

FIRST REGULAR SESSION
[CORRECTED]
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 265

96TH GENERAL ASSEMBLY

0520S.07T

2011

AN ACT

To repeal sections 324.043, 333.041, 333.042, 333.051, 333.061, 333.091, 333.151, 333.171, 334.040, 334.070, 334.090, 334.100, 334.102, 334.103, 334.715, 436.405, 436.412, 436.445, 436.450, 436.455, 436.456, 536.063, 536.067, 536.070, 621.045, 621.100, and 621.110, RSMo, and to enact in lieu thereof thirty-two new sections relating to licensure of certain professions.

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

Section A. Sections 324.043, 333.041, 333.042, 333.051, 333.061, 333.091, 333.151, 333.171, 334.040, 334.070, 334.090, 334.100, 334.102, 334.103, 334.715, 436.405, 436.412, 436.445, 436.450, 436.455, 436.456, 536.063, 536.067, 536.070, 621.045, 621.100, and 621.110, RSMo, are repealed and thirty-two new sections enacted in lieu thereof, to be known as sections 324.014, 324.043, 324.045, 333.041, 333.042, 333.051, 333.061, 333.091, 333.151, 333.171, 334.001, 334.040, 334.070, 334.090, 334.099, 334.100, 334.102, 334.103, 334.108, 334.715, 436.405, 436.412, 436.445, 436.450, 436.455, 436.456, 536.063, 536.067, 536.070, 621.045, 621.100, and 621.110, to read as follows:

324.014. Any board, commission, committee, council, or office within the division of professional registration shall notify any known current employer of a change in a licensee's license and discipline status. An employer may provide a list of current licensed employees and make a request in writing to the board, commission, committee, council, or

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

5 **office within the division of professional registration responsible for the licensee's license,**
6 **to be notified upon a change in the licensing status of any such licensed employee. Nothing**
7 **in this section shall be construed as requiring the board, commission, committee, council,**
8 **or office within the division of professional registration to determine the current employer**
9 **of any person whose license is sanctioned.**

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

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

7 (1) A written complaint;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

333.041. 1. Each applicant for a license to practice funeral directing shall furnish
2 evidence to establish to the satisfaction of the board that he or she is:

3 (1) At least eighteen years of age, and possesses a high school diploma, **a general**
4 **equivalency diploma**, or equivalent thereof, **as determined, at its discretion, by the board;**
5 **and**

6 (2) [Either a citizen or a bona fide resident of the state of Missouri or entitled to a license
7 pursuant to section 333.051, or a resident in a county contiguous and adjacent to the state of
8 Missouri who is employed by a funeral establishment located within the state of Missouri, to
9 practice funeral directing upon the grant of a license to do so; and

10 (3)] A person of good moral character.

11 2. Every person desiring to enter the profession of embalming dead human bodies within
12 the state of Missouri and who is enrolled in [an] **a program** accredited [institution of mortuary

13 science education] **by the American Board of Funeral Service Education, any successor**
14 **organization, or other accrediting entity as approved by the board,** shall register with the
15 board as a practicum student upon the form provided by the board. After such registration, a
16 student may assist, under the direct supervision of Missouri licensed embalmers and funeral
17 directors, in Missouri licensed funeral establishments, while serving his or her practicum [for the
18 accredited institution of mortuary science education]. The form for registration as a practicum
19 student shall be accompanied by a fee in an amount established by the board.

20 3. Each applicant for a license to practice embalming shall furnish evidence to establish
21 to the satisfaction of the board that he or she:

22 (1) Is at least eighteen years of age, and possesses a high school diploma, **a general**
23 **equivalency diploma,** or equivalent thereof, **as determined, at its discretion, by the board;**

24 (2) [Is either a citizen or bona fide resident of the state of Missouri or entitled to a license
25 pursuant to section 333.051, or a resident in a county contiguous and adjacent to the state of
26 Missouri who is employed by a funeral establishment located within the state of Missouri, to
27 practice embalming upon the grant of a license to do so;

28 (3)] Is a person of good moral character;

29 [(4)] **(3) Has [graduated from an institute of mortuary science education] completed a**
30 **funeral service education program** accredited by the American Board of Funeral Service
31 Education, [or] any successor organization [recognized by the United States Department of
32 Education, for funeral service education] , **or other accrediting entity as approved by the**
33 **board.** If an applicant does not [appear for the final examination before the board] **complete all**
34 **requirements for licensure** within five years from the date of his or her [graduation from]
35 **completion of** an accredited [institution of mortuary science education] **program,** his or her
36 registration as [a student] **an apprentice** embalmer shall be automatically canceled. **The**
37 **applicant shall be required to file a new application and pay applicable fees. No previous**
38 **apprenticeship shall be considered for the new application;**

39 [(5)] **(4)** Upon due examination administered by the board, is possessed of a knowledge
40 of the subjects of embalming, anatomy, pathology, bacteriology, mortuary administration,
41 chemistry, restorative art, together with statutes, rules and regulations governing the care,
42 custody, shelter and disposition of dead human bodies and the transportation thereof or has
43 passed the national board examination of the Conference of Funeral Service Examining Boards.
44 If any applicant fails to pass the state examination, he or she may retake the examination at the
45 next regular examination meeting. The applicant shall notify the board office of his or her desire
46 to retake the examination at least thirty days prior to the date of the examination. Each time the
47 examination is retaken, the applicant shall pay a new examination fee in an amount established
48 by the board;

49 [(6)] (5) Has been employed full time in funeral service in a licensed funeral
50 establishment and has personally embalmed at least twenty-five dead human bodies under the
51 personal supervision of an embalmer who holds a current and valid Missouri embalmer's license
52 or an embalmer who holds a current and valid embalmer's license in a state with which the
53 Missouri board has entered into a reciprocity agreement during an apprenticeship of not less than
54 twelve consecutive months. "Personal supervision" means that the licensed embalmer shall be
55 physically present during the entire embalming process in the first six months of the
56 apprenticeship period and physically present at the beginning of the embalming process and
57 available for consultation and personal inspection within a period of not more than one hour in
58 the remaining six months of the apprenticeship period. All transcripts and other records filed
59 with the board shall become a part of the board files.

60 4. If the applicant does not [appear for oral examination] **complete the application**
61 **process** within the five years after his or her [graduation from an accredited institution of
62 mortuary science education] **completion of an approved program**, then he or she must file a
63 new application and no fees paid previously shall apply toward the license fee.

64 5. Examinations required by this section and section 333.042 shall be held at least twice
65 a year at times and places fixed by the board. The board shall by rule and regulation prescribe
66 the standard for successful completion of the examinations.

67 6. Upon establishment of his or her qualifications as specified by this section or section
68 333.042, the board shall issue to the applicant a license to practice funeral directing or
69 embalming, as the case may require, and shall register the applicant as a duly licensed funeral
70 director or a duly licensed embalmer. Any person having the qualifications required by this
71 section and section 333.042 may be granted both a license to practice funeral directing and to
72 practice embalming.

73 7. The board shall, upon request, waive any requirement of this chapter and issue a
74 temporary funeral director's license, valid for six months, to the surviving spouse or next of kin
75 or the personal representative of a licensed funeral director, or to the spouse, next of kin,
76 employee or conservator of a licensed funeral director disabled because of sickness, mental
77 incapacity or injury.

