

FIRST REGULAR SESSION

# HOUSE BILL NO. 109

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SCHAAF.

Pre-filed December 16, 2004 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0521L.011

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### AN ACT

To repeal sections 334.100, 334.252, and 334.253, RSMo, and to enact in lieu thereof three new sections relating to physical therapists.

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

Section A. Sections 334.100, 334.252, and 334.253, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 334.100, 334.252, and 334.253, to read as follows:

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

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.

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, RSMo, against any holder of any certificate of  
20 registration or authority, permit or license required by this chapter or any person who has failed  
21 to renew or has surrendered the person's certificate of registration or authority, permit or license  
22 for any one or any combination of the following causes:

23 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic  
24 beverage to an extent that such use impairs a person's ability to perform the work of any  
25 profession licensed 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 fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or  
31 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, or for other than medically accepted therapeutic or experimental or investigative  
63 purposes duly authorized by a state or federal agency, or not in the course of professional  
64 practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical  
65 infirmity or disease, except as authorized in section 334.104;

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

68 (j) Terminating the medical care of a patient without adequate notice or without making  
69 other arrangements for the continued care of the patient;

70 (k) Failing to furnish details of a patient's medical records to other treating physicians  
71 or hospitals upon proper request; or failing to comply with any other law relating to medical  
72 records;

73 (l) Failure of any applicant or licensee, other than the licensee subject to the  
74 investigation, to cooperate with the board during any investigation;

75 (m) Failure to comply with any subpoena or subpoena duces tecum from the board or  
76 an order of the board;

77 (n) Failure to timely pay license renewal fees specified in this chapter;

78 (o) Violating a probation agreement with this board or any other licensing agency;

79 (p) Failing to inform the board of the physician's current residence and business address;

80 (q) Advertising by an applicant or licensee which is false or misleading, or which  
81 violates any rule of the board, or which claims without substantiation the positive cure of any  
82 disease, or professional superiority to or greater skill than that possessed by any other physician.  
83 An applicant or licensee shall also be in violation of this provision if the applicant or licensee  
84 has a financial interest in any organization, corporation or association which issues or conducts  
85 such advertising;

86 (5) Any conduct or practice which is or might be harmful or dangerous to the mental or  
87 physical health of a patient or the public; or incompetency, gross negligence or repeated

88 negligence in the performance of the functions or duties of any profession licensed or regulated  
89 by this chapter. For the purposes of this subdivision, "repeated negligence" means the failure,  
90 on more than one occasion, to use that degree of skill and learning ordinarily used under the  
91 same or similar circumstances by the member of the applicant's or licensee's profession;

92 (6) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling  
93 any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted  
94 pursuant to this chapter;

95 (7) Impersonation of any person holding a certificate of registration or authority, permit  
96 or license or allowing any person to use his or her certificate of registration or authority, permit,  
97 license or diploma from any school;

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

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

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

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

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

120 (13) Violation of the drug laws or rules and regulations of this state, any other state or  
121 the federal government;

122 (14) Knowingly making, or causing to be made, or aiding, or abetting in the making of,  
123 a false statement in any birth, death or other certificate or document executed in connection with

124 the practice of the person's profession;

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

130 (16) Using, or permitting the use of, the person's name under the designation of  
131 "Doctor", "Dr.", "M.D.", or "D.O.", or any similar designation with reference to the commercial  
132 exploitation of any goods, wares or merchandise;

133 (17) Knowingly making or causing to be made a false statement or misrepresentation of  
134 a material fact, with intent to defraud, for payment pursuant to the provisions of chapter 208,  
135 RSMo, or chapter 630, RSMo, or for payment from Title XVIII or Title XIX of the federal  
136 Medicare program;

137 (18) Failure or refusal to properly guard against contagious, infectious or communicable  
138 diseases or the spread thereof; maintaining an unsanitary office or performing professional  
139 services under unsanitary conditions; or failure to report the existence of an unsanitary condition  
140 in the office of a physician or in any health care facility to the board, in writing, within thirty  
141 days after the discovery thereof;

