

FIRST REGULAR SESSION

HOUSE BILL NO. 732

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BRANDOM.

1911L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 324.043, 334.040, 334.070, 334.090, 334.100, 334.102, 334.103, 334.107, 334.127, 334.715, 536.063, 536.067, 536.070, 621.045, 621.100, and 621.110, RSMo, and to enact in lieu thereof twenty-two new sections relating to licensure of certain professions, with penalty provisions.

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

Section A. Sections 324.043, 334.040, 334.070, 334.090, 334.100, 334.102, 334.103, 334.107, 334.127, 334.715, 536.063, 536.067, 536.070, 621.045, 621.100, and 621.110, RSMo, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 324.043, 324.045, 334.001, 334.040, 334.070, 334.090, 334.091, 334.092, 334.099, 334.100, 334.102, 334.103, 334.107, 334.108, 334.127, 334.715, 536.063, 536.067, 536.070, 621.045, 621.100, and 621.110, to read as follows:

- 324.043. 1. Except as provided in this section, no disciplinary proceeding against any person or entity licensed, registered, or certified to practice a profession within the division of professional registration shall be initiated unless such action is commenced within three years of the date upon which the licensing, registering, or certifying agency received notice of an alleged violation of an applicable statute or regulation.
2. For the purpose of this section, notice shall be limited to:
- (1) A written complaint;
 - (2) Notice of final disposition of a malpractice claim, including exhaustion of all extraordinary remedies and appeals;
 - (3) Notice of exhaustion of all extraordinary remedies and appeals of a conviction based upon a criminal statute of this state, any other state, or the federal government;

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.

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. Notwithstanding any provision of chapter 536, in any proceeding initiated
2 by the division of professional registration or any board, committee, commission, or office
3 within the division of professional registration to determine the appropriate level of
4 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 proper notice fails to plead or otherwise defend against the proceeding,
7 the board, commission, committee, or office within the division shall enter a default
8 decision against the licensee without further proceedings. The terms of the default decision
9 shall not exceed the terms of discipline authorized by law for the division, board,**

10 commission, or committee. The division, office, board, commission, or committee shall
11 provide the licensee notice of the default decision in writing.

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 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 known to the board, discipline by another state or administrative
13 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 in 20 CSR 2150-1.015.

26 4. At its discretion, the board may disclose confidential information, without the
27 consent of the licensee or applicant, to a licensee or licensed applicant in order to further
28 an investigation or to facilitate settlement negotiations, or in the course of voluntary
29 interstate exchange of information, to other administrative or law enforcement agencies
30 acting within the scope of their statutory authority.

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

34 **6. The board is entitled to the attorney/client privilege and work product privilege**
35 **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. The board may waive the provisions of this section if the applicant is licensed
26 to practice as a physician and surgeon in another state of the United States, the District of
27 Columbia or Canada and the applicant has achieved a passing score on a licensing examination
28 administered in a state or territory of the United States or the District of Columbia and no license
29 issued to the applicant has been disciplined in any state or territory of the United States or the
30 District of Columbia[. Prior to waiving the provisions of this section, the board may require the
31 applicant to achieve a passing score on one of the following:

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

34 (2) Part II of the FLEX; or

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

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

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

**334.091. 1. In disciplinary actions against licensed, registered, or certified persons
2 or persons holding a certificate of authority, the board may issue an order imposing a civil
3 penalty. Such penalty shall not be imposed until the findings of fact and conclusions of law
4 by the administrative hearing commission have been delivered to the board in accordance
5 with section 621.110, or in accordance with a settlement agreement in compliance with
6 section 621.045, or until the board finds cause to discipline under subsection 8 of section
7 334.102 or section 334.103. In addition, no civil penalty shall commence until a formal
8 meeting and vote by the board has been taken to impose such a penalty.**

9 2. A civil penalty imposed under this section shall not exceed five thousand dollars
10 for each offense. Each day of a continued violation constitutes a separate offense, with a
11 maximum penalty of twenty-five thousand dollars. In determining the amount of penalty
12 to be imposed, the board may consider any of the following:

- 13 (1) Whether the amount imposed will be a substantial deterrent to the violation;
- 14 (2) The circumstances leading to the violation;
- 15 (3) The severity of the violation and the risk of harm to the public;
- 16 (4) The economic benefits gained by the violator as a result of the violation; and
- 17 (5) The interest of the public.

