

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 732

96TH GENERAL ASSEMBLY

1911L.04P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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334.090, 334.100, 334.102, 334.103, 334.715, 536.063, 536.067, 536.070, 621.045, 621.100, and 621.110, RSMo, are repealed and twenty-nine new sections enacted in lieu thereof, to be known as sections 195.450, 195.453, 195.456, 195.459, 195.462, 195.465, 195.468, 195.471, 195.474, 195.477, 195.480, 324.043, 324.045, 334.001, 334.040, 334.070, 334.090, 334.099, 334.100, 334.102, 334.103, 334.108, 334.715, 536.063, 536.067, 536.070, 621.045, 621.100, and 621.110, to read as follows:

- 195.450. 1. Sections 195.450 to 195.480 shall be known and may be cited as the "Prescription Drug Monitoring Program Act".**
- 2. As used in sections 195.450 to 195.480, the following terms mean:**
- (1) "Controlled substance", the same meaning given such term in section 195.010;**
 - (2) "Department", the department of health and senior services;**
 - (3) "Dispenser", a person who delivers a schedule II, III, IV, or V controlled substance to the ultimate user, but does not include:**
 - (a) A hospital, as defined in section 197.020, that distributes such substances for the purpose of inpatient hospital care or dispenses prescriptions for controlled substances at the time of discharge from an inpatient stay at such facility;**

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.

11 (b) A practitioner or other authorized person who administers such a substance;
12 or

13 (c) A wholesale distributor of a schedule II, III, IV, or V controlled substance;

14 (4) "Patient", a person who is the ultimate user of a drug for whom a prescription
15 is issued or for whom a drug is dispensed;

16 (5) "Schedule II, III, IV, or V controlled substance", a controlled substance that
17 is listed in schedules II, III, IV, or V of the schedules provided under this chapter or the
18 Federal Controlled Substances Act, 21 U.S.C. Section 812.

19 3. Notwithstanding any other law to the contrary, the provisions of this section shall
20 not apply to persons licensed under chapter 340.

195.453. 1. Subject to appropriations, the department of health and senior services
2 shall establish and maintain a program for the monitoring of prescribing and dispensing
3 of all schedule II, III, IV, and V controlled substances by all professionals licensed to
4 prescribe or dispense such substances in this state. The department may apply for any
5 available grants and accept any gifts, grants, or donations to assist in developing and
6 maintaining the program.

7 2. Each dispenser shall submit to the department by electronic means information
8 regarding each dispensation of a drug included in subsection 1 of this section. The
9 information submitted for each shall include, but not be limited to:

10 (1) The dispenser identification number;

11 (2) The date of the dispensation;

12 (3) If there is a prescription:

13 (a) The prescription number;

14 (b) Whether the prescription is new or a refill;

15 (c) The prescriber identification number;

16 (d) The date the prescription is issued by the prescriber;

17 (e) The person who receives the prescription from the dispenser, if other than the
18 patient;

19 (f) The source of payment for the prescription;

20 (4) The NDC code for the drug dispensed;

21 (5) The number of days' supply of the drug;

22 (6) The quantity dispensed;

23 (7) The patient identification number;

24 (8) The patient's name, address, and date of birth.

25 3. Each dispenser shall submit the information in accordance with transmission
26 methods and frequency established by the department; except that, each dispenser shall

27 report at least every thirty days between the first and fifteenth of the month following the
28 month of the dispensation.

29 **4. The department may issue a waiver to a dispenser that is unable to submit**
30 **dispensation information by electronic means. Such waiver may permit the dispenser to**
31 **submit dispensation information by paper form or other means, provided all information**
32 **required in subsection 2 of this section is submitted in such alternative format.**

33 **5. The department shall reimburse each dispenser for the fees and other direct costs**
34 **of transmitting the information required by this section.**

195.456. 1. Dispensation information submitted to the department shall be
2 **confidential and not subject to public disclosure under chapter 610 except as provided in**
3 **subsections 3 to 5 of this section.**

4 **2. The department shall maintain procedures to ensure that the privacy and**
5 **confidentiality of patients and personnel information collected, recorded, transmitted, and**
6 **maintained is not disclosed to persons except as provided in subsections 3 to 5 of this**
7 **section.**

8 **3. The department shall review the dispensation information and, if there is**
9 **reasonable cause to believe a violation of law or breach of professional standards may have**
10 **occurred, the department shall notify the appropriate law enforcement or professional**
11 **licensing, certification, or regulatory agency or entity, and provide dispensation**
12 **information required for an investigation.**

13 **4. The department may provide data in the controlled substances dispensation**
14 **monitoring program to the following persons:**