142 (19) Any candidate for licensure or person licensed to practice as a physical therapist,  
143 paying or offering to pay a referral fee or, notwithstanding section 334.010 to the contrary,  
144 practicing or offering to practice professional physical therapy independent of the prescription  
145 and direction of a person licensed and registered as a physician and surgeon pursuant to this  
146 chapter, as a dentist pursuant to chapter 332, RSMo, as a podiatrist pursuant to chapter 330,  
147 RSMo, or any licensed and registered physician, dentist, or podiatrist practicing in another  
148 jurisdiction, whose license is in good standing;

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

152 (21) Any person licensed to practice as a physician or surgeon, requiring, as a condition  
153 of the physician-patient relationship, that the patient receive prescribed drugs, devices or other  
154 professional services directly from facilities of that physician's office or other entities under that  
155 physician's ownership or control. A physician shall provide the patient with a prescription which  
156 may be taken to the facility selected by the patient and a physician knowingly failing to disclose  
157 to a patient on a form approved by the advisory commission for professional physical therapists  
158 as established by section 334.625 which is dated and signed by a patient or guardian  
159 acknowledging that the patient or guardian has read and understands that the physician has a

160 pecuniary interest in [a physical therapy or rehabilitation] **the** service providing prescribed  
161 treatment and that the [prescribed treatment is available on a competitive basis] **patient may**  
162 **obtain a prescription from the physician in order to obtain the prescribed treatment from**  
163 **any other service. This form shall be kept as a part of the patient's record.** This subdivision  
164 shall not apply to a referral by one physician to another physician within a group of physicians  
165 practicing together;

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

168 (23) Revocation, suspension, limitation or restriction of any kind whatsoever of any  
169 controlled substance authority, whether agreed to voluntarily or not;

170 (24) For a physician to operate, conduct, manage, or establish an abortion facility, or for  
171 a physician to perform an abortion in an abortion facility, if such facility comes under the  
172 definition of an ambulatory surgical center pursuant to sections 197.200 to 197.240, RSMo, and  
173 such facility has failed to obtain or renew a license as an ambulatory surgical center;

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

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

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

196 physician's testimony or examination is privileged;

197 (c) In addition to ordering a physical or mental examination to determine competency,  
198 the board may, notwithstanding any other law limiting access to medical or other health data,  
199 obtain medical data and health records relating to a physician or applicant without the physician's  
200 or applicant's consent;

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

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

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

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

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

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

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

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

334.252. As used in this section and section 334.253, the following terms mean:

2           (1) "Board", the state board of registration for the healing arts in the state of Missouri;

3           (2) "Entity", any individual, partnership, firm, corporation, or other business entity which  
4 provides, furnishes, or refers [physical therapy] services;

5           (3) "Fair market value", value in arms length transactions, consistent with the general  
6 market value and, with respect to rentals or leases, the value of rental property for general  
7 commercial purposes, not taking into account its intended use, and, in the case of a lease of  
8 space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute  
9 to the proximity or convenience to the lessor where the lessor is a potential source of patient  
10 referrals to the lessee;

11           (4) "Joint venture", any ownership or investment interest or compensation arrangement  
12 between physicians and an entity providing [physical therapy] services;

13           (5) "Physician", any physician licensed under chapter 334;

14           (6) "Referral", any referral or prescription, written or verbal, for [physical therapy]  
15 **drugs, devices, or professional** service;

16           (7) "Remuneration" includes any remuneration, directly or indirectly, overtly or covertly,  
17 in-cash or in-kind arising out of a compensation arrangement of any kind. Remuneration does  
18 not include any payment by a lessee or lessor for the use of premises or equipment as long as all  
19 of the following five standards are met:

20           (a) The lease agreement is set out in writing and signed by the parties;