18 3. Any final order imposing a civil penalty is subject to judicial review upon the
19 filing of a petition under section 536.100 by any person subject to the penalty.

20 4. Payment of a civil penalty shall be made within sixty days of entering the order,
21 or if the order is stayed pending an appeal, within ten days after the court enters a final
22 judgment in favor of the board. If the penalty is not timely paid, legal counsel may
23 commence an action to recover the amount of the penalty, including reasonable attorney's
24 fees and costs and a surcharge of fifteen percent of the penalty plus ten percent per annum
25 on any amounts owed. In such action, the validity and appropriateness of the final order
26 imposing the civil penalty shall not be subject to review.

27 5. An action to enforce an order under this section may be joined with an action for
28 an injunction.

29 **6. Any offer of settlement to resolve a civil penalty under this section shall be in**
30 **writing, state that an action for imposition of a civil penalty may be initiated by legal**
31 **counsel representing the board and identify any dollar amount as an offer of settlement,**
32 **which shall be negotiated in good faith.**

33 **7. Failure to pay a civil penalty by any person licensed under this chapter shall be**
34 **grounds for refusing to issue, renew, or reinstate a license, registration, permit, or**
35 **certificate of authority.**

36 **8. Penalties collected under this section shall be handled in accordance with Article**
37 **IX, Section 7 of the Missouri Constitution. Such penalties shall not be considered a**
38 **charitable contribution for tax purposes.**

334.092. 1. No person who does not hold the required license, registration, permit,
2 **or certificate of authority from the board shall perform any act for which a license,**
3 **registration, permit, or certificate of authority is required by the statutes pertaining to the**
4 **appropriate licensing board. The board may cause a complaint to be filed with the**
5 **administrative hearing commission, as provided in chapter 621, against any unlicensed**
6 **person who:**

7 **(1) Engages in or offers to perform any act for which a license, registration, permit,**
8 **or certificate of authority is required by the statutes pertaining to the board; or**

9 **(2) Uses or employs titles defined and protected by the statutes pertaining to the**
10 **board or implies authorization to provide or offer professional services, or otherwise uses**
11 **or advertises any title, work, figure, sign, card, advertisement, or other symbol or**
12 **description tending to convey the impression that the person holds any license, registration,**
13 **permit, or certificate of authority required by the statutes pertaining to the board.**

14 **2. When reviewing complaints against unlicensed persons, the board may initiate**
15 **an investigation and take all measures necessary to find the facts of any potential violation,**
16 **including issuing subpoenas to compel the attendance and testimony of witnesses and the**
17 **disclosure of evidence.**

18 **3. If the board files a complaint with the administrative hearing commission, the**
19 **proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a**
20 **finding by the administrative hearing commission that the grounds provided in subsection**
21 **1 of this section for action are met, the board, commission, or office of the division, or the**
22 **division may either singularly or in combination with other provisions of the statutes**
23 **pertaining to the boards, commission, committees, or offices of the division impose a civil**
24 **penalty against the persons named in the complaint in compliance with this section and**
25 **section 334.091 in an amount not to exceed the limit authorized by section 334.091.**

334.099. 1. 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 incompetency, mental or physical incapacity, or due to being habitually intoxicated or dependent on alcohol or controlled substances, the following shall apply:

(1) The board shall 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;

(2) 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;

(3) 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. The order shall state the cause for the examination, how to obtain information about approved facilities, and a time limit for obtaining the examination. The licensee or applicant shall cause a report of the examination to be sent to the board;