15 **(1) Persons, both in-state and out-of-state, authorized to prescribe or dispense**
16 **controlled substances for the purpose of providing medical or pharmaceutical care for**
17 **their patients;**

18 **(2) An individual who requests his or her own dispensation monitoring information**
19 **in accordance with state law;**

20 **(3) The state board of pharmacy;**

21 **(4) Any state board charged with regulating a professional that has the authority**
22 **to prescribe or dispense controlled substances that requests data related to a specific**
23 **professional under the authority of that board;**

24 **(5) Local, state, and federal law enforcement or prosecutorial officials, both in-state**
25 **and out-of-state engaged in the administration, investigation, or enforcement of the laws**
26 **governing licit drugs based on a specific case and under a subpoena or court order;**

27 **(6) The family support division within the department of social services regarding**
28 **Medicaid program recipients;**

29 (7) A judge or other judicial authority under a subpoena or court order; and

30 (8) Personnel of the department of health and senior services for the administration
31 and enforcement of sections 195.450 to 195.480.

32 5. The department may provide data to public or private entities for statistical,
33 research, or educational purposes after removing information that could be used to identify
34 individual patients, prescribers, or persons who received dispensations from dispensers.

35 6. Nothing in sections 195.450 to 195.480 shall be construed to require a pharmacist
36 or prescriber to obtain information about a patient from the database. A pharmacist or
37 prescriber shall not be held liable for damages to any person in any civil action for injury,
38 death, or loss to person or property on the basis that the pharmacist or prescriber did or
39 did not seek or obtain information from the database.

195.459. The department is authorized to contract with any other agency of this
2 state or with a private vendor, as necessary, to ensure the effective operation of the
3 prescription monitoring program. Any contractor shall comply with the provisions
4 regarding confidentiality of prescription information in section 195.456.

195.462. The department shall promulgate rules setting forth the procedures and
2 methods of implementing sections 195.450 to 195.480. Any rule or portion of a rule, as that
3 term is defined in section 536.010, that is created under the authority delegated in this
4 section shall become effective only if it complies with and is subject to all of the provisions
5 of chapter 536 and, if applicable, section 536.028. Sections 195.450 to 195.480 and chapter
6 536 are nonseverable and if any of the powers vested with the general assembly pursuant
7 to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are
8 subsequently held unconstitutional, then the grant of rulemaking authority and any rule
9 proposed or adopted after August 28, 2011, shall be invalid and void.

195.465. 1. A dispenser who knowingly fails to submit dispensation monitoring
2 information to the department as required in sections 195.450 to 195.480 or knowingly
3 submits the incorrect dispensation information is guilty of a class A misdemeanor.

4 2. A person authorized to have dispensation monitoring information under sections
5 195.450 to 195.480 who knowingly discloses such information in violation of sections
6 195.450 to 195.480 or who uses such information in a manner and for a purpose in
7 violation of sections 195.450 to 195.480 is guilty of a class A misdemeanor.

195.468. 1. The department shall implement the following education courses:

2 (1) An orientation course during the implementation phase of the dispensation
3 monitoring program established in section 195.453;

4 (2) A course for persons who are authorized to access the dispensation monitoring
5 information but who did not participate in the orientation course;

6 **(3) A course for persons who are authorized to access the dispensation monitoring**
7 **information but who have violated laws or breached occupational standards involving**
8 **dispensing, prescribing, and use of substances monitored by the dispensation monitoring**
9 **program established in section 195.453;**

10
11 **When appropriate, the department shall develop the content of the education courses**
12 **described in subdivisions (1) to (3) of this subsection.**

13 **2. The department shall, when appropriate:**

14 **(1) Work with associations for impaired professionals to ensure intervention,**
15 **treatment, and ongoing monitoring and followup; and**

16 **(2) Encourage individual patients who are identified and who have become**
17 **addicted to substances monitored by the dispensation monitoring program established in**
18 **section 195.453 to receive addiction treatment.**

195.471. The department of health and senior services shall develop and implement
2 **an electronic logbook to monitor the sale of schedule V controlled substances containing**
3 **any detectable amount of pseudoephedrine. All pharmacists and registered pharmacy**
4 **technicians shall submit their logbooks, as required under section 195.017, electronically**
5 **in accordance with rules promulgated by the department.**

195.474. 1. Beginning January 1, 2012, the bureau of narcotics and dangerous
2 **drugs within the department of health and senior services shall establish a two-year**
3 **statewide pilot project for the reporting of fraudulently obtained prescription controlled**
4 **substances. The pilot project shall include the following:**

