
13 or any cause listed in section 334.100. The board shall notify
14 the applicant in writing of the reasons for the refusal and shall
15 advise the applicant of the applicant's right to file a complaint
16 with the administrative hearing commission as provided in chapter
17 621. As an alternative to a refusal to issue or renew any
18 certificate, registration, or authority, the board may, in its
19 discretion, issue a license which is subject to reprimand,
20 probation, restriction, or limitation to an applicant for
21 licensure for any one or any combination of causes listed in
22 subsection 2 of this section or section 334.100. The board's
23 order of reprimand, probation, limitation, or restriction shall
24 contain a statement of the discipline imposed, the basis
25 therefor, the date such action shall become effective, and a
26 statement that the applicant has thirty days to request in
27 writing a hearing before the administrative hearing commission.
28 If the board issues a probationary, limited, or restricted
29 license to an applicant for licensure, either party may file a

1 written petition with the administrative hearing commission
2 within thirty days of the effective date of the probationary,
3 limited, or restricted license seeking review of the board's
4 determination. If no written request for a hearing is received
5 by the administrative hearing commission within the thirty-day
6 period, the right to seek review of the board's decision shall be
7 considered waived.

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

15 (1) Violated or conspired to violate any provision of
16 sections 334.700 to 334.725 or any provision of any rule
17 promulgated pursuant to sections 334.700 to 334.725; or

18 (2) Has been found guilty of unethical conduct as defined
19 in the ethical standards of the National Athletic Trainers
20 Association or the National Athletic Trainers Association Board
21 of Certification, or its successor agency, as adopted and
22 published by the committee and the board and filed with the
23 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
26 and manner prescribed by the board, the board may reinstate any
27 license which has expired, been suspended or been revoked or may
28 issue any license which has been denied; provided, that no
29 application for reinstatement or issuance of license or licensure

1 shall be considered until at least six months have elapsed from
2 the date of denial, expiration, suspension, or revocation when
3 the license to be reinstated or issued was denied issuance or
4 renewal or was suspended or revoked for one of the causes listed
5 in subsection 1 of this section.]

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

12 (1) Warn, censure, or place the person named in the
13 complaint on probation on such terms and conditions as the board
14 deems appropriate for a period not to exceed ten years; or

15 (2) Suspend the person's license, certificate, or permit
16 for a period not to exceed three years; or

17 (3) Administer a public or private reprimand; or

18 (4) Deny the person's application for a license; or

19 (5) Permanently withhold issuance of a license or require
20 the person to submit to the care, counseling, or treatment of
21 physicians designated by the board at the expense of the
22 individual to be examined; or

23 (6) Require the person to attend such continuing education
24 courses and pass such examinations as the board may direct.

25 4. In any order of revocation, the board may provide that
26 the person shall not apply for reinstatement of the person's
27 license for a period of time ranging from two to seven years
28 following the date of the order of revocation. All stay orders
29 shall toll such time period.

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

7 Further amend said bill, page 22, section 436.456,
8 line 1, by inserting after all of said line the following:

9 "536.063. In any contested case:

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

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

28 (3) Reasonable opportunity shall be given for the
29 preparation and presentation of evidence bearing on any issue

1 raised or decided or relief sought or granted. Where issues are
2 tried without objection or by consent, such issues shall be
3 deemed to have been properly before the agency. Any formality of
4 procedure may be waived by mutual consent[.];

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

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

24 (6) When a holder of a license, registration, permit, or
25 certificate of authority issued by the division of professional
26 registration or a board, commission, or committee of the division
27 of professional registration against whom an affirmative decision
28 is sought has failed to plead or otherwise respond in the
29 contested case and adequate notice has been given under section

1 536.067 upon a properly pled writing filed to initiate the
2 contested case under this chapter, a default decision shall be
3 entered against the licensee without further proceedings. The
4 default decision shall grant such relief as requested by the
5 division of professional registration, board, committee,
6 commission, or office in the writing initiating the contested
7 case as allowed by law. Upon motion stating facts constituting a
8 meritorious defense and for good cause shown, a default decision
9 may be set aside. The motion shall be made within a reasonable
10 time, not to exceed thirty days after entry of the default
11 decision. "Good cause" includes a mistake or conduct that is not
12 intentionally or recklessly designed to impede the administrative
13 process.