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

(5) After receiving the report of the examination ordered in subdivision (2) of subsection 1 of this section, the board may hold a hearing to determine if by a preponderance of the evidence the licensee or applicant is unable to practice with reasonable skill or safety to the public by reasons of medical or osteopathic incompetency, reason of mental or physical incapacity, or due to the excessive use or abuse of alcohol or controlled substances. If the board finds that the licensee or applicant is unable to practice with reasonable skill or safety to the public by reasons of medical or osteopathic incompetency, reason of mental or physical incapacity, or substance abuse, the board shall, after a hearing, enter an order imposing one or more of the disciplinary measures set forth in subsection 4 of section 334.100; and

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

37 **proceedings contained in this subsection and the rights and duties of the parties involved.**
38 **The person appealing such an action shall be entitled to present evidence under chapter**
39 **536 relevant to the allegations.**

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

44 **3. In any proceeding under this section, neither the record of proceedings nor the**
45 **orders entered by the board shall be used against a licensee or applicant in any other**
46 **proceeding.**

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

52 **5. For purposes of this section, "examination" means a skills, multidisciplinary, or**
53 **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. **Notwithstanding**
18 **the provisions of section 621.120, the board shall retain discretion in refusing a license or**

19 **renewal of license and such discretion shall not transfer to the administrative hearing**
20 **commission.**

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

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

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

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

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

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

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

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

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

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

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

56 (g) Final disciplinary action by any professional medical or osteopathic association or
57 society or licensed hospital or medical staff of such hospital in this or any other state or territory,
58 whether agreed to voluntarily or not, and including, but not limited to, any removal, suspension,
59 limitation, or restriction of the person's license or staff or hospital privileges, failure to renew
60 such privileges or license for cause, or other final disciplinary action, if the action was in any way
61 related to unprofessional conduct[, professional incompetence, malpractice or any other violation
62 of any provision of this chapter];

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

70 (i) Exercising influence within a physician-patient relationship for purposes of engaging
71 a patient in sexual activity **or being listed on any state or federal sexual offender registry**;

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

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

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

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

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

82 (o) Violating a probation agreement, **order, or other settlement agreement** with this
83 board or any other licensing agency;

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

85 (q) Advertising by an applicant or licensee which is false or misleading, or which
86 violates any rule of the board, or which claims without substantiation the positive cure of any
87 disease, or professional superiority to or greater skill than that possessed by any other physician.

88 An applicant or licensee shall also be in violation of this provision if the applicant or licensee

89 has a financial interest in any organization, corporation or association which issues or conducts
90 such advertising;

91 **(r) Any other conduct in the performance of the functions or duties of this chapter**
92 **that is unethical or unprofessional;**

93 (5) Any conduct or practice which is or might be harmful or dangerous to the mental or
94 physical health of a patient or the public; or incompetency[, gross negligence] or [repeated]
95 negligence in the performance of the functions or duties of any profession licensed or regulated
96 by this chapter. For the purposes of this subdivision, ["repeated negligence" means] **the**
97 **following terms shall mean:**

98 **(a) "Incompetency", lacking the requisite skills, abilities, and qualities to effectively**
99 **perform an aspect of professional practice that the licensee has represented he or she can**
100 **perform;**

101 **(b) "Negligence", the failure[, on more than one occasion,] to use that degree of skill**
102 **and learning ordinarily used under the same or similar circumstances by the member of the**
103 **applicant's or licensee's profession, in the treatment of one or more patients whether or not**
104 **actual injury or harm occurs to the patient as a result of any such negligence;**

105 (6) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling
106 any person to violate, any provision of this chapter **or chapter 324**, or of any lawful rule or
107 regulation adopted pursuant to this chapter **or chapter 324;**

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

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

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

122 (10) Assisting or enabling any person to practice or offer to practice any profession
123 licensed or regulated by this chapter who is not registered and currently eligible to practice
124 pursuant to this chapter; or knowingly performing any act which in any way aids, assists,

125 procures, advises, or encourages any person to practice medicine who is not registered and
126 currently eligible to practice pursuant to this chapter. A physician who works in accordance with
127 standing orders or protocols or in accordance with the provisions of section 334.104 shall not be
128 in violation of this subdivision;

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

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

133 (13) Violation of the drug laws or rules and regulations of this state, **including but not**
134 **limited to any provision of chapter 195, and 19 CSR 30-1**, any other state, or the federal
135 government;