5 **(1) Provide a toll-free number for reporting to the bureau by physicians,**
6 **pharmacists, and other health care professionals with prescriptive authority who have**
7 **reason to believe that a person is fraudulently attempting to obtain a prescription for a**
8 **controlled substance or is attempting to obtain an excessive amount of a controlled**
9 **substance by prescription;**

10 **(2) Establish a system within the bureau for receiving such reports under**
11 **subdivision (1) of this subsection along with any evidence offered or submitted by the**
12 **reporter which indicates the fraud; and**

13 **(3) Forward such reports, along with any evidence offered or submitted to the**
14 **appropriate prosecuting attorney or the state attorney general for investigation and**
15 **prosecution.**

16 **2. On or before February 1, 2013, and February 1, 2014, the bureau of narcotics**
17 **and dangerous drugs shall submit a report to the general assembly detailing the following**
18 **specifics regarding the pilot project:**

- 19 (1) The number of reports received under this section;
20 (2) The type of evidence offered or submitted indicating the fraud;
21 (3) The number of referrals to the attorney general and each local prosecuting
22 attorney;
23 (4) The number of cases investigated and prosecuted as a result of such reporting,
24 and the number of convictions or pleas resulting from such investigations and
25 prosecutions. The attorney general and local prosecuting attorneys shall cooperate with
26 the bureau in the submission and collection of the information necessary for inclusion in
27 the report; and
28 (5) Any recommendations regarding continuance of and improvements in the pilot
29 project.

30

31 Nothing in this section shall be construed as authorizing the inclusion or release of any
32 identifying information of any reporter or person who is identified as a person who is
33 attempting to fraudulently obtain prescription controlled substances.

34 3. Any person who in good faith reports to the bureau under this section shall be
35 immune from any civil or criminal liability as the result of such good faith reporting.

36 4. The department of health and senior services may promulgate rules to implement
37 the provisions of this section. Any rule or portion of a rule, as that term is defined in
38 section 536.010, that is created under the authority delegated in this section shall become
39 effective only if it complies with and is subject to all of the provisions of chapter 536 and,
40 if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of
41 the powers vested with the general assembly pursuant to chapter 536 to review, to delay
42 the effective date, or to disapprove and annul a rule are subsequently held
43 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
44 after August 28, 2011, shall be invalid and void.

45 5. The pilot project shall be funded from existing appropriations or with any
46 moneys specifically appropriated for this pilot project. The lack of any additional new
47 appropriations for this pilot project shall not be sufficient cause for the department to fail
48 to establish the pilot project under this section.

49 6. Under section 23.253 of the Missouri sunset act:

50 (1) The provisions of the new program authorized under this section shall
51 automatically sunset three years after the effective date of this section unless reauthorized
52 by an act of the general assembly; and

53 (2) If such program is reauthorized, the program authorized under this section
54 shall automatically sunset twelve years after the effective date of the reauthorization of this
55 section; and

56 (3) This section shall terminate on September first of the calendar year immediately
57 following the calendar year in which the program authorized under this section is sunset.
195.477. Under section 23.253 of the Missouri sunset act:

2 (1) The provisions of the new program authorized under sections 195.450 to
3 195.480 shall automatically sunset six years after the effective date of sections 195.450 to
4 195.480 unless reauthorized by an act of the general assembly; and

5 (2) If such program is reauthorized, the program authorized under sections 195.450
6 to 195.480 shall automatically sunset six years after the effective date of the reauthorization
7 of sections 195.450 to 195.480; and

8 (3) Sections 195.450 to 195.480 shall terminate on September first of the calendar
9 year immediately following the calendar year in which the program authorized under
10 sections 195.450 to 195.480 is sunset.

195.480. The provisions of sections 195.450 to 195.480 shall be funded with federal
2 or private grant moneys. If no federal or private grant moneys are available to implement
3 the provisions of sections 195.450 to 195.480, the prescription drug monitoring act shall be
4 implemented subject to appropriations.

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

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

7 (1) A written complaint;

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

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

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

15 3. For the purposes of this section, an action is commenced when a complaint is filed by
16 the agency with the administrative hearing commission, any other appropriate agency, or in a

17 court; or when a complaint is filed by the agency's legal counsel with the agency in respect to an
18 automatic revocation or a probation violation.

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

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

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

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

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

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

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

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

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

13 **2. Upon motion stating facts constituting a meritorious defense and for good cause**
14 **shown, a default decision may be set aside. The motion shall be made within a reasonable**
15 **time, not to exceed thirty days after entry of the default decision. "Good cause" includes**

16 a mistake or conduct that is not intentionally or recklessly designed to impede the
17 administrative process.