14 536.067. In any contested case:

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

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

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

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

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

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

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

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

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

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

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

2 (b) The time and place of hearing;

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

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

1 intentionally or recklessly designed to impede the administrative
2 process.

3 536.070. In any contested case:

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

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

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

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

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

24 (6) Agencies shall take official notice of all matters of
25 which the courts take judicial notice. They may also take
26 official notice of technical or scientific facts, not judicially
27 cognizable, within their competence, if they notify the parties,
28 either during a hearing or in writing before a hearing, or before
29 findings are made after hearing, of the facts of which they

1 propose to take such notice and give the parties reasonable
2 opportunity to contest such facts or otherwise show that it would
3 not be proper for the agency to take such notice of them[.];

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

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

16 (9) Copies of writings, documents and records shall be
17 admissible without proof that the originals thereof cannot be
18 produced, if it shall appear by testimony or otherwise that the
19 copy offered is a true copy of the original, but the agency may,
20 nevertheless, if it believes the interests of justice so require,
21 sustain any objection to such evidence which would be sustained
22 were the proffered evidence offered in a civil action in the
23 circuit court, but if it does sustain such an objection, it shall
24 give the party offering such evidence reasonable opportunity and,
25 if necessary, opportunity at a later date, to establish by
26 evidence the facts sought to be proved by the evidence to which
27 such objection is sustained[.];

28 (10) Any writing or record, whether in the form of an entry
29 in a book or otherwise, made as a memorandum or record of an act,

1 transaction, occurrence or event, shall be admissible as evidence
2 of the act, transaction, occurrence or event, if it shall appear
3 that it was made in the regular course of any business, and that
4 it was the regular course of such business to make such
5 memorandum or record at the time of such act, transaction,
6 occurrence, or event or within a reasonable time thereafter. All
7 other circumstances of the making of such writing or record,
8 including lack of personal knowledge by the entrant or maker, may
9 be shown to affect the weight of such evidence, but such showing
10 shall not affect its admissibility. The term "business" shall
11 include business, profession, occupation and calling of every
12 kind[.];

13 (11) The results of statistical examinations or studies, or
14 of audits, compilations of figures, or surveys, involving
15 interviews with many persons, or examination of many records, or
16 of long or complicated accounts, or of a large number of figures,
17 or involving the ascertainment of many related facts, shall be
18 admissible as evidence of such results, if it shall appear that
19 such examination, study, audit, compilation of figures, or survey
20 was made by or under the supervision of a witness, who is present
21 at the hearing, who testifies to the accuracy of such results,
22 and who is subject to cross-examination, and if it shall further
23 appear by evidence adduced that the witness making or under whose
24 supervision such examination, study, audit, compilation of
25 figures, or survey was made was basically qualified to make it.
26 All the circumstances relating to the making of such an
27 examination, study, audit, compilation of figures or survey,
28 including the nature and extent of the qualifications of the
29 maker, may be shown to affect the weight of such evidence but

1 such showing shall not affect its admissibility[.];

2 (12) Any party or the agency desiring to introduce an
3 affidavit in evidence at a hearing in a contested case may serve
4 on all other parties (including, in a proper case, the agency)
5 copies of such affidavit in the manner hereinafter provided, at
6 any time before the hearing, or at such later time as may be
7 stipulated. Not later than seven days after such service, or at
8 such later time as may be stipulated, any other party (or, in a
9 proper case, the agency) may serve on the party or the agency who
10 served such affidavit an objection to the use of the affidavit or
11 some designated portion or portions thereof on the ground that it
12 is in the form of an affidavit; provided, however, that if such
13 affidavit shall have been served less than eight days before the
14 hearing such objection may be served at any time before the
15 hearing or may be made orally at the hearing. If such objection
16 is so served, the affidavit or the part thereof to which
17 objection was made, may not be used except in ways that would
18 have been permissible in the absence of this subdivision;
19 provided, however, that such objection may be waived by the party
20 or the agency making the same. Failure to serve an objection as
21 aforesaid, based on the ground aforesaid, shall constitute a
22 waiver of all objections to the introduction of such affidavit,
23 or of the parts thereof with respect to which no such objection
24 was so served, on the ground that it is in the form of an
25 affidavit, or that it constitutes or contains hearsay evidence,
26 or that it is not, or contains matters which are not, the best
27 evidence, but any and all other objections may be made at the
28 hearing. Nothing herein contained shall prevent the
29 cross-examination of the affiant if he or she is present in