333.042. 1. Every person desiring to enter the profession of funeral directing in this state
2 shall make application with the state board of embalmers and funeral directors and pay the
3 current application and examination fees. **Except as otherwise provided in section 41.950,**
4 applicants not entitled to a license pursuant to section 333.051 shall serve an apprenticeship for
5 at least twelve **consecutive** months in a funeral establishment licensed for the care and
6 preparation for burial and transportation of the human dead in this state or in another state which
7 has established standards for admission to practice funeral directing equal to, or more stringent

8 than, the requirements for admission to practice funeral directing in this state. The applicant
9 shall devote at least fifteen hours per week to his or her duties as an apprentice under the
10 supervision of a Missouri licensed funeral director. Such applicant shall submit proof to the
11 board, on forms provided by the board, that the applicant has arranged and conducted ten funeral
12 services during the applicant's apprenticeship under the supervision of a Missouri licensed
13 funeral director. Upon completion of the apprenticeship, the applicant shall appear before the
14 board to be tested on the applicant's legal and practical knowledge of funeral directing, funeral
15 home licensing, preneed funeral contracts and the care, custody, shelter, disposition and
16 transportation of dead human bodies. Upon acceptance of the application and fees by the board,
17 an applicant shall have twenty-four months to successfully complete the requirements for
18 licensure found in this section or the application for licensure shall be canceled.

19 2. If a person applies for a limited license to work only in a funeral establishment which
20 is licensed only for cremation, including transportation of dead human bodies to and from the
21 funeral establishment, he or she shall make application, pay the current application and
22 examination fee and successfully complete the Missouri law examination. He or she shall be
23 exempt from the twelve-month apprenticeship **required by subsection 1 of this section** and the
24 practical examination before the board. If a person has a limited license issued pursuant to this
25 subsection, he or she may obtain a full funeral director's license if he or she fulfills the
26 apprenticeship and successfully completes the funeral director practical examination.

27 3. If an individual is a Missouri licensed embalmer or has [graduated from an institute
28 of mortuary science education] **completed a program** accredited by the American Board of
29 Funeral Service Education [or] , any successor organization [recognized by the United States
30 Department of Education for funeral service education], **or other accrediting entity as**
31 **approved by the board** or has successfully completed a course of study in funeral directing
32 offered by [a college] **an institution** accredited by a recognized national, regional or state
33 accrediting body and approved by the state board of embalmers and funeral directors, and desires
34 to enter the profession of funeral directing in this state, the individual shall comply with all the
35 requirements for licensure as a funeral director pursuant to subsection 1 of section 333.041 and
36 subsection 1 of this section; however, the individual is exempt from the twelve-month
37 apprenticeship required by subsection 1 of this section.

333.051. 1. Any [nonresident] individual holding a valid, unrevoked and unexpired
2 license as a funeral director or embalmer in the state of his **or her** residence may be granted a
3 license to practice funeral directing or embalming in this state on application to the board and
4 on providing the board with such evidence as to his **or her** qualifications as is required by the
5 board. [No license shall be granted to a nonresident applicant except one who resides in a county
6 contiguous and adjacent to the state of Missouri and who is regularly engaged in the practice of

7 funeral directing or embalming, as defined by this chapter, at funeral establishments within this
8 state or in an establishment located in a county contiguous and adjacent to the state of Missouri,
9 unless the law of the state of the applicant's residence authorizes the granting of licenses to
10 practice funeral directing in such state to persons licensed as funeral directors under the law of
11 the state of Missouri.]

12 2. Any individual holding a valid, unrevoked and unexpired license as an embalmer or
13 funeral director in another state having requirements substantially similar to those existing in this
14 state [who is or intends to become a resident of this state] may apply for a license to practice in
15 this state by filing with the board a certified statement from the examining board of the state or
16 territory in which the applicant holds his **or her** license showing the grade rating upon which
17 [his] **the** license was granted, together with a recommendation, and the board shall grant the
18 applicant a license upon his **or her** successful completion of an examination over Missouri laws
19 as required in section 333.041 or section 333.042 if the board finds that the applicant's
20 qualifications meet the requirements for funeral directors or embalmers in this state at the time
21 the applicant was originally licensed in the other state.

22 3. A person holding a valid, unrevoked and unexpired license to practice funeral
23 directing or embalming in another state or territory with requirements less than those of this state
24 may, after five consecutive years of active experience as a licensed funeral director or embalmer
25 in that state, apply for a license to practice in this state after passing a test to prove his **or her**
26 proficiency, including but not limited to a knowledge of the laws and regulations of this state as
27 to funeral directing and embalming.

333.061. 1. No funeral establishment shall be operated in this state unless the owner or
2 operator thereof has a license issued by the board.

3 2. A license for the operation of a funeral establishment shall be issued by the board, if
4 the board finds:

5 (1) That the establishment is under the general management and the supervision of a duly
6 licensed funeral director;

7 (2) That all embalming performed therein is performed by or under the direct supervision
8 of a duly licensed embalmer;

9 (3) That any place in the funeral establishment where embalming is conducted contains
10 a preparation room with a sanitary floor, walls and ceiling, and adequate sanitary drainage and
11 disposal facilities including running water, and complies with the sanitary standard prescribed
12 by the department of health and senior services for the prevention of the spread of contagious,
13 infectious or communicable diseases;

14 (4) Each funeral establishment shall have [available in the preparation or embalming
15 room] a register book or log which shall be available at all times [in full view] for the board's

16 inspector and [the name of each body embalmed, place, if other than at the establishment, the
17 date and time that the embalming took place, the name and signature of the embalmer and the
18 embalmer's license number shall be noted in the book] **that shall contain:**

19 (a) **The name of each body that has been in the establishment;**

20 (b) **The date the body arrived at the establishment;**

21 (c) **If applicable, the place of embalming, if known; and**

22 (d) **If the body was embalmed at the establishment, the date and time that the**
23 **embalming took place, and the name, signature, and license number of the embalmer; and**

24 (5) The establishment complies with all applicable state, county or municipal zoning
25 ordinances and regulations.

26 3. The board shall grant or deny each application for a license pursuant to this section
27 within thirty days after it is filed. The applicant may request in writing up to two thirty-day
28 extensions of the application, provided the request for an extension is received by the board prior
29 to the expiration of the thirty-day application or extension period.

30 4. Licenses shall be issued pursuant to this section upon application and the payment of
31 a funeral establishment fee and shall be renewed at the end of the licensing period on the
32 establishment's renewal date.

33 5. The board may refuse to renew or may suspend or revoke any license issued pursuant
34 to this section if it finds, after hearing, that the funeral establishment does not meet any of the
35 requirements set forth in this section as conditions for the issuance of a license, or for the
36 violation by the owner of the funeral establishment of any of the provisions of section 333.121.
37 No new license shall be issued to the owner of a funeral establishment or to any corporation
38 controlled by such owner for three years after the revocation of the license of the owner or of a
39 corporation controlled by the owner. Before any action is taken pursuant to this subsection the
40 procedure for notice and hearing as prescribed by section 333.121 shall be followed.

333.091. [Each establishment, funeral director or embalmer receiving a license under this
2 chapter shall have recorded in the office of the local registrar of vital statistics of the registration
3 district in which the licensee practices.] All licenses or registrations, or duplicates thereof, issued
4 pursuant to this chapter shall be displayed at each place of business.

