

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 29
96TH GENERAL ASSEMBLY

0331L.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 197.705, 302.291, 324.043, 334.040, 334.070, 334.090, 334.100, 334.102, 334.103, 334.715, 338.010, 338.140, 338.150, 338.210, 338.220, 338.240, 339.190, 536.063, 536.067, 536.070, 621.045, 621.100, and 621.110, RSMo, and to enact in lieu thereof thirty new sections relating to the licensing of certain professions, with penalty provisions.

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

Section A. Sections 197.705, 302.291, 324.043, 334.040, 334.070, 334.090, 334.100, 334.102, 334.103, 334.715, 338.010, 338.140, 338.150, 338.210, 338.220, 338.240, 339.190, 536.063, 536.067, 536.070, 621.045, 621.100, and 621.110, RSMo, are repealed and thirty new sections enacted in lieu thereof, to be known as sections 197.705, 302.291, 324.013, 324.043, 324.045, 332.425, 334.001, 334.040, 334.070, 334.090, 334.099, 334.100, 334.102, 334.103, 334.108, 334.715, 338.010, 338.140, 338.150, 338.210, 338.220, 338.240, 339.190, 536.063, 536.067, 536.070, 537.033, 621.045, 621.100, and 621.110, to read as follows:

197.705. **1. Except as otherwise provided in subsection 2 of this section**, all hospitals, **ambulatory surgical centers**, and health care facilities, defined in sections 197.020, **197.200**, and [197.305] **197.366**, shall require all personnel providing services in such facilities to wear identification badges while acting within the scope of their employment. The identification badges of all personnel shall prominently display the licensure status of such personnel **and shall include the following:**

(1) A recent photograph of the employee, the employee's first name, the employee's title, and the name of the health care facility or organization;

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.

9 (2) The title of the employee shall be as large as possible in a single line in block
10 type and shall occupy a one-half inch tall strip as close as practicable to the bottom edge
11 of the badge;

12 (3) Titles shall be as follows:

13 (a) A medical doctor as defined in section 334.021 shall have the title "Physician"
14 at the bottom one-half inch margin of the name tag;

15 (b) Any nurse as defined in section 335.016 may have the title "Advanced Practice
16 Registered Nurse", "Certified Nurse Midwife", "Certified Nurse Practitioner", "Certified
17 Registered Nurse Anesthetist", "Licensed Practical Nurse", "Registered Nurse", or
18 "Clinical Nurse Specialist" as applicable for such nurse's level of nursing, licensure, and
19 certification; and

20 (c) All other titles shall be determined by rule by the department of health and
21 senior services.

22

23 Nothing in this section shall prohibit a health care provider from placing the provider's
24 additional specialty or designation after the provider's name on the badge.

25 2. Personnel shall not be required to wear an identification badge while delivering
26 direct care to a consumer if not clinically feasible.

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

36 4. Nothing in this section shall require the immediate replacement of identification
37 badges worn by personnel currently employed on or before August 28, 2011. Such
38 identification badges shall be replaced within a reasonable time after August 28, 2011, such
39 as at a regularly scheduled interval of reissuance; except that, all identification badges
40 worn by personnel of hospitals and health care facilities shall comply with this section
41 within five years from August 28, 2011.

302.291. 1. The director, having good cause to believe that an operator is incompetent
2 or unqualified to retain his or her license, after giving ten days' notice in writing by certified mail
3 directed to such person's present known address, may require the person to submit to an

4 examination as prescribed by the director. Upon conclusion of the examination, the director may
5 allow the person to retain his or her license, may suspend, deny or revoke the person's license,
6 or may issue the person a license subject to restrictions as provided in section 302.301. If an
7 examination indicates a condition that potentially impairs safe driving, the director, in addition
8 to action with respect to the license, may require the person to submit to further periodic
9 examinations. The refusal or neglect of the person to submit to an examination within thirty days
10 after the date of such notice shall be grounds for suspension, denial or revocation of the person's
11 license by the director, an associate circuit or circuit court. Notice of any suspension, denial,
12 revocation or other restriction shall be provided by certified mail. As used in this section, the
13 term "denial" means the act of not licensing a person who is currently suspended, revoked or
14 otherwise not licensed to operate a motor vehicle. Denial may also include the act of
15 withdrawing a previously issued license.