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

- 4 (1) The name of a licensee or applicant;
- 5 (2) The licensee's business address;
- 6 (3) Registration type;
- 7 (4) Currency of the license, certificate, or registration;
- 8 (5) Professional schools attended;
- 9 (6) Degrees and certifications, including certification by the American Board of
10 Medical Specialties, the American Osteopathic Association, or other certifying agency
11 approved by the board by rule;
- 12 (7) To the extent provided to the board after August 28, 2011, discipline by another
13 state or administrative agency;
- 14 (8) Limitations on practice placed by a court of competent jurisdiction;
- 15 (9) Any final discipline by the board, including the content of the settlement
16 agreement or order issued; and
- 17 (10) Whether a discipline case brought by the board is pending in the
18 administrative hearing commission or any court.

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

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

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

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

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

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

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

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

35 (2) Part II of the FLEX; or

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

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

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

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

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

334.090. 1. Each applicant for registration under this chapter shall accompany the
2 application for registration with a registration fee to be paid to the [director of revenue] **board**.
3 If the application is filed and the fee paid after the registration renewal date, a delinquent fee
4 shall be paid; but whenever in the opinion of the board the applicant's failure to register is caused
5 by extenuating circumstances including illness of the applicant, as defined by rule and regulation,

6 the delinquent fee may be waived by the board. Whenever any new license is granted to any
7 person under the provisions of this chapter, the board shall, upon application therefor, issue to
8 such licensee a certificate of registration covering a period from the date of the issuance of the
9 license to the next renewal date without the payment of any registration fee.

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

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

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

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

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

27 (4) For purposes of this subsection, every licensee or applicant is deemed to have
28 consented to an examination upon a showing of reasonable cause. The applicant or

29 licensee shall be deemed to have waived all objections to the admissibility of testimony by
30 the provider of the examination and to the admissibility of examination reports on the
31 grounds that the provider of the examination's testimony or the examination is confidential
32 or privileged;

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

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

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

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

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

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

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

69 **5. For purposes of this section, "examination" means a skills, multidisciplinary, or**
70 **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. **Notwithstanding any**
16 **law to the contrary, the sole issue before the administrative hearing commission shall be**
17 **whether there is cause to deny the license. If the commission determines there is cause to**
18 **deny the license, the decision of whether to deny the license, issue the license with**
19 **discipline, or issue the license with no discipline vests in the board.** If no written request for
20 a hearing is received by the administrative hearing commission within the thirty-day period, the
21 right to seek review of the board's decision shall be considered as waived.

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

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

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

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

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

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

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

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

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

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

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

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

64 (h) Signing a blank prescription form; or dispensing, prescribing, administering or
65 otherwise distributing any drug, controlled substance or other treatment without sufficient

66 examination **including failing to establish a valid physician-patient relationship pursuant**
67 **to section 334.108**, or for other than medically accepted therapeutic or experimental or
68 investigative purposes duly authorized by a state or federal agency, or not in the course of
69 professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment,
70 physical infirmity or disease, except as authorized in section 334.104;

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

73 (j) **Being listed on any state or federal sexual offender registry;**

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

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

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

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

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

84 [(o)] (p) Violating a probation agreement, **order, or other settlement agreement** with
85 this board or any other licensing agency;

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

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

94 (s) **Any other conduct that is unethical or unprofessional involving a minor;**

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

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

103 (b) **"Negligence", is:**

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

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

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

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

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

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

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

- 136 (11) Issuance of a certificate of registration or authority, permit or license based upon
137 a material mistake of fact;
- 138 (12) Failure to display a valid certificate or license if so required by this chapter or any
139 rule promulgated pursuant to this chapter;
- 140 (13) Violation of the drug laws or rules and regulations of this state, **including but not**
141 **limited to any provision of chapter 195**, any other state, or the federal government;
- 142 (14) Knowingly making, or causing to be made, or aiding, or abetting in the making of,
143 a false statement in any birth, death or other certificate or document executed in connection with
144 the practice of the person's profession;
- 145 (15) **Knowingly making a false statement, orally or in writing to the board;**
- 146 (16) Soliciting patronage in person or by agents or representatives, or by any other means
147 or manner, under the person's own name or under the name of another person or concern, actual
148 or pretended, in such a manner as to confuse, deceive, or mislead the public as to the need or
149 necessity for or appropriateness of health care services for all patients, or the qualifications of
150 an individual person or persons to diagnose, render, or perform health care services;
- 151 [(16)] (17) Using, or permitting the use of, the person's name under the designation of
152 "Doctor", "Dr.", "M.D.", or "D.O.", or any similar designation with reference to the commercial
153 exploitation of any goods, wares or merchandise;
- 154 [(17)] (18) Knowingly making or causing to be made a false statement or
155 misrepresentation of a material fact, with intent to defraud, for payment pursuant to the
156 provisions of chapter 208 or chapter 630 or for payment from Title XVIII or Title XIX of the
157 federal Medicare program;
- 158 [(18)] (19) Failure or refusal to properly guard against contagious, infectious or
159 communicable diseases or the spread thereof; maintaining an unsanitary office or performing
160 professional services under unsanitary conditions; or failure to report the existence of an
161 unsanitary condition in the office of a physician or in any health care facility to the board, in
162 writing, within thirty days after the discovery thereof;
- 163 [(19)] (20) Any candidate for licensure or person licensed to practice as a physical
164 therapist, paying or offering to pay a referral fee or, notwithstanding section 334.010 to the
165 contrary, practicing or offering to practice professional physical therapy independent of the
166 prescription and direction of a person licensed and registered as a physician and surgeon pursuant
167 to this chapter, as a dentist pursuant to chapter 332, as a podiatrist pursuant to chapter 330, as
168 an advanced practice registered nurse under chapter 335, or any licensed and registered
169 physician, dentist, podiatrist, or advanced practice registered nurse practicing in another
170 jurisdiction, whose license is in good standing;