333.151. 1. The state board of embalmers and funeral directors shall consist of [ten] **six**
2 members, including one voting public member appointed by the governor with the advice and
3 consent of the senate. Each member, other than the public member, appointed shall possess
4 either a license to practice embalming or a license to practice funeral directing in this state or
5 both said licenses and shall have been actively engaged in the practice of embalming or funeral
6 directing for a period of five years next before his or her appointment. Each member shall be
7 a United States citizen, a resident of this state for a period of at least one year, a qualified voter

8 of this state and shall be of good moral character. Not more than [five] **three** members of the
9 board shall be of the same political party. The nonpublic members shall be appointed by the
10 governor, with the advice and consent of the senate[, one from each of the state's congressional
11 districts be of good moral character and submit an audited financial statement of their funeral
12 establishment by an independent auditor for the previous five years. This audited financial
13 statement must include all at-need and preneed business] . **A majority of the members shall
14 constitute a quorum. Members shall be appointed to represent diversity in gender, race,
15 ethnicity, and the various geographic regions of the state.**

16 2. Each member of the board shall serve for a term of five years. Any vacancy on the
17 board shall be filled by the governor and the person appointed to fill the vacancy shall possess
18 the qualifications required by this chapter and shall serve until the end of the unexpired term of
19 his or her predecessor, if any.

20 3. The public member shall be at the time of his or her appointment a person who is not
21 and never was a member of any profession licensed or regulated pursuant to this chapter or the
22 spouse of such person; and a person who does not have and never has had a material, financial
23 interest in either the providing of the professional services regulated by this chapter, or an
24 activity or organization directly related to any profession licensed or regulated pursuant to this
25 chapter. All members, including public members, shall be chosen from lists submitted by the
26 director of the division of professional registration. The duties of the public member shall not
27 include the determination of the technical requirements to be met for licensure or whether any
28 person meets such technical requirements or of the technical competence or technical judgment
29 of a licensee or a candidate for licensure.

333.171. The board shall hold at least two regular meetings each year for the purpose of
2 administering examinations at times and places fixed by the board. Other meetings shall be held
3 at the times fixed by regulations of the board or on the call of the chairman of the board. Notice
4 of the time and place of each regular or special meeting shall be mailed by the executive
5 secretary to each member of the board at least five days before the date of the meeting. [At all
6 meetings of the board three members constitute a quorum.] The board may adopt and use a
7 common seal.

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

- 4 (1) **The name of a licensee or applicant;**
- 5 (2) **The licensee's business address;**
- 6 (3) **Registration type;**
- 7 (4) **Currency of the license, certificate, or registration;**

8 **(5) Professional schools attended;**

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

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

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

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

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

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

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

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

32 **5. Information obtained from a federal administrative or law enforcement agency**
33 **shall be disclosed only after the board has obtained written consent to the disclosure from**
34 **the federal administrative or law enforcement agency.**

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

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

6 2. The examination shall be sufficient to test the applicant's fitness to practice as a
7 physician and surgeon. The examination shall be conducted in such a manner as to conceal the

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

- 33 (1) The American Specialty Board's certifying examination in the physician's field of
34 specialization;
35 (2) Part II of the FLEX; or
36 (3) The Federation portion of the State Medical Board's Special Purpose Examination
37 (SPEX)] **and the applicant is certified in the applicant's area of specialty by the American**
38 **Board of Medical Specialties, the American Osteopathic Association, or other certifying**
39 **agency approved by the board by rule.**

40 3. If the board waives the provisions of this section, then the license issued to the
41 applicant may be limited or restricted to the applicant's board specialty. [Scores from one test
42 administration shall not be combined or averaged with scores from other test administrations to

43 achieve a passing score.] The board shall not be permitted to favor any particular school or
44 system of healing.

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

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

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

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

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

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

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

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

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

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

(5) Written notice of the order for an examination shall be sent to the applicant or licensee by registered mail, addressed to the licensee or applicant at the licensee's or applicant's last known address on file with the board, or shall be personally served on the applicant or licensee. The order shall state the cause for the examination, how to obtain

37 information about approved facilities, and a time limit for obtaining the examination. The
38 licensee or applicant shall cause a report of the examination to be sent to the board;

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

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

52 (8) The provisions of chapter 536 for a contested case, except those provisions or
53 amendments which are in conflict with this section, shall apply to and govern the
54 proceedings contained in this subsection and the rights and duties of the parties involved.
55 The person appealing such an action shall be entitled to present evidence under chapter
56 536 relevant to the allegations.

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

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

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

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

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

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

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

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

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

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

- 35 (4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or
36 unprofessional conduct in the performance of the functions or duties of any profession licensed
37 or regulated by this chapter, including, but not limited to, the following:
- 38 (a) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by
39 fraud, deception or misrepresentation; willfully and continually overcharging or overtreating
40 patients; or charging for visits to the physician's office which did not occur unless the services
41 were contracted for in advance, or for services which were not rendered or documented in the
42 patient's records;
- 43 (b) Attempting, directly or indirectly, by way of intimidation, coercion or deception, to
44 obtain or retain a patient or discourage the use of a second opinion or consultation;
- 45 (c) Willfully and continually performing inappropriate or unnecessary treatment,
46 diagnostic tests or medical or surgical services;
- 47 (d) Delegating professional responsibilities to a person who is not qualified by training,
48 skill, competency, age, experience or licensure to perform such responsibilities;
- 49 (e) Misrepresenting that any disease, ailment or infirmity can be cured by a method,
50 procedure, treatment, medicine or device;
- 51 (f) Performing or prescribing medical services which have been declared by board rule
52 to be of no medical or osteopathic value;
- 53 (g) Final disciplinary action by any professional medical or osteopathic association or
54 society or licensed hospital or medical staff of such hospital in this or any other state or territory,
55 whether agreed to voluntarily or not, and including, but not limited to, any removal, suspension,
56 limitation, or restriction of the person's license or staff or hospital privileges, failure to renew
57 such privileges or license for cause, or other final disciplinary action, if the action was in any way
58 related to unprofessional conduct, professional incompetence, malpractice or any other violation
59 of any provision of this chapter;
- 60 (h) Signing a blank prescription form; or dispensing, prescribing, administering or
61 otherwise distributing any drug, controlled substance or other treatment without sufficient
62 examination **including failing to establish a valid physician-patient relationship pursuant**
63 **to section 334.108**, or for other than medically accepted therapeutic or experimental or
64 investigative purposes duly authorized by a state or federal agency, or not in the course of
65 professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment,
66 physical infirmity or disease, except as authorized in section 334.104;
- 67 (i) Exercising influence within a physician-patient relationship for purposes of engaging
68 a patient in sexual activity;
- 69 (j) **Being listed on any state or federal sexual offender registry;**

