

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

**Offered By**

1 AMEND House Committee Substitute for House Bill No. 732, Pages 12-13, Section 334.099,  
2 Lines 1-58, by deleting all of said section and lines and inserting in lieu thereof the following:

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4 “334.099. 1. The board may initiate a hearing to determine if reasonable cause exists to  
5 believe that a licensee or applicant is unable to practice his or her profession with reasonable skill  
6 and safety to the public by reason of medical or osteopathic incompetency, mental or physical  
7 incapacity, or due to the excessive use or abuse of alcohol or controlled substances:

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

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

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

27 (4) For purposes of this subsection, every licensee or applicant is deemed to have  
28 consented to an examination upon a showing of reasonable cause. The applicant or licensee shall  
29 be deemed to have waived all objections to the admissibility of testimony by the provider of the

1 examination and to the admissibility of examination reports on the grounds that the provider of  
2 the examination's testimony or the examination is confidential or privileged;

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

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

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

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

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

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

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

1 5. For purposes of this section, "examination" means a skills, multidisciplinary, or  
2 substance abuse evaluation."; and

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4 Further amend said bill, Page 16, Section 334.100, Lines 103-106, by deleting all of said lines and  
5 inserting in lieu thereof the following:

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7 "(b) "Negligence", is:

8 a. The failure, on more than one occasion, to use that degree of skill and learning  
9 ordinarily used under the same or similar circumstances by the member of the applicant's or  
10 licensee's profession, in the treatment of one or more patients where such failure causes damage  
11 to one or more patients; or

12 b. The failure, on one or more occasion, to use that degree of skill and learning ordinarily  
13 used under the same or similar circumstances by the member of the applicant's or licensee's  
14 profession, in the treatment of one or more patients where such failure causes serious and  
15 permanent injury;"; and

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17 Further amend said bill, Page 24, Section 334.102, Lines 93-94, by deleting all of said lines and  
18 inserting in lieu thereof the following:

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20 "2. The board shall hold a hearing to determine if probable cause exists.

21 (1) At least seven days but not more than fourteen days prior to the hearing, the board  
22 shall serve the licensee with notice of the hearing, including a statement of the facts alleged to  
23 give rise to the emergency suspension, the affidavits the board intends to rely on the prove such  
24 facts, the date of the hearing, and the licensee's right to present evidence via affidavit or by his or  
25 her own sworn testimony;

26 (2) Service may be by personal service or by leaving a copy of the notice at the last known  
27 address of the licensee on file with the board;

28 (3) At the hearing, the board shall receive into evidence and review any affidavits  
29 presented in proper form from either party and shall hear the sworn testimony of the licensee if  
30 offered;

31 (4) If the board determines that there is probable cause pursuant to subsection 1 of this  
32 section, the board may issue an emergency suspension or restriction."; and

33  
34 Further amend said Page and Section, Line 98, by deleting the semicolon ";" and inserting in lieu  
35 thereof a period "."; and

1 Further amend said Page and Section, Lines 99-101, by deleting all of said lines from the bill; and  
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3 Further amend said Page and Section, Lines 107-112, by deleting all of said lines and inserting in  
4 lieu thereof the following:

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6 “(3) The circuit court shall hear the appeal de novo and may modify or stay the emergency  
7 suspension or restriction.”; and

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9 Further amend said Page and Section, Line 117, by inserting after the word “days” the phrase “of  
10 the effective date of the suspension issued pursuant to subsection 2 of this section”; and

11  
12 Further amend bill, Page 25, Section 334.102, Line 131, by deleting all of said line and inserting  
13 in lieu thereof the following:

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15 “8. If the court vacates the emergency suspension or in its final order the board rescinds  
16 the emergency suspension, the board shall remove all reference to such emergency suspension  
17 from its public records. Records relating to the suspension shall be maintained in the board files.  
18 The board or licensee may use such records in the course of any litigation to which they are both  
19 parties. Additionally, such records may be released upon a specific, written request of the  
20 licensee.

21 9. (1) The board may initiate a hearing before the board for discipline of any”; and

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23 Further amend said bill by amending the title, enacting clause, and intersectional references  
24 accordingly.