171 [(20)] (21) Any candidate for licensure or person licensed to practice as a physical
172 therapist, treating or attempting to treat ailments or other health conditions of human beings other
173 than by professional physical therapy and as authorized by sections 334.500 to 334.620;

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

186 [(22)] (23) A pattern of personal use or consumption of any controlled substance unless
187 it is prescribed, dispensed or administered by another physician who is authorized by law to do
188 so;

189 [(23)] (24) **Habitual intoxication or dependence on alcohol, evidence of which may
190 include more than one alcohol-related enforcement contact as defined by section 302.525;**

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

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

197 [(24)] (27) For a physician to operate, conduct, manage, or establish an abortion facility,
198 or for a physician to perform an abortion in an abortion facility, if such facility comes under the
199 definition of an ambulatory surgical center pursuant to sections 197.200 to 197.240, and such
200 facility has failed to obtain or renew a license as an ambulatory surgical center;

201 [(25)] (25) Being unable to practice as a physician and surgeon or with a specialty with
202 reasonable skill and safety to patients by reasons of medical or osteopathic incompetency, or
203 because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or as a result of any
204 mental or physical condition. The following shall apply to this subdivision:

205 (a) In enforcing this subdivision the board shall, after a hearing by the board, upon a
206 finding of probable cause, require a physician to submit to a reexamination for the purpose of

207 establishing his or her competency to practice as a physician or surgeon or with a specialty
208 conducted in accordance with rules adopted for this purpose by the board, including rules to
209 allow the examination of the pattern and practice of such physician's or surgeon's professional
210 conduct, or to submit to a mental or physical examination or combination thereof by at least three
211 physicians, one selected by the physician compelled to take the examination, one selected by the
212 board, and one selected by the two physicians so selected who are graduates of a professional
213 school approved and accredited as reputable by the association which has approved and
214 accredited as reputable the professional school from which the licentiate graduated. However,
215 if the physician is a graduate of a medical school not accredited by the American Medical
216 Association or American Osteopathic Association, then each party shall choose any physician
217 who is a graduate of a medical school accredited by the American Medical Association or the
218 American Osteopathic Association;

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

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

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

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

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

244 **(28) Violating any professional trust or confidence.**

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

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

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

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

267 7. In any investigation, hearing or other proceeding to determine a licensee's or
268 applicant's fitness to practice, any record relating to any patient of the licensee or applicant shall
269 be discoverable by the board and admissible into evidence, regardless of any statutory or
270 common law privilege which such licensee, applicant, record custodian or patient might
271 otherwise invoke. In addition, no such licensee, applicant, or record custodian may withhold
272 records or testimony bearing upon a licensee's or applicant's fitness to practice on the ground of
273 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
2 or authority, permit or license issued pursuant to this chapter may present a clear and present
3 danger to the public health and safety, the executive secretary or director shall direct that the

4 information be brought to the board in the form of sworn testimony or affidavits during a
5 meeting of the board.

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

8 (1) The licensee's acts, conduct or condition may have violated subsection 2 of section
9 334.100; and

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

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

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

19 3. (1) The order of suspension or restriction:

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

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

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

24 (2) The board or the administrative hearing commission shall serve the licensee, in
25 person or by certified mail, with a copy of the order of suspension or restriction and all sworn
26 testimony or affidavits presented to the board, a copy of the complaint and the request for
27 expedited hearing, and a notice of the place of and the date upon which the preliminary hearing
28 will be held.