- 70 **(k)** Terminating the medical care of a patient without adequate notice or without making
71 other arrangements for the continued care of the patient;
- 72 [(k)] **(l)** Failing to furnish details of a patient's medical records to other treating
73 physicians or hospitals upon proper request; or failing to comply with any other law relating to
74 medical records;
- 75 [(l)] **(m)** Failure of any applicant or licensee[, other than the licensee subject to the
76 investigation,] to cooperate with the board during any investigation;
- 77 [(m)] **(n)** Failure to comply with any subpoena or subpoena duces tecum from the board
78 or an order of the board;
- 79 [(n)] **(o)** Failure to timely pay license renewal fees specified in this chapter;
- 80 [(o)] **(p)** Violating a probation agreement, **order, or other settlement agreement** with
81 this board or any other licensing agency;
- 82 [(p)] **(q)** Failing to inform the board of the physician's current residence and business
83 address;
- 84 [(q)] **(r)** Advertising by an applicant or licensee which is false or misleading, or which
85 violates any rule of the board, or which claims without substantiation the positive cure of any
86 disease, or professional superiority to or greater skill than that possessed by any other physician.
87 An applicant or licensee shall also be in violation of this provision if the applicant or licensee
88 has a financial interest in any organization, corporation or association which issues or conducts
89 such advertising;
- 90 **(s) Any other conduct that is unethical or unprofessional involving a minor;**
- 91 (5) Any conduct or practice which is or might be harmful or dangerous to the mental or
92 physical health of a patient or the public; or incompetency, gross negligence or repeated
93 negligence in the performance of the functions or duties of any profession licensed or regulated
94 by this chapter. For the purposes of this subdivision, "repeated negligence" means the failure,
95 on more than one occasion, to use that degree of skill and learning ordinarily used under the
96 same or similar circumstances by the member of the applicant's or licensee's profession;
- 97 (6) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling
98 any person to violate, any provision of this chapter **or chapter 324**, or of any lawful rule or
99 regulation adopted pursuant to this chapter **or chapter 324**;
- 100 (7) Impersonation of any person holding a certificate of registration or authority, permit
101 or license or allowing any person to use his or her certificate of registration or authority, permit,
102 license or diploma from any school;
- 103 (8) Revocation, suspension, restriction, modification, limitation, reprimand, warning,
104 censure, probation or other final disciplinary action against the holder of or applicant for a
105 license or other right to practice any profession regulated by this chapter by another state,

106 territory, federal agency or country, whether or not voluntarily agreed to by the licensee or
107 applicant, including, but not limited to, the denial of licensure, surrender of the license, allowing
108 the license to expire or lapse, or discontinuing or limiting the practice of medicine while subject
109 to an investigation or while actually under investigation by any licensing authority, medical
110 facility, branch of the armed forces of the United States of America, insurance company, court,
111 agency of the state or federal government, or employer;

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

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

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

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

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

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

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

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

136 [(16)] (17) Using, or permitting the use of, the person's name under the designation of
137 "Doctor", "Dr.", "M.D.", or "D.O.", or any similar designation with reference to the commercial
138 exploitation of any goods, wares or merchandise;

139 [(17)] (18) Knowingly making or causing to be made a false statement or
140 misrepresentation of a material fact, with intent to defraud, for payment pursuant to the

141 provisions of chapter 208 or chapter 630 or for payment from Title XVIII or Title XIX of the
142 federal Medicare program;

143 [(18)] (19) Failure or refusal to properly guard against contagious, infectious or
144 communicable diseases or the spread thereof; maintaining an unsanitary office or performing
145 professional services under unsanitary conditions; or failure to report the existence of an
146 unsanitary condition in the office of a physician or in any health care facility to the board, in
147 writing, within thirty days after the discovery thereof;

148 [(19)] (20) Any candidate for licensure or person licensed to practice as a physical
149 therapist, paying or offering to pay a referral fee or, notwithstanding section 334.010 to the
150 contrary, practicing or offering to practice professional physical therapy independent of the
151 prescription and direction of a person licensed and registered as a physician and surgeon pursuant
152 to this chapter, as a dentist pursuant to chapter 332, as a podiatrist pursuant to chapter 330, as
153 an advanced practice registered nurse under chapter 335, or any licensed and registered
154 physician, dentist, podiatrist, or advanced practice registered nurse practicing in another
155 jurisdiction, whose license is in good standing;

156 [(20)] (21) Any candidate for licensure or person licensed to practice as a physical
157 therapist, treating or attempting to treat ailments or other health conditions of human beings other
158 than by professional physical therapy and as authorized by sections 334.500 to 334.620;

159 [(21)] (22) Any person licensed to practice as a physician or surgeon, requiring, as a
160 condition of the physician-patient relationship, that the patient receive prescribed drugs, devices
161 or other professional services directly from facilities of that physician's office or other entities
162 under that physician's ownership or control. A physician shall provide the patient with a
163 prescription which may be taken to the facility selected by the patient and a physician knowingly
164 failing to disclose to a patient on a form approved by the advisory commission for professional
165 physical therapists as established by section 334.625 which is dated and signed by a patient or
166 guardian acknowledging that the patient or guardian has read and understands that the physician
167 has a pecuniary interest in a physical therapy or rehabilitation service providing prescribed
168 treatment and that the prescribed treatment is available on a competitive basis. This subdivision
169 shall not apply to a referral by one physician to another physician within a group of physicians
170 practicing together;

171 [(22)] (23) A pattern of personal use or consumption of any controlled substance unless
172 it is prescribed, dispensed or administered by another physician who is authorized by law to do
173 so;

174 [(23)] (24) **Habitual intoxication or dependence on alcohol, evidence of which may**
175 **include more than one alcohol-related enforcement contact as defined by section 302.525;**

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

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

182 [(24)] **(27) For a physician to operate, conduct, manage, or establish an abortion facility,**
183 **or for a physician to perform an abortion in an abortion facility, if such facility comes under the**
184 **definition of an ambulatory surgical center pursuant to sections 197.200 to 197.240, and such**
185 **facility has failed to obtain or renew a license as an ambulatory surgical center[;**

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

190 (a) In enforcing this subdivision the board shall, after a hearing by the board, upon a
191 finding of probable cause, require a physician to submit to a reexamination for the purpose of
192 establishing his or her competency to practice as a physician or surgeon or with a specialty
193 conducted in accordance with rules adopted for this purpose by the board, including rules to
194 allow the examination of the pattern and practice of such physician's or surgeon's professional
195 conduct, or to submit to a mental or physical examination or combination thereof by at least three
196 physicians, one selected by the physician compelled to take the examination, one selected by the
197 board, and one selected by the two physicians so selected who are graduates of a professional
198 school approved and accredited as reputable by the association which has approved and
199 accredited as reputable the professional school from which the licentiate graduated. However,
200 if the physician is a graduate of a medical school not accredited by the American Medical
201 Association or American Osteopathic Association, then each party shall choose any physician
202 who is a graduate of a medical school accredited by the American Medical Association or the
203 American Osteopathic Association;

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

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

211 obtain medical data and health records relating to a physician or applicant without the physician's
212 or applicant's consent;

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

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

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

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

231 4. After the filing of such complaint before the administrative hearing commission, the
232 proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding
233 by the administrative hearing commission that the grounds, provided in subsection 2 of this
234 section, for disciplinary action are met, the board may, singly or in combination, warn, censure
235 or place the person named in the complaint on probation on such terms and conditions as the
236 board deems appropriate for a period not to exceed ten years, or may suspend the person's
237 license, certificate or permit for a period not to exceed three years, or restrict or limit the person's
238 license, certificate or permit for an indefinite period of time, or revoke the person's license,
239 certificate, or permit, or administer a public or private reprimand, or deny the person's
240 application for a license, or permanently withhold issuance of a license or require the person to
241 submit to the care, counseling or treatment of physicians designated by the board at the expense
242 of the individual to be examined, or require the person to attend such continuing educational
243 courses and pass such examinations as the board may direct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 4. The board shall file a complaint in the administrative hearing commission with a
37 request for expedited preliminary hearing and shall certify the order of suspension or restriction
38 and all sworn testimony or affidavits presented to the board. Immediately upon receipt of a
39 complaint filed pursuant to this section, the administrative hearing commission shall set the place
40 and date of the expedited preliminary hearing which shall be conducted as soon as possible, but
41 not later than five days after the date of service upon the licensee. The administrative hearing
42 commission shall grant a licensee's request for a continuance of the preliminary hearing;
43 however, the board's order shall remain in full force and effect until the preliminary hearing,
44 which shall be held not later than forty-five days after service of the documents required in
45 subdivision (2) of subsection 3.