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

139 (15) **Making a false statement, orally or in writing to the board;**

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

145 [(16)] (17) Using, or permitting the use of, the person's name under the designation of
146 "Doctor", "Dr.", "M.D.", or "D.O.", or any similar designation with reference to the commercial
147 exploitation of any goods, wares or merchandise;

148 [(17)] (18) Knowingly making or causing to be made a false statement or
149 misrepresentation of a material fact, with intent to defraud, for payment pursuant to the
150 provisions of chapter 208 or chapter 630 or for payment from Title XVIII or Title XIX of the
151 federal Medicare program;

152 [(18)] (19) Failure or refusal to properly guard against contagious, infectious or
153 communicable diseases or the spread thereof; maintaining an unsanitary office or performing
154 professional services under unsanitary conditions; or failure to report the existence of an
155 unsanitary condition in the office of a physician or in any health care facility to the board, in
156 writing, within thirty days after the discovery thereof;

157 [(19)] (20) Any candidate for licensure or person licensed to practice as a physical
158 therapist, paying or offering to pay a referral fee or, notwithstanding section 334.010 to the
159 contrary, practicing or offering to practice professional physical therapy independent of the
160 prescription and direction of a person licensed and registered as a physician and surgeon pursuant

161 to this chapter, as a dentist pursuant to chapter 332, as a podiatrist pursuant to chapter 330, as
162 an advanced practice registered nurse under chapter 335, or any licensed and registered
163 physician, dentist, podiatrist, or advanced practice registered nurse practicing in another
164 jurisdiction, whose license is in good standing;

165 [(20)] **(21)** Any candidate for licensure or person licensed to practice as a physical
166 therapist, treating or attempting to treat ailments or other health conditions of human beings other
167 than by professional physical therapy and as authorized by sections 334.500 to 334.620;

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

180 [(22)] **(23)** A pattern of personal use or consumption of any controlled substance unless
181 it is prescribed, dispensed or administered by another physician who is authorized by law to do
182 so;

183 [(23)] **(24) Habitual intoxication or dependence on alcohol;**

184 **(25) Failure to comply with a treatment program or an aftercare program entered**
185 **into as part of a board order, settlement agreement or under subsection 7 of section**
186 **324.043 or section 334.101;**

187 **(26) Participating in a drug court, as defined in section 478.001;**

188 **(27) Revocation, suspension, limitation, probation, or restriction of any kind whatsoever**
189 **of any controlled substance authority, whether agreed to voluntarily or not, or voluntary**
190 **termination of a controlled substance authority while under investigation;**

191 [(24)] **(28)** For a physician to operate, conduct, manage, or establish an abortion facility,
192 or for a physician to perform an abortion in an abortion facility, if such facility comes under the
193 definition of an ambulatory surgical center pursuant to sections 197.200 to 197.240, and such
194 facility has failed to obtain or renew a license as an ambulatory surgical center;

195 **(29) Violating any professional trust or confidence;**

196 [(25)] **(30)** Being unable to practice as a physician and surgeon or with a specialty with
197 reasonable skill and safety to patients by reasons of [medical or osteopathic incompetency, or
198 because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or as a result of any
199 mental or physical condition. The following shall apply to this subdivision:

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

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

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

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

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

236 (f) When the board finds any person unqualified because of any of the grounds set forth
237 in this subdivision, it may enter an order imposing one or more of the disciplinary measures set
238 forth in subsection 4 of this section] **use of alcohol, drugs, or narcotics.**

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

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

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

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

261 7. In any investigation, hearing or other proceeding to determine a licensee's or
262 applicant's fitness to practice, any record relating to any patient of the licensee or applicant shall
263 be discoverable by the board and admissible into evidence, regardless of any statutory or
264 common law privilege which such licensee, applicant, record custodian or patient might
265 otherwise invoke. In addition, no such licensee, applicant, or record custodian may withhold
266 records or testimony bearing upon a licensee's or applicant's fitness to practice on the ground of
267 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 testimony or affidavits presented to the board, a copy of the complaint and the request for expedited hearing, and a notice of the place of and the date upon which the preliminary hearing will be held.