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

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

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

36 4. The board shall file a complaint in the administrative hearing commission with a
37 request for expedited preliminary hearing and shall certify the order of suspension or restriction
38 and all sworn testimony or affidavits presented to the board. Immediately upon receipt of a
39 complaint filed pursuant to this section, the administrative hearing commission shall set the place

40 and date of the expedited preliminary hearing which shall be conducted as soon as possible, but
41 not later than five days after the date of service upon the licensee. The administrative hearing
42 commission shall grant a licensee's request for a continuance of the preliminary hearing;
43 however, the board's order shall remain in full force and effect until the preliminary hearing,
44 which shall be held not later than forty-five days after service of the documents required in
45 subdivision (2) of subsection 3.

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

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

58 7. Upon receipt of a request for full hearing, the administrative hearing commission shall
59 set a date for hearing and notify the parties in writing of the time and place of the hearing. If a
60 request for full hearing is timely filed, the preliminary order of the administrative hearing
61 commission shall remain in effect until the administrative hearing commission enters an order
62 terminating, modifying, or dismissing its preliminary order or until the board issues an order of
63 discipline following its consideration of the decision of the administrative hearing commission
64 pursuant to section 621.110 and subsection 3 of section 334.100.

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

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

73 10. The burden of proving the elements listed in subsection 2 of this section shall be
74 upon the state board of registration for the healing arts.] **The board may, 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 or significant other, regardless of whether the patient consented
79 to the contact;

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

83 (3) Possession of a controlled substance in violation of chapter 195 or any other
84 state or federal drug law, rule, or regulation;

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

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

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

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

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

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

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

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

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

106 3. The emergency suspension or restriction shall be effective upon service pursuant
107 to section 536.067 to the licensee of:

108 (1) The order of emergency suspension or restriction;

109 (2) A statement of the basis of the emergency suspension or restriction.

110 **4. (1) The suspension or restriction may be appealed to the circuit court of the**
111 **county of residence of the licensee or if the licensee is not a resident of Missouri, to the**
112 **circuit court of Cole County.**

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

115 **(3) The circuit court shall hear the appeal de novo and may modify or stay the**
116 **emergency suspension or restriction.**

117 **(4) If the circuit court determines to vacate or modify the emergency suspension or**
118 **restriction pursuant to this section, the court shall issue its decision vacating or modifying**
119 **the suspension or restriction no later than five days after the appeal is filed.**

120 **5. (1) Unless the circuit court vacates the order, the board shall hold a hearing on**
121 **the causes pled for discipline within ninety days of the effective date of the suspension**
122 **issued pursuant to subsection 2 of this section.**

123 **(2) The board shall grant a continuance on request of the petitioner; except that,**
124 **the emergency suspension or restriction shall remain in effect unless otherwise ordered by**
125 **a court under subsection 4 of this section.**

126 **(3) The board shall determine whether cause for discipline exists and, if so, may**
127 **impose any discipline otherwise authorized by state law.**

128 **(4) The board shall issue a final order within thirty days of hearing the case.**

129 **(5) The emergency suspension or restriction shall be terminated as of the date of**
130 **the final order of the board.**

131 **6. Any action under subsections 1 to 7 of this section shall be in addition to and not**
132 **in lieu of any penalty otherwise in the board's power to impose and may be brought**
133 **concurrently with other actions.**

134 **7. Unless it conflicts with provisions of subsections 1 to 7 of this section, chapter 536**
135 **shall govern the hearings held under subsections 1 to 7 of this section.**

136 **8. If the court vacates the emergency suspension or in its final order the board**
137 **rescinds the emergency suspension, the board shall remove all reference to such emergency**
138 **suspension from its public records. Records relating to the suspension shall be maintained**
139 **in the board files. The board or licensee may use such records in the course of any**
140 **litigation to which they are both parties. Additionally, such records may be released upon**
141 **a specific, written request of the licensee.**

142 **9. (1) The board may initiate a hearing before the board for discipline of any**
143 **licensee's license or certificate upon receipt of:**

144 **(a) Certified court records of a finding of guilt or plea of guilty or nolo contendere**
145 **in a criminal prosecution under the laws of any state or the United States for any offense**

146 **involving the qualifications, functions, or duties of any profession licensed or regulated**
147 **under this chapter; for any offense involving fraud, dishonesty, or an act of violence; or**
148 **for any offense involving moral turpitude, whether or not sentence is imposed;**

149 **(b) Evidence of final discipline by any medical service provider, hospital, clinic, or**
150 **agency against the licensee's license, certification, or privileges to practice, if the discipline**
151 **was in any way related to unprofessional conduct, incompetence, malpractice, or any**
152 **violation of any provisions of this chapter;**

153 **(c) Evidence of failure to pay fees as required by rule or provide a current address**
154 **to the board;**

155 **(d) Evidence of final discipline against the licensee's license, certification, or**
156 **registration to practice issued by any other state, the United States and its territories, or**
157 **any other country;**

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

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

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

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

168 **(4) The board's decision regarding discipline of a license shall be subject to judicial**
169 **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.