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

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

58 7. Upon receipt of a request for full hearing, the administrative hearing commission shall
59 set a date for hearing and notify the parties in writing of the time and place of the hearing. If a
60 request for full hearing is timely filed, the preliminary order of the administrative hearing
61 commission shall remain in effect until the administrative hearing commission enters an order

62 terminating, modifying, or dismissing its preliminary order or until the board issues an order of
63 discipline following its consideration of the decision of the administrative hearing commission
64 pursuant to section 621.110 and subsection 3 of section 334.100.

65 8. In cases where the board initiates summary suspension or restriction proceedings
66 against a physician licensed pursuant to this chapter, and said petition is subsequently denied by
67 the administrative hearing commission, in addition to any award made pursuant to sections
68 536.085 and 536.087, the board, but not individual members of the board, shall pay actual
69 damages incurred during any period of suspension or restriction.

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

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

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

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

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

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

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

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

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

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

97 **2. The board shall submit existing affidavits and existing certified court records**
98 **together with a complaint alleging the facts in support of the board's request for an**
99 **emergency suspension or restriction to the administrative hearing commission and shall**
100 **supply the administrative hearing commission with the last home or business addresses on**
101 **file with the board for the licensee. Within one business day of the filing of the complaint,**
102 **the administrative hearing commission shall return a service packet to the board. The**
103 **service packet shall include the board's complaint and any affidavits or records the board**
104 **intends to rely on that have been filed with the administrative hearing commission. The**
105 **service packet may contain other information in the discretion of the administrative**
106 **hearing commission. Within twenty-four hours of receiving the packet, the board shall**
107 **either personally serve the licensee or leave a copy of the service packet at all of the**
108 **licensee's current addresses on file with the board. Prior to the hearing, the licensee may**
109 **file affidavits and certified court records for consideration by the administrative hearing**
110 **commission.**

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

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

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

129 **(2) If cause for discipline exists, the administrative hearing commission shall issue**
130 **findings of fact and conclusions of law and order the emergency suspension or restriction**
131 **to remain in full force and effect pending a disciplinary hearing before the board. The**

board shall hold a hearing following the certification of the record by the administrative hearing commission and may impose any discipline otherwise authorized by state law.

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

7. If the administrative hearing commission does not find probable cause and does not grant the emergency suspension or restriction, the board shall remove all reference to such emergency suspension or restriction from its public records. Records relating to the suspension or restriction shall be maintained in the board's files. The board or licensee may use such records in the course of any litigation to which they are both parties. Additionally, such records may be released upon a specific, written request of the licensee.

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

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

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

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

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

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

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

334.103. 1. A license issued under this chapter by the Missouri State Board of Registration for the Healing Arts shall be automatically revoked at such time as the final trial proceedings are concluded whereby a licensee has been adjudicated and found guilty, or has entered a plea of guilty or nolo contendere, in a felony criminal prosecution under the laws of the state of Missouri, the laws of any other state, or the laws of the United States of America for

6 any offense reasonably related to the qualifications, functions or duties of their profession, or for
7 any felony offense[, an essential element of which is] **involving** fraud, dishonesty or an act of
8 violence, or for any felony offense involving moral turpitude, whether or not sentence is
9 imposed, or, upon the final and unconditional revocation of the license to practice their
10 profession in another state or territory upon grounds for which revocation is authorized in this
11 state following a review of the record of the proceedings and upon a formal motion of the state
12 board of registration for the healing arts. The license of any such licensee shall be automatically
13 reinstated if the conviction or the revocation is ultimately set aside upon final appeal in any court
14 of competent jurisdiction.

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

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

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

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

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

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

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

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

18 (1) **A hospital as defined in section 197.020;**

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

20 (3) **Home health services provided by a home health agency as defined in section
21 197.400;**

22 (4) **Accordance with a collaborative practice agreement as defined in section
23 334.104;**

- 24 **(5) Conjunction with a physician assistant licensed pursuant to section 334.738;**
25 **(6) Consultation with another physician who has an ongoing physician-patient**
26 **relationship with the patient, and who has agreed to supervise the patient's treatment,**
27 **including use of any prescribed medications; or**
28 **(7) On-call or cross-coverage situations.**

334.715. 1. The board may refuse to **issue or renew any** license [any applicant or may
2 suspend, revoke, or refuse to renew the license of any licensee for any one or any combination
3 of the causes provided in section 334.100, or if the applicant or licensee] **required under**
4 **sections 334.700 to 334.725 for one or any combination of causes listed in subsection 2 of**
5 **this section or any cause listed in section 334.100. The board shall notify the applicant in**
6 **writing of the reasons for the refusal and shall advise the applicant of the applicant's right**
7 **to file a complaint with the administrative hearing commission as provided in chapter 621.**
8 **As an alternative to a refusal to issue or renew any certificate, registration, or authority,**
9 **the board may, in its discretion, issue a license which is subject to reprimand, probation,**
10 **restriction, or limitation to an applicant for licensure for any one or any combination of**
11 **causes listed in subsection 2 of this section or section 334.100. The board's order of**
12 **reprimand, probation, limitation, or restriction shall contain a statement of the discipline**
13 **imposed, the basis therefor, the date such action shall become effective, and a statement**
14 **that the applicant has thirty days to request in writing a hearing before the administrative**
15 **hearing commission. If the board issues a probationary, limited, or restricted license to an**
16 **applicant for licensure, either party may file a written petition with the administrative**
17 **hearing commission within thirty days of the effective date of the probationary, limited,**
18 **or restricted license seeking review of the board's determination. If no written request for**
19 **a hearing is received by the administrative hearing commission within the thirty-day**
20 **period, the right to seek review of the board's decision shall be considered waived.**

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

- 26 **(1) Violated or conspired to violate any provision of sections 334.700 to 334.725 or any**
27 **provision of any rule promulgated pursuant to sections 334.700 to 334.725; or**
28 **(2) Has been found guilty of unethical conduct as defined in the ethical standards of the**
29 **National Athletic Trainers Association or the National Athletic Trainers Association Board of**
30 **Certification, or its successor agency, as adopted and published by the committee and the board**
31 **and filed with the secretary of state; or**

32 **(3) Any cause listed in section 334.100.**

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

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

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

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

50 **(3) Administer a public or private reprimand; or**

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

52 **(5) Permanently withhold issuance of a license or require the person to submit to**
53 **the care, counseling, or treatment of physicians designated by the board at the expense of**
54 **the individual to be examined; or**

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

57 **4. In any order of revocation, the board may provide that the person shall not apply**
58 **for reinstatement of the person's license for a period of time ranging from two to seven**
59 **years following the date of the order of revocation. All stay orders shall toll such time**
60 **period.**

61 **5. Before restoring to good standing a license, certificate, or permit issued under**
62 **this chapter which has been in a revoked, suspended, or inactive state for any cause for**
63 **more than two years, the board may require the applicant to attend such continuing**
64 **education courses and pass such examinations as the board may direct.**

436.405. 1. As used in sections 436.400 to 436.520, unless the context otherwise
2 requires, the following terms shall mean:

3 (1) "Beneficiary", the individual who is to be the subject of the disposition or who will
4 receive funeral services, facilities, or merchandise described in a preneed contract;