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

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

(5) The licensee may seek a stay order from the circuit court of Cole County from the preliminary order of suspension, pending the issuance of a final order by the administrative 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, upon a showing of**
75 **probable cause, issue an emergency suspension or restriction to a licensee for the following**
76 **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 to the contact;**

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

82 (3) **Possession or use of a controlled substance without a valid prescription;**

83 (4) **The licensee is finally adjudicated incapacitated or disabled by court of**
84 **competent jurisdiction;**

85 (5) **Habitual intoxication or dependence on alcohol or controlled substances or**
86 **failure to comply with a treatment program or an aftercare program entered into as part**
87 **of a board order, settlement agreement, or a licensee's professional health program; or**

88 (6) **Any other conduct for which the board may otherwise impose discipline if such**
89 **conduct is a serious danger to the health, safety, or welfare of a patient or the public.**

90 2. **The board shall determine if probable cause exists on the basis of sworn**
91 **affidavits or certified court records without notice to the licensee.**

92 3. **The emergency suspension or restriction shall be effective upon service to the**
93 **licensee of:**

94 (1) **The order of emergency suspension or restriction under section 536.067;**

95 (2) **A statement of the basis of the emergency suspension or restriction;**

96 (3) **Copies of any affidavits or certified records the board considered in making its**
97 **decision; and**

98 (4) **Notice of the hearing date.**

99 4. (1) **The suspension or restriction may be appealed to the circuit court of the**
100 **county of residence of the licensee or if the licensee is not a resident of Missouri, to the**
101 **circuit court of Cole County.**

102 (2) **Such appeal shall be filed within thirty days of the effective date of the**
103 **suspension or restriction.**

104 (3) **The circuit court may modify or stay the emergency suspension or restriction**
105 **upon a finding that the board's action was:**

- 106 (a) **Unsupported by competent and substantial evidence upon the whole record;**
107 (b) **Is arbitrary or capricious; or**
108 (c) **Involves an abuse of discretion.**
- 109 (4) **If the circuit court determines to vacate or modify the emergency suspension or**
110 **restriction pursuant to this section, the court shall issue its decision vacating or modifying**
111 **the suspension or restriction no later than five days after the appeal is filed.**
- 112 5. (1) **Unless the circuit court vacates the order, the board shall hold a hearing on**
113 **the causes pled for discipline within ninety days.**
- 114 (2) **The board shall grant a continuance on request of the petitioner; except that,**
115 **the emergency suspension or restriction shall remain in effect unless otherwise ordered by**
116 **a court under subsection 4 of this section.**
- 117 (3) **The board shall determine whether cause for discipline exists and, if so, may**
118 **impose any discipline otherwise authorized by state law.**
- 119 (4) **The board shall issue a final order within thirty days of hearing the case.**
- 120 (5) **The emergency suspension or restriction shall be terminated as of the date of**
121 **the final order of the board.**
- 122 6. **Any action under subsections 1 to 7 of this section shall be in addition to and not**
123 **in lieu of any penalty otherwise in the board's power to impose and may be brought**
124 **concurrently with other actions.**
- 125 7. **Unless it conflicts with provisions of subsections 1 to 7 of this section, chapter 536**
126 **shall govern the hearings held under subsections 1 to 7 of this section.**
- 127 8. (1) **The board may initiate a hearing before the board for discipline of any**
128 **licensee's license or certificate upon receipt of:**
- 129 (a) **Certified court records of a finding of guilt or plea of guilty or nolo contendere**
130 **in a criminal prosecution under the laws of any state or the United States or any municipal**
131 **ordinance violation for any offense involving the qualifications, functions, or duties of any**
132 **profession licensed or regulated under this chapter; for any offense an essential element**
133 **of which is fraud, dishonesty, or an act of violence; or for any offense involving moral**
134 **turpitude, whether or not sentence is imposed;**
- 135 (b) **Evidence of final discipline by any medical service provider, hospital, clinic, or**
136 **agency against the licensee's license, certification, or privileges to practice;**
- 137 (c) **Evidence of failure to pay fees as required by rule or provide a current address**
138 **to the board;**
- 139 (d) **Evidence of final discipline against the licensee's license, certification, or**
140 **registration to practice issued by any other state, the United States and its territories, or**
141 **any other country;**

142 (e) Evidence of certified court records finding the licensee has been judged
143 incapacitated or disabled under Missouri law or the laws of any other state or the United
144 States and its territories;

145 (f) Evidence of final discipline against a licensee by any other agency or entity of
146 this state or any other state or the United States and its territories.