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

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

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

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

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

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

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

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

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

20 **(3) In a home health program as defined in section 197.400;**

21 **(4) In accordance with a collaborative practice agreement as defined in section
22 334.104:**

23 **(5) In conjunction with a physician assistant licensed pursuant to section 334.738;**

24 **(6) In consultation with another physician who has an ongoing physician-patient
25 relationship with the patient, and who has agreed to supervise the patient's treatment,
26 including use of any prescribed medications; or**

27 **(7) In on-call or cross-coverage situations.**

334.715. 1. The board may refuse to **issue or renew any** license [any applicant or may
2 suspend, revoke, or refuse to renew the license of any licensee for any one or any combination
3 of the causes provided in section 334.100, or if the applicant or licensee] **required under**

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

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

26 (1) Violated or conspired to violate any provision of sections 334.700 to 334.725 or any
27 provision of any rule promulgated pursuant to sections 334.700 to 334.725; or

28 (2) Has been found guilty of unethical conduct as defined in the ethical standards of the
29 National Athletic Trainers Association or the National Athletic Trainers Association Board of
30 Certification, or its successor agency, as adopted and published by the committee and the board
31 and filed with the secretary of state; or

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

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

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

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

48 **(2) Suspend the person's license, certificate, or permit; 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. Upon motion stating facts constituting a meritorious**
40 **defense and for good cause shown, a default decision may be set aside. The motion shall**
41 **be made within a reasonable time, not to exceed thirty days after entry of the default**
42 **decision. "Good cause" includes a mistake or conduct that is not intentionally or recklessly**
43 **designed to impede the administrative process.**

536.067. In any contested case:

2 (1) The agency shall promptly mail a notice of institution of the case to all necessary
3 parties, if any, and to all persons designated by the moving party and to any other persons to
4 whom the agency may determine that notice should be given. The agency or its clerk or secretary

5 shall keep a permanent record of the persons to whom such notice was sent and of the addresses
6 to which sent and the time when sent. Where a contested case would affect the rights, privileges
7 or duties of a large number of persons whose interests are sufficiently similar that they may be
8 considered as a class, notice may in a proper case be given to a reasonable number thereof as
9 representatives of such class. In any case where the name or address of any proper or designated
10 party or person is not known to the agency, and where notice by publication is permitted by law,
11 then notice by publication may be given in accordance with any rule or regulation of the agency
12 or if there is no such rule or regulation, then, in a proper case, the agency may by a special order
13 fix the time and manner of such publication[.] ;

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

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

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

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

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

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

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

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

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

34 (b) The time and place of hearing;

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

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

536.070. In any contested case:

- 2 (1) Oral evidence shall be taken only on oath or affirmation[.] ;
- 3 (2) Each party shall have the right to call and examine witnesses, to introduce exhibits,
4 to cross-examine opposing witnesses on any matter relevant to the issues even though that matter
5 was not the subject of the direct examination, to impeach any witness regardless of which party
6 first called him **or her** to testify, and to rebut the evidence against him[.] **or her**;
- 7 (3) A party who does not testify in his **or her** own behalf may be called and examined
8 as if under cross-examination[.] ;
- 9 (4) Each agency shall cause all proceedings in hearings before it to be suitably recorded
10 and preserved. A copy of the transcript of such a proceeding shall be made available to any
11 interested person upon the payment of a fee which shall in no case exceed the reasonable cost
12 of preparation and supply[.] ;
- 13 (5) Records and documents of the agency which are to be considered in the case shall
14 be offered in evidence so as to become a part of the record, the same as any other evidence, but
15 the records and documents may be considered as a part of the record by reference thereto when
16 so offered[.] ;
- 17 (6) Agencies shall take official notice of all matters of which the courts take judicial
18 notice. They may also take official notice of technical or scientific facts, not judicially
19 cognizable, within their competence, if they notify the parties, either during a hearing or in
20 writing before a hearing, or before findings are made after hearing, of the facts of which they
21 propose to take such notice and give the parties reasonable opportunity to contest such facts or
22 otherwise show that it would not be proper for the agency to take such notice of them[.] ;

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

27 (8) Any evidence received without objection which has probative value shall be
28 considered by the agency along with the other evidence in the case. The rules of privilege shall
29 be effective to the same extent that they are now or may hereafter be in civil actions. Irrelevant
30 and unduly repetitious evidence shall be excluded. **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 or the
33 basis or merits of any disciplinary action taken by any other state or territory shall be
34 excluded when evidence establishing the existence of such guilty finding, plea of guilty or
35 nolo contendere, or disciplinary action has been admitted in the case;**