5 (2) **"Board", the board of embalmers and funeral directors;**

6 (3) "Guaranteed contract", a preneed contract in which the seller promises, assures, or
7 guarantees to the purchaser that all or any portion of the costs for the disposition, services,
8 facilities, or merchandise identified in a preneed contract will be no greater than the amount
9 designated in the contract upon the preneed beneficiary's death or that such costs will be
10 otherwise limited or restricted;

11 [(3)] (4) "Insurance-funded preneed contract", a preneed contract which is designated
12 to be funded by payments or proceeds from an insurance policy or [single premium] **a deferred**
13 annuity contract **that is not classified as a variable annuity and has death benefit proceeds**
14 **that are never less than the sum of premiums paid;**

15 [(4)] (5) "Joint account-funded preneed contract", a preneed contract which designates
16 that payments for the preneed contract made by or on behalf of the purchaser will be deposited
17 and maintained in a joint account in the names of the purchaser and seller, as provided in this
18 chapter;

19 [(5)] (6) "Market value", a fair market value:

20 (a) As to cash, the amount thereof;

21 (b) As to a security as of any date, the price for the security as of that date obtained from
22 a generally recognized source, or to the extent no generally recognized source exists, the price
23 to sell the security in an orderly transaction between unrelated market participants at the
24 measurement date; and

25 (c) As to any other asset, the price to sell the asset in an orderly transaction between
26 unrelated market participants at the measurement date consistent with statements of financial
27 accounting standards;

28 [(6)] (7) "Nonguaranteed contract", a preneed contract in which the seller does not
29 promise, assure, or guarantee that all or any portion of the costs for the disposition, facilities,
30 service, or merchandise identified in a preneed contract will be limited to the amount designated
31 in the contract upon the preneed beneficiary's death or that such costs will be otherwise limited
32 or restricted;

33 [(7)] (8) "Preneed contract", any contract or other arrangement which provides for the
34 final disposition in Missouri of a dead human body, funeral or burial services or facilities, or
35 funeral merchandise, where such disposition, services, facilities, or merchandise are not
36 immediately required. Such contracts include, but are not limited to, agreements providing for
37 a membership fee or any other fee for the purpose of furnishing final disposition, funeral or
38 burial services or facilities, or funeral merchandise at a discount or at a future date;

39 [(8)](9) "Preneed trust", a trust to receive deposits of, administer, and disburse payments
40 received under preneed contracts, together with income thereon;

41 [(9)](10) "Purchaser", the person who is obligated to pay under a preneed contract;

42 [(10)](11) "Trustee", the trustee of a preneed trust, including successor trustees;

43 [(11)](12) "Trust-funded preneed contract", a preneed contract which provides that
44 payments for the preneed contract shall be deposited and maintained in trust.

45 2. All terms defined in chapter 333 shall be deemed to have the same meaning when
46 used in sections 436.400 to 436.520.

 436.412. Each preneed contract made before August 28, 2009, and all payments and
2 disbursements under such contract shall continue to be governed by this chapter as the chapter
3 existed at the time the contract was made. Any licensee or registrant of the board may be
4 disciplined for violation of any provision of sections 436.005 to 436.071 within the applicable
5 statute of limitations. [In addition, the provisions of section 436.031, as it existed on August 27,
6 2009, shall continue to govern disbursements to the seller from the trust and payment of trust
7 expenses.] Joint accounts in existence as of August 27, 2009, shall continue to be governed by
8 the provisions of section 436.053, as that section existed on August 27, 2009.

 436.445. A trustee of any preneed trust, including trusts established before August 28,
2 2009, shall not after August 28, 2009, make any decisions to invest any trust fund with:

3 (1) The spouse of the trustee;

4 (2) The descendants, siblings, parents, or spouses of a seller or an officer, manager,
5 director or employee of a seller, provider, or preneed agent;

6 (3) Agents, **other than authorized external investment advisors as authorized by**
7 **section 436.440**, or attorneys of a trustee, seller, or provider; or

8 (4) A corporation or other person or enterprise in which the trustee, seller, or provider
9 owns a controlling interest or has an interest that might affect the trustee's judgment.

 436.450. 1. An insurance-funded preneed contract shall comply with sections 436.400
2 to 436.520 and the specific requirements of this section.

3 2. A seller, provider, or any preneed agent shall not receive or collect from the purchaser
4 of an insurance-funded preneed contract any amount in excess of what is required to pay the
5 premiums on the insurance policy as assessed or required by the insurer as premium payments
6 for the insurance policy except for any amount required or authorized by this chapter or by rule.
7 A seller shall not receive or collect any administrative or other fee from the purchaser for or in
8 connection with an insurance-funded preneed contract, other than those fees or amounts assessed
9 by the insurer. As of August 29, 2009, no preneed seller, provider, or agent shall use any
10 existing preneed contract as collateral or security pledged for a loan or take preneed funds of any
11 existing preneed contract as a loan for any purpose other than as authorized by this chapter.

12 3. Payments collected by or on behalf of a seller for an insurance-funded preneed
13 contract shall be promptly remitted to the insurer or the insurer's designee as required by the
14 insurer; provided that payments shall not be retained or held by the seller or preneed agent for
15 more than thirty days from the date of receipt.

16 4. It is unlawful for a seller, provider, or preneed agent to procure or accept a loan
17 against any insurance contract used to fund a preneed contract.

18 5. Laws regulating insurance shall not apply to preneed contracts, but shall apply to any
19 insurance or [single premium] annuity sold with a preneed contract; provided, however, the
20 provisions of [this act] **sections 436.400 to 436.520** shall not apply to [single premium] annuities
21 or insurance policies regulated by chapters 374, 375, and 376 used to fund preneed funeral
22 agreements, contracts, or programs.

23 6. This section shall apply to all preneed contracts including those entered into before
24 August 28, 2009.

25 7. For any insurance-funded preneed contract sold after August 28, 2009, the following
26 shall apply:

27 (1) The purchaser or beneficiary shall be the owner of the insurance policy purchased
28 to fund a preneed contract; and

29 (2) An insurance-funded preneed contract shall be valid and enforceable only if the seller
30 or provider is named as the beneficiary or assignee of the life insurance policy funding the
31 contract.

32 8. If the proceeds of the life insurance policy exceed the actual cost of the goods and
33 services provided pursuant to the nonguaranteed preneed contract, any overage shall be paid to
34 the estate of the beneficiary, or, if the beneficiary received public assistance, to the state of
35 Missouri.

 436.455. 1. A joint account-funded preneed contract shall comply with sections 436.400
2 to 436.520 and the specific requirements of this section.

3 2. In lieu of a trust-funded or insurance-funded preneed contract, the seller and the
4 purchaser may agree in writing that all funds paid by the purchaser or beneficiary for the preneed
5 contract shall be deposited with a financial institution chartered and regulated by the federal or
6 state government authorized to do business in Missouri in an account in the joint names and
7 under the joint control of the seller and purchaser, beneficiary or party holding power of attorney
8 over the beneficiary's estate, **or in an account titled in the beneficiary's name and payable**
9 **on the beneficiary's death to the seller.** There shall be a separate joint account established for
10 each preneed contract sold or arranged under this section. Funds shall only be withdrawn or paid
11 from the account upon the signatures of both the seller and the purchaser or under a pay-on-death
12 designation or as required to pay reasonable expenses of administering the account.

13 3. All consideration paid by the purchaser under a joint account-funded contract shall
14 be deposited into a joint account as authorized by this section within ten days of receipt of
15 payment by the seller.