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

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

152 (4) The board's decision regarding discipline of a license shall be subject to judicial
153 review under chapter 536.

334.103. 1. A license issued under this chapter by the Missouri State Board of
2 Registration for the Healing Arts shall be automatically revoked at such time as the final trial
3 proceedings are concluded whereby a licensee has been adjudicated and found guilty, or has
4 entered a plea of guilty or nolo contendere, in a felony criminal prosecution under the laws of
5 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.

334.107. [Nothing in section 334.106 and this section shall deny the right of the board
2 to deny, revoke or suspend the license of any physician or otherwise discipline any physician
3 who] **1. For purposes of this section, the following terms shall mean:**

4 (1) "Controlled substance", a substance classified as a controlled substance under
5 section 195.017;

6 (2) "Medically sufficient examination", an examination conducted in person which
7 includes a history and physical examination with sufficient detail to support the diagnosis
8 made or treatment plan created;

9 (3) "Medication agreement", a written document signed by the prescriber and
10 patient which includes at least the following statements:

11 (a) Patients are expected to comply with the medication agreement. Failure to
12 abide by the terms of the agreement may result in the physician terminating care of the
13 patient;

14 (b) The risks, benefits, and side effects of the prescribed medication have been
15 discussed with the patient and such discussion will be documented in the patient's medical
16 chart;

17 (c) The patient shall notify the prescriber of all controlled substances, psychotropic
18 medications, and noncontrolled pain medications prescribed, dispensed, or administered,
19 or otherwise authorized by other practitioners to the patient within twenty-four hours of
20 the patient having received a controlled substance from another practitioner;

21 (d) Multiple losses, thefts, or accidents causing the prescriber to issue the patient
22 a new prescription are grounds for the prescriber to dismiss the patient;

23 (e) False statements, misrepresentations, lies, forgery, and the failure to disclose
24 material information relating to controlled substances treatment is a class D felony under
25 section 195.204;

26 (f) All prescriptions are issued for the patient only. It is against the law for a
27 patient to transfer, sell, or give his or her medications to another person;

28 (g) Under subsection 5 of section 195.375, controlled substance records are open
29 for inspection and copying by the Bureau of Narcotics and Dangerous Drugs and law
30 enforcement of this state;

31 (h) The prescriber may randomly perform a drug test to ensure the medications
32 that are administered, dispensed, or prescribed are in the patient's body and also to
33 determine if unauthorized controlled substances are present in the patient's body. Refusal
34 to submit to a drug test or failing a drug test constitutes grounds for the licensee to dismiss
35 the patient;

36 (4) "Noncontrolled pain medication", a medication which is not a controlled
37 substance and which is prescribed in a specific case for the purpose of treating pain.

38 2. Prior to prescribing a controlled substance for any purpose or a noncontrolled
39 pain medication, a prescriber shall document in the patient's medical record the following:

40 (1) A medically sufficient examination conducted by the prescriber issuing the
41 prescription, a physician working in collaboration with the prescriber, a licensed physician

42 **assistant, or a licensed nurse practitioner working within the scope of his or her practice;**
43 **and**

44 **(2) The diagnosis supporting use of the controlled substance or noncontrolled pain**
45 **medication; and**

46 **(3) Any tests or ancillary studies supporting the diagnosis; and**

47 **(4) Documentation that the directions for use and side effects of the medication as**
48 **discussed with the patient.**

49 **3. If a prescriber prescribes a patient a controlled substance for any purpose or**
50 **noncontrolled pain medication for a single condition for more than ninety days out of a**
51 **period of three hundred sixty-five days, the following shall apply:**