1 obedience to a subpoena or otherwise and if he or she is present,
2 he or she may be called for cross-examination during the case of
3 the party who introduced the affidavit in evidence. If the
4 affidavit is admissible in part only it shall be admitted as to
5 such part, without the necessity of preparing a new affidavit.
6 The manner of service of such affidavit and of such objection
7 shall be by delivering or mailing copies thereof to the attorneys
8 of record of the parties being served, if any, otherwise, to such
9 parties, and service shall be deemed complete upon mailing;
10 provided, however, that when the parties are so numerous as to
11 make service of copies of the affidavit on all of them unduly
12 onerous, the agency may make an order specifying on what parties
13 service of copies of such affidavit shall be made, and in that
14 case a copy of such affidavit shall be filed with the agency and
15 kept available for inspection and copying. Nothing in this
16 subdivision shall prevent any use of affidavits that would be
17 proper in the absence of this subdivision."; and

~~18 Further amend said bill, page _____, section _____,
19 line _____, by inserting after all of said line the following:~~

20 "621.045. 1. The administrative hearing commission shall
21 conduct hearings and make findings of fact and conclusions of law
22 in those cases when, under the law, a license issued by any of
23 the following agencies may be revoked or suspended or when the
24 licensee may be placed on probation or when an agency refuses to
25 permit an applicant to be examined upon his or her qualifications
26 or refuses to issue or renew a license of an applicant who has
27 passed an examination for licensure or who possesses the
28 qualifications for licensure without examination:

29 Missouri State Board of Accountancy

1 Missouri State Board for Architects, Professional Engineers,
2 Professional Land Surveyors and Landscape Architects
3 Board of Barber Examiners
4 Board of Cosmetology
5 Board of Chiropody and Podiatry
6 Board of Chiropractic Examiners
7 Missouri Dental Board
8 Board of Embalmers and Funeral Directors
9 Board of Registration for the Healing Arts
10 Board of Nursing
11 Board of Optometry
12 Board of Pharmacy
13 Missouri Real Estate Commission
14 Missouri Veterinary Medical Board
15 Supervisor of Liquor Control
16 Department of Health and Senior Services
17 Department of Insurance, Financial Institutions and
18 Professional Registration
19 Department of Mental Health
20 Board of Private Investigator Examiners.

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

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

1 327.076.

2 4. Notwithstanding any other provision of this section to
3 the contrary, after August 28, 1995, in order to encourage
4 settlement of disputes between any agency described in subsection
5 1 or 2 of this section and its licensees, any such agency shall:

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

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

16 (3) If no contested case has been filed against the
17 licensee, advise the licensee that the licensee may, either at
18 the time the settlement agreement is signed by all parties, or
19 within fifteen days thereafter, submit the agreement to the
20 administrative hearing commission for determination that the
21 facts agreed to by the parties to the settlement constitute
22 grounds for denying or disciplining the license of the licensee;
23 and

24 (4) In any contact under this subsection by the agency or
25 its counsel with a licensee who is not represented by counsel,
26 advise the licensee that the licensee has the right to consult an
27 attorney at the licensee's own expense.