16 4. The financial institution shall hold, invest, and reinvest funds deposited under this
17 section in other accounts offered to depositors by the financial institutions as provided in the
18 written agreement of the purchaser and the seller, provided the financial institution shall not
19 invest or reinvest any funds deposited under this section in term life insurance or any investment
20 that does not reasonably have the potential to gain income or increase in value.

21 5. Income generated by preneed funds deposited under this section shall be used to pay
22 the reasonable expenses of administering the account as charged by the financial institution and
23 the balance of the income shall be distributed or reinvested upon fulfillment of the contract,
24 cancellation or transfer pursuant to the provisions of this chapter.

25 6. Within fifteen days after a provider [and a witness certify to the financial institution
26 in writing] **delivers a copy of a certificate of performance to the seller, signed by the**
27 **provider and the person authorized to make arrangements on behalf of the beneficiary,**
28 **certifying** that the provider has furnished the final disposition, funeral, and burial services and
29 facilities, and merchandise as required by the preneed contract, or has provided alternative
30 funeral benefits for the beneficiary under special arrangements made with the purchaser, the
31 [financial institution shall distribute the deposited funds to the seller if the certification has been
32 approved by the purchaser] **seller shall take whatever steps are required by the financial**
33 **institution to secure payment of the funds from the financial institution.** The seller shall pay
34 the provider within ten days of receipt of funds.

35 7. Any seller, provider, or preneed agent shall not procure or accept a loan against any
36 investment, or asset of, or belonging to a joint account. As of August 28, 2009, it shall be
37 prohibited to use any existing preneed contract as collateral or security pledged for a loan, or take
38 preneed funds of any existing preneed contract as a loan or for any purpose other than as
39 authorized by this chapter.

 436.456. At any time before final disposition, or before the funeral or burial services,
2 facilities, or merchandise described in a preneed contract are furnished, the purchaser may cancel
3 the contract, if designated as revocable, without cause. In order to cancel the contract the
4 purchaser shall:

5 (1) In the case of a joint account-funded preneed contract, deliver written notice of the
6 cancellation to the seller [and the financial institution]. Within fifteen days of receipt of notice
7 of the cancellation, the [financial institution shall distribute all deposited funds to the purchaser]
8 **seller shall take whatever steps may be required by the financial institution to obtain the**
9 **funds from the financial institution. Upon receipt of the funds from the financial**

10 **institution, the seller shall distribute the principal to the purchaser.** Interest shall be
11 distributed as provided in the agreement with the seller and purchaser;

12 (2) In the case of an insurance-funded preneed contract, deliver written notice of the
13 cancellation to the seller. Within fifteen days of receipt of notice of the cancellation, the seller
14 shall notify the purchaser that the cancellation of the contract shall not cancel any life insurance
15 funding the contract and that insurance cancellation is required to be made in writing to the
16 insurer;

17 (3) In the case of a trust-funded preneed contract, deliver written notice of the
18 cancellation to the seller and trustee. Within fifteen days of receipt of notice of the cancellation,
19 the trustee shall distribute one hundred percent of the trust property including any percentage of
20 the total payments received on the trust-funded contract that have been withdrawn from the
21 account under subsection 4 of section 436.430 but excluding the income, to the purchaser of the
22 contract;

23 (4) In the case of a guaranteed installment payment contract where the beneficiary dies
24 before all installments have been paid, the purchaser shall pay the seller the amount remaining
25 due under the contract in order to receive the goods and services set out in the contract, otherwise
26 the purchaser or their estate will receive full credit for all payments the purchaser has made
27 towards the cost of the beneficiary's funeral at the provider current prices.

536.063. In any contested case:

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

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

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

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

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

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

536.067. In any contested case:

2 (1) The agency shall promptly mail a notice of institution of the case to all necessary
3 parties, if any, and to all persons designated by the moving party and to any other persons to
4 whom the agency may determine that notice should be given. The agency or its clerk or secretary
5 shall keep a permanent record of the persons to whom such notice was sent and of the addresses
6 to which sent and the time when sent. Where a contested case would affect the rights, privileges
7 or duties of a large number of persons whose interests are sufficiently similar that they may be
8 considered as a class, notice may in a proper case be given to a reasonable number thereof as
9 representatives of such class. In any case where the name or address of any proper or designated
10 party or person is not known to the agency, and where notice by publication is permitted by law,

11 then notice by publication may be given in accordance with any rule or regulation of the agency
12 or if there is no such rule or regulation, then, in a proper case, the agency may by a special order
13 fix the time and manner of such publication[.] ;

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

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

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

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

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

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

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

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

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

34 (b) The time and place of hearing;

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

41 **(5) When a holder of a license, registration, permit, or certificate of authority issued**
42 **by the division of professional registration or a board, commission, or committee of the**
43 **division of professional registration against whom an affirmative decision is sought has**
44 **failed to plead or otherwise respond in the contested case and adequate notice has been**
45 **given under this section upon a properly pled writing filed to initiate the contested case**
46 **under this chapter, a default decision shall be entered against the holder of a license,**

47 **registration, permit, or certificate of authority without further proceedings. The default**
48 **decision shall grant such relief as requested by the division of professional registration,**
49 **board, committee, commission, or office in the writing initiating the contested case as**
50 **allowed by law. Upon motion stating facts constituting a meritorious defense and for good**
51 **cause shown, a default decision may be set aside. The motion shall be made within a**
52 **reasonable time, not to exceed thirty days after entry of the default decision. "Good cause"**
53 **includes a mistake or conduct that is not intentionally or recklessly designed to impede the**
54 **administrative process.**

536.070. In any contested case:

- 2 (1) Oral evidence shall be taken only on oath or affirmation[.] ;
- 3 (2) Each party shall have the right to call and examine witnesses, to introduce exhibits,
4 to cross-examine opposing witnesses on any matter relevant to the issues even though that matter
5 was not the subject of the direct examination, to impeach any witness regardless of which party
6 first called him **or her** to testify, and to rebut the evidence against him[.] **or her**;
- 7 (3) A party who does not testify in his **or her** own behalf may be called and examined
8 as if under cross-examination[.] ;
- 9 (4) Each agency shall cause all proceedings in hearings before it to be suitably recorded
10 and preserved. A copy of the transcript of such a proceeding shall be made available to any
11 interested person upon the payment of a fee which shall in no case exceed the reasonable cost
12 of preparation and supply[.] ;
- 13 (5) Records and documents of the agency which are to be considered in the case shall
14 be offered in evidence so as to become a part of the record, the same as any other evidence, but
15 the records and documents may be considered as a part of the record by reference thereto when
16 so offered[.] ;
- 17 (6) Agencies shall take official notice of all matters of which the courts take judicial
18 notice. They may also take official notice of technical or scientific facts, not judicially
19 cognizable, within their competence, if they notify the parties, either during a hearing or in
20 writing before a hearing, or before findings are made after hearing, of the facts of which they
21 propose to take such notice and give the parties reasonable opportunity to contest such facts or
22 otherwise show that it would not be proper for the agency to take such notice of them[.] ;
- 23 (7) Evidence to which an objection is sustained shall, at the request of the party seeking
24 to introduce the same, or at the instance of the agency, nevertheless be heard and preserved in
25 the record, together with any cross-examination with respect thereto and any rebuttal thereof,
26 unless it is wholly irrelevant, repetitious, privileged, or unduly long[.] ;
- 27 (8) Any evidence received without objection which has probative value shall be
28 considered by the agency along with the other evidence in the case. The rules of privilege shall