52 **(1) If the patient is mentally or physically able, the physician shall require the**
53 **patient to sign and abide by a medication agreement. A copy of such agreement shall be in**
54 **the patient's medical chart;**

55 **(2) If the patient is not mentally or physically able to sign a medication agreement,**
56 **documentation of that fact shall be in the patient's medical chart;**

57 **(3) The physician may conduct random drug screening tests to document**
58 **compliance with the prescribed medication.**

59 **4. In addition to any other documentation required by federal or state law, a**
60 **physician shall include in the patient's medical record a copy of the prescription issued to**
61 **the patient. If not noted on the prescription, the record shall also include the name of the**
62 **medication, the date of the prescription, the quantity prescribed, the dosage prescribed,**
63 **and instructions for taking the medication.**

64 **5. The physician shall be responsible for ensuring that any collaborating nurse**
65 **practitioners or physician assistants comply with this section.**

66 **6. A licensee shall be subject to discipline under subdivision (6) of subsection 2 of**
67 **section 334.100 if the licensee:**

68 **(1) Prescribes, administers or dispenses a controlled substance that is nontherapeutic in**
69 **nature or nontherapeutic in the manner in which it is prescribed, administered or dispensed, or**
70 **fails to keep complete and accurate ongoing records of the diagnosis and treatment plan; or**

71 **(2) Fails to keep complete and accurate records of controlled substances received,**
72 **prescribed, dispensed and administered, and disposal of drugs listed in the Missouri**
73 **comprehensive drug control act contained in chapter 195 or of controlled substances scheduled**
74 **in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801,**
75 **et seq. A physician shall keep records of controlled substances received, prescribed, dispensed**
76 **and administered, and disposal of these drugs shall include the date of receipt of the drugs, the**

77 sale or disposal of the drugs by the physician, the name and address of the person receiving the
78 drugs, and the reason for the disposal or the dispensing of the drugs to the person; **or**

79 (3) Writes false or fictitious prescriptions for controlled substances as defined in the
80 Missouri comprehensive drug control act, chapter 195, or for controlled substances scheduled
81 in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801,
82 et seq.; or

83 (4) Prescribes or administers, or dispenses in a manner which is inconsistent with
84 provisions of the Missouri drug control act contained in chapter 195 or the Federal
85 Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801, et seq; **or**

86 (5) **Fails to comply with the requirements of this section.**

**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) **As 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 shall not apply to treatment
17 provided in consultation with another physician who has an ongoing professional
18 relationship with the patient, and who has agreed to supervise the patient's treatment,
19 including use of any prescribed medications, and on-call or cross-coverage situations.**

334.127. 1. The president or secretary of the board may administer oaths, subpoena
2 witnesses, issue subpoenas duces tecum and require production of documents and records.
3 Subpoenas, including subpoenas duces tecum, shall be served by a person authorized to serve
4 subpoenas of courts of record. In lieu of requiring attendance of a person to produce original
5 documents in response to a subpoena duces tecum, the board may require sworn copies of such
6 documents to be filed with it or delivered to its designated representative.

7 2. **Notwithstanding any other provision of law to the contrary, subpoena duces**
8 **tecum may be issued for documents and records of a peer review committee, medical**
9 **executive committee, hospital, pharmacy, or to any other person or entity the board has**
10 **reason to believe is in possession of information relevant to an investigation of a licensee.**

11 3. The board may enforce its subpoenas, including subpoena duces tecum, by applying
12 to a circuit court of Cole County, the county of the investigation, hearing or proceeding, or any
13 county where the person resides or may be found, for an order upon any person who shall fail
14 to obey a subpoena to show cause why such subpoena should not be enforced, which such order
15 and a copy of the application therefore shall be served upon the person in the same manner as
16 a summons in a civil action, and if the circuit court shall, after a hearing, determine that the
17 subpoena should be sustained and enforced, such court shall proceed to enforce the subpoena in
18 the same manner as though the subpoena had been issued in a civil case in the circuit court.