16 2. The examination provided for in subsection 1 of this section may include, but is not
17 limited to, a written test and tests of driving skills, vision, highway sign recognition and, if
18 appropriate, a physical and/or mental examination as provided in section 302.173.

19 3. The director shall have good cause to believe that an operator is incompetent or
20 unqualified to retain such person's license on the basis of, but not limited to, a report by:

21 (1) Any certified peace officer;

22 (2) Any physician, physical therapist or occupational therapist licensed pursuant to
23 chapter 334; any chiropractic physician licensed pursuant to chapter 331; any registered nurse
24 licensed pursuant to chapter 335; any psychologist [or] , social worker **or professional**
25 **counselor** licensed pursuant to chapter 337; any optometrist licensed pursuant to chapter 336;
26 or

27 (3) Any member of the operator's family within three degrees of consanguinity, or the
28 operator's spouse, who has reached the age of eighteen, except that no person may report the
29 same family member pursuant to this section more than one time during a twelve-month period.
30 The report must state that the person reasonably and in good faith believes the driver cannot
31 safely operate a motor vehicle and must be based upon personal observation or physical evidence
32 which shall be described in the report, or the report shall be based upon an investigation by a law
33 enforcement officer. The report shall be a written declaration in the form prescribed by the
34 department of revenue and shall contain the name, address, telephone number, and signature of
35 the person making the report.

36 4. Any physician, physical therapist or occupational therapist licensed pursuant to
37 chapter 334, any chiropractor licensed pursuant to chapter 331, any registered nurse licensed
38 pursuant to chapter 335, any psychologist [or] , social worker **or professional counselor**
39 licensed pursuant to chapter 337, or any optometrist licensed pursuant to chapter 336 may report

40 to the department any patient diagnosed or assessed as having a disorder or condition that may
41 prevent such person from safely operating a motor vehicle. Such report shall state the diagnosis
42 or assessment and whether the condition is permanent or temporary. The existence of a
43 physician-patient relationship shall not prevent the making of a report by such medical
44 professionals.

45 5. Any person who makes a report in good faith pursuant to this section shall be immune
46 from any civil liability that otherwise might result from making the report. Notwithstanding the
47 provisions of chapter 610 to the contrary, all reports made and all medical records reviewed and
48 maintained by the department of revenue pursuant to this section shall be kept confidential
49 except upon order of a court of competent jurisdiction or in a review of the director's action
50 pursuant to section 302.311.

51 6. The department of revenue shall keep records and statistics of reports made and
52 actions taken against driver's licenses pursuant to this section.

53 7. The department of revenue shall, in consultation with the medical advisory board
54 established by section 302.292, develop a standardized form and provide guidelines for the
55 reporting of cases and for the examination of drivers pursuant to this section. The guidelines
56 shall be published and adopted as required for rules and regulations pursuant to chapter 536. The
57 department of revenue shall also adopt rules and regulations as necessary to carry out the other
58 provisions of this section. The director of revenue shall provide health care professionals and
59 law enforcement officers with information about the procedures authorized in this section. The
60 guidelines and regulations implementing this section shall be in compliance with the federal
61 Americans with Disabilities Act of 1990.

62 8. Any person who knowingly violates a confidentiality provision of this section or who
63 knowingly permits or encourages the unauthorized use of a report or reporting person's name in
64 violation of this section shall be guilty of a class A misdemeanor and shall be liable for damages
65 which proximately result.

66 9. Any person who intentionally files a false report pursuant to this section shall be guilty
67 of a class A misdemeanor and shall be liable for damages which proximately result.

68 10. All appeals of license revocations, suspensions, denials and restrictions shall be made
69 as required pursuant to section 302.311 within thirty days after the receipt of the notice of
70 revocation, suspension, denial or restriction.