28 5. If the licensee desires review by the administrative
29 hearing commission under subdivision (3) of subsection 4 of this

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

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

1 621.100. 1. Upon receipt of a written complaint from an
2 agency named in section 621.045 in a case relating to a holder of
3 a license granted by such agency, or upon receipt of such
4 complaint from the attorney general, the administrative hearing
5 commission shall cause a copy of said complaint to be served upon
6 such licensee in person, or by leaving a copy of the complaint at
7 the licensee's dwelling house or usual place of abode or last
8 address given to the agency by the licensee with some person
9 residing or present therein over the age of fifteen, or by
10 certified mail, together with a notice of the place of and the
11 date upon which the hearing on said complaint will be held. If
12 service cannot be accomplished [in person or by certified mail]
13 as described in this section, notice by publication as described
14 in subsection 3 of section 506.160 shall be allowed; any
15 commissioner is authorized to act as a court or judge would in
16 that section, and any employee of the commission is authorized to
17 act as a clerk would in that section. In any case initiated upon
18 complaint of the attorney general, the agency which issued the
19 license shall be given notice of such complaint and the date upon
20 which the hearing will be held by delivery of a copy of such
21 complaint and notice to the office of such agency or by certified
22 mail. Such agency may intervene and may retain the services of
23 legal counsel to represent it in such case.

24 2. When a holder of a license, registration, permit, or
25 certificate of authority issued by the division of professional
26 registration or a board, commission, or committee of the division
27 of professional registration against whom an affirmative decision
28 is sought has failed to plead or otherwise respond in the
29 contested case and adequate notice has been given under this

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

14 3. In any case initiated under this section, the custodian
15 of the records of an agency may prepare a sworn affidavit stating
16 truthfully pertinent information regarding the license status of
17 the licensee charged in the complaint, including only: the name
18 of the licensee; his or her license number; its designated date
19 of expiration; the date of his or her original Missouri
20 licensure; the particular profession, practice or privilege
21 licensed; and the status of his or her license as current and
22 active or otherwise. This affidavit shall be received as
23 substantial and competent evidence of the facts stated therein
24 notwithstanding any objection as to the form, manner of
25 presentment or admissibility of this evidence, and shall create a
26 rebuttable presumption of the veracity of the statements therein;
27 provided, however, that the procedures specified in section
28 536.070 shall apply to the introduction of this affidavit in any
29 case where the status of this license constitutes a material

1 issue of fact in the proof of the cause charged in the complaint.

2 621.110. Upon a finding in any cause charged by the
3 complaint for which the license may be suspended or revoked as
4 provided in the statutes and regulations relating to the
5 profession or vocation of the licensee and within one hundred
6 twenty days of the date the case became ready for decision, the
7 commission shall deliver or transmit by mail to the agency which
8 issued the license the record and a transcript of the proceedings
9 before the commission together with the commission's findings of
10 fact and conclusions of law. The commission may make
11 recommendations as to appropriate disciplinary action but any
12 such recommendations shall not be binding upon the agency. A copy
13 of the findings of fact, conclusions of law and the commission's
14 recommendations, if any, shall be delivered or transmitted by
15 mail to the licensee if the licensee's whereabouts are known, and
16 to any attorney who represented the licensee. Within thirty days
17 after receipt of the record of the proceedings before the
18 commission and the findings of fact, conclusions of law, and
19 recommendations, if any, of the commission, the agency shall set
20 the matter for hearing upon the issue of appropriate disciplinary
21 action and shall notify the licensee of the time and place of the
22 hearing, provided that such hearing may be waived by consent of
23 the agency and licensee where the commission has made
24 recommendations as to appropriate disciplinary action. In case
25 of such waiver by the agency and licensee, the recommendations of
26 the commission shall become the order of the agency. The
27 licensee may appear at said hearing and be represented by
28 counsel. The agency may receive evidence relevant to said issue
29 from the licensee or any other source. After such hearing the

1 agency may order any disciplinary measure it deems appropriate
2 and which is authorized by law. In any case where the commission
3 fails to find any cause charged by the complaint for which the
4 license may be suspended or revoked, the commission shall dismiss
5 the complaint, and so notify all parties."; and

6 Further amend the title and enacting clause accordingly.