21           (b) The lease specifies the premises or equipment covered by the lease;

22           (c) If the lease is intended to provide the lessee with access to the premises or to the

23 equipment for periodic intervals of time, rather than on a full-time basis for a term of the lease,  
24 the lease shall specify exactly the schedule of such intervals, their precise length, and the exact  
25 rent for such intervals;

26 (d) The term of the lease is not for less than one year;

27 (e) The aggregate rental charge is set in advance, is consistent with fair market in arms  
28 length transactions, and is not determined in a manner that takes into account the volume or  
29 value of any referrals or business otherwise generated between the parties[;

30 (8) "Rural area", a county with a population density of no greater than one hundred  
31 persons per square mile, as defined by the latest United States Census].

334.253. 1. A physician may not make a referral to an entity for the furnishing of any  
2 physical therapy services with whom the physician, physician's employer, or immediate family  
3 member of such referring physician has a financial relationship **without disclosing to a patient**  
4 **on a form which is dated and signed by the patient acknowledging that the patient or**  
5 **guardian has read and understands the physician's financial relationship and that the**  
6 **patient may obtain a prescription from the physician in order to obtain the prescribed**  
7 **service from any other location. This form shall be kept as part of the patient's record.**  
8 A financial relationship exists if the referring physician, the referring physician's employer, or  
9 immediate family member:

10 (1) Has a direct or indirect ownership or investment interest in the entity whether through  
11 equity, debt, or other means; or

12 (2) Receives remuneration from a compensation arrangement from the entity for the  
13 referral.

14 2. The following financial arrangements shall be exempt from disciplinary action under  
15 this section:

16 (1) [When the entity with whom the referring physician has an ownership or investment  
17 interest is the sole provider of the physical therapy service within a rural area;

18 (2)] When the referring physician owns registered securities issued by a publicly held  
19 corporation or publicly traded limited partnership, the shares of which are traded on a national  
20 exchange or the over-the-counter market, provided that such referring physician's interest in the  
21 publicly held corporation or publicly traded limited partnership is less than five percent and the  
22 referring physician does not receive any compensation from such publicly held corporation or  
23 publicly traded limited partnership other than as any other owner of the shares of such publicly  
24 held corporation or publicly traded limited partnership;

25 [(3)] (2) When the referring physician has an interest in real property resulting in a  
26 landlord-tenant relationship between the physician and the entity in which the equity interest is  
27 held, unless the rent is determined, in whole or in part, by the business volume or profitability

28 of the tenant or is otherwise unrelated to fair market value;

29        [(4)] (3) When the indirect ownership in the entity is by means of a bona fide debt  
30 incurred in the purchase or acquisition of the entity for a price which does not in any manner  
31 reflect the potential source of referrals from the physician with the indirect interest in the entity  
32 and the terms of the debt are fair market value, and neither the amount or the terms of the debt  
33 in any manner, directly or indirectly, constitutes a form of compensating such physician for the  
34 source of his business;

35        [(5)] (4) When such physician's employer is a health maintenance organization as defined  
36 in subdivision (6) of section 376.960, RSMo, and such health maintenance organization owns  
37 or controls other organizations which furnish [physical therapy] services so long as the referral  
38 is to such owned or controlled organization and the physician does not also have a direct or  
39 indirect ownership or investment interest in such organization, [physical therapy] services or the  
40 health maintenance organization and the referring physician does not receive any remuneration  
41 as the result of the referral;

42        [(6)] (5) When such physician's employer is a hospital defined in section 197.020,  
43 RSMo, and such hospital owns or controls other organizations which furnish [physical therapy]  
44 services so long as the referral is to such owned or controlled organization and the physician does  
45 not also have a direct or indirect ownership or investment interest in such organization, [physical  
46 therapy] service, or the hospital and the referring physician does not receive any remuneration  
47 as the result of the referral.

48        [3. The provisions of sections 334.252 and 334.253 shall become effective January 1,  
49 1995.]