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; **or**

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

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

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

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

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

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

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.**

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.**

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. **Evidence contesting or challenging the**
31 **basis or merits of a guilty finding or a plea of guilty or nolo contendere in a criminal**
32 **prosecution under the laws of any state or the United States or any of its territories shall**
33 **be excluded when evidence establishing the existence of such guilty finding or plea of guilty**
34 **or nolo contendere has been admitted in the case;**

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

43 (10) Any writing or record, whether in the form of an entry in a book or otherwise, made
44 as a memorandum or record of an act, transaction, occurrence or event, shall be admissible as
45 evidence of the act, transaction, occurrence or event, if it shall appear that it was made in the
46 regular course of any business, and that it was the regular course of such business to make such
47 memorandum or record at the time of such act, transaction, occurrence, or event or within a
48 reasonable time thereafter. All other circumstances of the making of such writing or record,
49 including lack of personal knowledge by the entrant or maker, may be shown to affect the weight

50 of such evidence, but such showing shall not affect its admissibility. The term "business" shall
51 include business, profession, occupation and calling of every kind[.] ;

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

64 (12) Any party or the agency desiring to introduce an affidavit in evidence at a hearing
65 in a contested case may serve on all other parties (including, in a proper case, the agency) copies
66 of such affidavit in the manner hereinafter provided, at any time before the hearing, or at such
67 later time as may be stipulated. Not later than seven days after such service, or at such later time
68 as may be stipulated, any other party (or, in a proper case, the agency) may serve on the party or
69 the agency who served such affidavit an objection to the use of the affidavit or some designated
70 portion or portions thereof on the ground that it is in the form of an affidavit; provided, however,
71 that if such affidavit shall have been served less than eight days before the hearing such objection
72 may be served at any time before the hearing or may be made orally at the hearing. If such
73 objection is so served, the affidavit or the part thereof to which objection was made, may not be
74 used except in ways that would have been permissible in the absence of this subdivision;
75 provided, however, that such objection may be waived by the party or the agency making the
76 same. Failure to serve an objection as aforesaid, based on the ground aforesaid, shall constitute
77 a waiver of all objections to the introduction of such affidavit, or of the parts thereof with respect
78 to which no such objection was so served, on the ground that it is in the form of an affidavit, or
79 that it constitutes or contains hearsay evidence, or that it is not, or contains matters which are not,
80 the best evidence, but any and all other objections may be made at the hearing. Nothing herein
81 contained shall prevent the cross-examination of the affiant if he **or she** is present in obedience
82 to a subpoena or otherwise and if he **or she** is present, he **or she** may be called for
83 cross-examination during the case of the party who introduced the affidavit in evidence. If the
84 affidavit is admissible in part only it shall be admitted as to such part, without the necessity of
85 preparing a new affidavit. The manner of service of such affidavit and of such objection shall

86 be by delivering or mailing copies thereof to the attorneys of record of the parties being served,
 87 if any, otherwise, to such parties, and service shall be deemed complete upon mailing; provided,
 88 however, that when the parties are so numerous as to make service of copies of the affidavit on
 89 all of them unduly onerous, the agency may make an order specifying on what parties service of
 90 copies of such affidavit shall be made, and in that case a copy of such affidavit shall be filed with
 91 the agency and kept available for inspection and copying. Nothing in this subdivision shall
 92 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.**

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.**

26 3. In any case initiated under this section, the custodian of the records of an agency may
27 prepare a sworn affidavit stating truthfully pertinent information regarding the license status of
28 the licensee charged in the complaint, including only: the name of the licensee; his **or her**
29 license number; its designated date of expiration; the date of his **or her** original Missouri
30 licensure; the particular profession, practice or privilege licensed; and the status of his **or her**
31 license as current and active or otherwise. This affidavit shall be received as substantial and
32 competent evidence of the facts stated therein notwithstanding any objection as to the form,
33 manner of presentment or admissibility of this evidence, and shall create a rebuttable

34 presumption of the veracity of the statements therein; provided, however, that the procedures
35 specified in section 536.070 shall apply to the introduction of this affidavit in any case where the
36 status of this license constitutes a material issue of fact in the proof of the cause charged in the
37 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.