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

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

53 (11) The results of statistical examinations or studies, or of audits, compilations of
54 figures, or surveys, involving interviews with many persons, or examination of many records,
55 or of long or complicated accounts, or of a large number of figures, or involving the
56 ascertainment of many related facts, shall be admissible as evidence of such results, if it shall
57 appear that such examination, study, audit, compilation of figures, or survey was made by or
58 under the supervision of a witness, who is present at the hearing, who testifies to the accuracy

59 of such results, and who is subject to cross-examination, and if it shall further appear by evidence
60 adduced that the witness making or under whose supervision such examination, study, audit,
61 compilation of figures, or survey was made was basically qualified to make it. All the
62 circumstances relating to the making of such an examination, study, audit, compilation of figures
63 or survey, including the nature and extent of the qualifications of the maker, may be shown to
64 affect the weight of such evidence but such showing shall not affect its admissibility[.] ;

65 (12) Any party or the agency desiring to introduce an affidavit in evidence at a hearing
66 in a contested case may serve on all other parties (including, in a proper case, the agency) copies
67 of such affidavit in the manner hereinafter provided, at any time before the hearing, or at such
68 later time as may be stipulated. Not later than seven days after such service, or at such later time
69 as may be stipulated, any other party (or, in a proper case, the agency) may serve on the party or
70 the agency who served such affidavit an objection to the use of the affidavit or some designated
71 portion or portions thereof on the ground that it is in the form of an affidavit; provided, however,
72 that if such affidavit shall have been served less than eight days before the hearing such objection
73 may be served at any time before the hearing or may be made orally at the hearing. If such
74 objection is so served, the affidavit or the part thereof to which objection was made, may not be
75 used except in ways that would have been permissible in the absence of this subdivision;
76 provided, however, that such objection may be waived by the party or the agency making the
77 same. Failure to serve an objection as aforesaid, based on the ground aforesaid, shall constitute
78 a waiver of all objections to the introduction of such affidavit, or of the parts thereof with respect
79 to which no such objection was so served, on the ground that it is in the form of an affidavit, or
80 that it constitutes or contains hearsay evidence, or that it is not, or contains matters which are not,
81 the best evidence, but any and all other objections may be made at the hearing. Nothing herein
82 contained shall prevent the cross-examination of the affiant if he **or she** is present in obedience
83 to a subpoena or otherwise and if he **or she** is present, he **or she** may be called for
84 cross-examination during the case of the party who introduced the affidavit in evidence. If the
85 affidavit is admissible in part only it shall be admitted as to such part, without the necessity of
86 preparing a new affidavit. The manner of service of such affidavit and of such objection shall
87 be by delivering or mailing copies thereof to the attorneys of record of the parties being served,
88 if any, otherwise, to such parties, and service shall be deemed complete upon mailing; provided,
89 however, that when the parties are so numerous as to make service of copies of the affidavit on
90 all of them unduly onerous, the agency may make an order specifying on what parties service of
91 copies of such affidavit shall be made, and in that case a copy of such affidavit shall be filed with
92 the agency and kept available for inspection and copying. Nothing in this subdivision shall
93 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 findings of fact and conclusions of law in those cases when, under the law, a license issued by any of the following agencies may be revoked or suspended or when the licensee may be placed on probation or when an agency refuses to permit an applicant to be examined upon his or her qualifications or refuses to issue or renew a license of an applicant who has passed an examination for licensure or who possesses the qualifications for licensure without examination:

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

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

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

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

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

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

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

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

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

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

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

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

31 3. In any case initiated under this section, the custodian of the records of an agency may 32 prepare a sworn affidavit stating truthfully pertinent information regarding the license status of 33 the licensee charged in the complaint, including only: the name of the licensee; his **or her** 34 license number; its designated date of expiration; the date of his **or her** original Missouri 35 licensure; the particular profession, practice or privilege licensed; and the status of his **or her** 36 license as current and active or otherwise. This affidavit shall be received as substantial and

37 competent evidence of the facts stated therein notwithstanding any objection as to the form,
38 manner of presentment or admissibility of this evidence, and shall create a rebuttable
39 presumption of the veracity of the statements therein; provided, however, that the procedures
40 specified in section 536.070 shall apply to the introduction of this affidavit in any case where the
41 status of this license constitutes a material issue of fact in the proof of the cause charged in the
42 complaint.

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

Section B. The enactment of sections 195.450 to 195.480 of section A of this act shall
2 become effective January 1, 2012.

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