29 be effective to the same extent that they are now or may hereafter be in civil actions. Irrelevant
30 and unduly repetitious evidence shall be excluded[.] ;

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

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

48 (11) The results of statistical examinations or studies, or of audits, compilations of
49 figures, or surveys, involving interviews with many persons, or examination of many records,
50 or of long or complicated accounts, or of a large number of figures, or involving the
51 ascertainment of many related facts, shall be admissible as evidence of such results, if it shall
52 appear that such examination, study, audit, compilation of figures, or survey was made by or
53 under the supervision of a witness, who is present at the hearing, who testifies to the accuracy
54 of such results, and who is subject to cross-examination, and if it shall further appear by evidence
55 adduced that the witness making or under whose supervision such examination, study, audit,
56 compilation of figures, or survey was made was basically qualified to make it. All the
57 circumstances relating to the making of such an examination, study, audit, compilation of figures
58 or survey, including the nature and extent of the qualifications of the maker, may be shown to
59 affect the weight of such evidence but such showing shall not affect its admissibility[.] ;

60 (12) Any party or the agency desiring to introduce an affidavit in evidence at a hearing
61 in a contested case may serve on all other parties (including, in a proper case, the agency) copies
62 of such affidavit in the manner hereinafter provided, at any time before the hearing, or at such
63 later time as may be stipulated. Not later than seven days after such service, or at such later time
64 as may be stipulated, any other party (or, in a proper case, the agency) may serve on the party or

65 the agency who served such affidavit an objection to the use of the affidavit or some designated
66 portion or portions thereof on the ground that it is in the form of an affidavit; provided, however,
67 that if such affidavit shall have been served less than eight days before the hearing such objection
68 may be served at any time before the hearing or may be made orally at the hearing. If such
69 objection is so served, the affidavit or the part thereof to which objection was made, may not be
70 used except in ways that would have been permissible in the absence of this subdivision;
71 provided, however, that such objection may be waived by the party or the agency making the
72 same. Failure to serve an objection as aforesaid, based on the ground aforesaid, shall constitute
73 a waiver of all objections to the introduction of such affidavit, or of the parts thereof with respect
74 to which no such objection was so served, on the ground that it is in the form of an affidavit, or
75 that it constitutes or contains hearsay evidence, or that it is not, or contains matters which are not,
76 the best evidence, but any and all other objections may be made at the hearing. Nothing herein
77 contained shall prevent the cross-examination of the affiant if he **or she** is present in obedience
78 to a subpoena or otherwise and if he **or she** is present, he **or she** may be called for
79 cross-examination during the case of the party who introduced the affidavit in evidence. If the
80 affidavit is admissible in part only it shall be admitted as to such part, without the necessity of
81 preparing a new affidavit. The manner of service of such affidavit and of such objection shall
82 be by delivering or mailing copies thereof to the attorneys of record of the parties being served,
83 if any, otherwise, to such parties, and service shall be deemed complete upon mailing; provided,
84 however, that when the parties are so numerous as to make service of copies of the affidavit on
85 all of them unduly onerous, the agency may make an order specifying on what parties service of
86 copies of such affidavit shall be made, and in that case a copy of such affidavit shall be filed with
87 the agency and kept available for inspection and copying. Nothing in this subdivision shall
88 prevent any use of affidavits that would be proper in the absence of this subdivision.

621.045. 1. The administrative hearing commission shall conduct hearings and make
2 findings of fact and conclusions of law in those cases when, under the law, a license issued by
3 any of the following agencies may be revoked or suspended or when the licensee may be placed
4 on probation or when an agency refuses to permit an applicant to be examined upon his **or her**
5 qualifications or refuses to issue or renew a license of an applicant who has passed an
6 examination for licensure or who possesses the qualifications for licensure without examination:
7 Missouri State Board of Accountancy
8 Missouri State Board for Architects, Professional Engineers, Professional Land Surveyors
9 and Landscape Architects
10 Board of Barber Examiners
11 Board of Cosmetology
12 Board of Chiropody and Podiatry

13 Board of Chiropractic Examiners
14 Missouri Dental Board
15 Board of Embalmers and Funeral Directors
16 Board of Registration for the Healing Arts
17 Board of Nursing
18 Board of Optometry
19 Board of Pharmacy
20 Missouri Real Estate Commission
21 Missouri Veterinary Medical Board
22 Supervisor of Liquor Control
23 Department of Health and Senior Services
24 Department of Insurance, Financial Institutions and Professional Registration
25 Department of Mental Health
26 Board of Private Investigator Examiners.

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

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

34 4. Notwithstanding any other provision of this section to the contrary, after August 28,
35 1995, in order to encourage settlement of disputes between any agency described in subsection
36 1 or 2 of this section and its licensees, any such agency shall:

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

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

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

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

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

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

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

13 issued the license shall be given notice of such complaint and the date upon which the hearing
14 will be held by delivery of a copy of such complaint and notice to the office of such agency or
15 by certified mail. Such agency may intervene and may retain the services of legal counsel to
16 represent it in such case.

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

31 **3.** In any case initiated under this section, the custodian of the records of an agency may
32 prepare a sworn affidavit stating truthfully pertinent information regarding the license status of
33 the licensee charged in the complaint, including only: the name of the licensee; his **or her**
34 license number; its designated date of expiration; the date of his **or her** original Missouri
35 licensure; the particular profession, practice or privilege licensed; and the status of his **or her**
36 license as current and active or otherwise. This affidavit shall be received as substantial and
37 competent evidence of the facts stated therein notwithstanding any objection as to the form,
38 manner of presentment or admissibility of this evidence, and shall create a rebuttable
39 presumption of the veracity of the statements therein; provided, however, that the procedures
40 specified in section 536.070 shall apply to the introduction of this affidavit in any case where the
41 status of this license constitutes a material issue of fact in the proof of the cause charged in the
42 complaint.

621.110. Upon a finding in any cause charged by the complaint for which the license
2 may be suspended or revoked as provided in the statutes and regulations relating to the
3 profession or vocation of the licensee **and within one hundred twenty days of the date the**
4 **case became ready for decision**, the commission shall deliver or transmit by mail to the agency
5 which issued the license the record and a transcript of the proceedings before the commission
6 together with the commission's findings of fact and conclusions of law. The commission may

7 make recommendations as to appropriate disciplinary action but any such recommendations shall
8 not be binding upon the agency. A copy of the findings of fact, conclusions of law and the
9 commission's recommendations, if any, shall be delivered or transmitted by mail to the licensee
10 if the licensee's whereabouts are known, and to any attorney who represented the licensee.
11 Within thirty days after receipt of the record of the proceedings before the commission and the
12 findings of fact, conclusions of law, and recommendations, if any, of the commission, the agency
13 shall set the matter for hearing upon the issue of appropriate disciplinary action and shall notify
14 the licensee of the time and place of the hearing, provided that such hearing may be waived by
15 consent of the agency and licensee where the commission has made recommendations as to
16 appropriate disciplinary action. In case of such waiver by the agency and licensee, the
17 recommendations of the commission shall become the order of the agency. The licensee may
18 appear at said hearing and be represented by counsel. The agency may receive evidence relevant
19 to said issue from the licensee or any other source. After such hearing the agency may order any
20 disciplinary measure it deems appropriate and which is authorized by law. In any case where the
21 commission fails to find any cause charged by the complaint for which the license may be
22 suspended or revoked, the commission shall dismiss the complaint, and so notify all parties.

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