71 11. Any individual whose condition is temporary in nature as reported pursuant to the
72 provisions of subsection 4 of this section shall have the right to petition the director of the
73 department of revenue for total or partial reinstatement of his or her license. Such request shall
74 be made on a form prescribed by the department of revenue and accompanied by a statement
75 from a health care provider with the same or similar license as the health care provider who made

76 the initial report resulting in the limitation or loss of the driver's license. Such petition shall be
77 decided by the director of the department of revenue within thirty days of receipt of the petition.
78 Such decision by the director is appealable pursuant to subsection 10 of this section.

**324.013. Any board, commission, committee, council, or office within the division
2 of professional registration shall notify any known current employer of a change in a
3 licensee's license or discipline status. Any employer may provide a list of current licensed
4 employees and request in writing to the board, commission, committee, council, or office
5 within the division of professional registration responsible for the licensee's license to be
6 notified upon a change in the licensure status of any such licensed employee. Nothing in
7 this section shall be construed as requiring the board, commission, committee, council, or
8 office within the division of professional registration to determine the current employer of
9 any person whose license is sanctioned under this section.**

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.**

332.425. 1. The dental board may issue a limited teaching license to a dentist
2 **employed as an instructor in an accredited dental school in Missouri. The holder of a**
3 **limited teaching license shall be authorized to practice dentistry, in accordance with section**
4 **332.071, only within the confines of the accredited dental school programs. A limited**
5 **teaching license shall be renewed every two years and shall be subject to the same renewal**

6 requirements contained in section 332.181. A limited teaching license shall be subject to
7 discipline in accordance with section 332.321 and shall be automatically cancelled and
8 nullified if the holder ceases to be employed as an instructor in the accredited dental
9 school.

10 2. To qualify for a limited teaching license, an applicant shall:

11 (1) Be a graduate of and hold a degree from a dental school. An applicant shall not
12 be required to be a graduate of an accredited dental school as defined in section 332.011;

13 (2) Have passed the National Board Examination in accordance with criteria
14 established by the sponsoring body;

15 (3) Have passed a state or regional entry level competency examination approved
16 by the Missouri dental board for licensure within the previous five years;

17 (4) Have passed a written jurisprudence examination given by the board on the
18 Missouri dental laws and rules with a grade of at least eighty percent;

19 (5) Hold current certification in the American Heart Association's Basic Life
20 Support (BLS), Advanced Cardiac Life Support (ACLS), or certification equivalent to BLS
21 or ACLS;

22 (6) Submit to the board a completed application for licensure on forms provided
23 by the board and the applicable license fee; and

24 (7) Submit to the board evidence of spoken written proficiency in the English
25 language.

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. Upon a showing of reasonable cause to believe that a licensee or
2 applicant is unable to practice his or her profession with reasonable skill and safety to the
3 public by reason of medical or osteopathic incompetency, mental or physical incapacity,
4 or due to the excessive use or abuse of alcohol or controlled substances, the following shall
5 apply:**

6 **(1) The board shall require a licensee or applicant to submit to an examination.
7 The board shall maintain a list of facilities approved to perform such examinations. The
8 licensee or applicant may propose a facility not previously approved to the board and the
9 board may accept such facility as an approved facility for such licensee or applicant by a
10 majority vote;**

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

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

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

26 (5) In addition to ordering an examination, the board may, notwithstanding any
27 other law limiting access to medical or other health data, obtain medical data and health
28 records relating to the licensee or applicant without the licensee's or applicant's consent,
29 upon issuance of a subpoena by the board.

30 (6) After receiving the report of the examination ordered in subdivision (1) of this
31 subsection, the board may hold a hearing to determine if by a preponderance of the
32 evidence the licensee or applicant is unable to practice with reasonable skill or safety to the
33 public by reasons of medical or osteopathic incompetency, reason of mental or physical
34 incapacity, or due to the excessive use or abuse of alcohol or controlled substances. If the
35 board finds that the licensee or applicant is unable to practice with reasonable skill or
36 safety to the public by reasons of medical or osteopathic incompetency, reason of mental
37 or physical incapacity, or substance abuse, the board shall, after a hearing, enter an order
38 imposing one or more of the disciplinary measures set forth in subsection 4 of section
39 334.100; and

40 (7) The provisions of chapter 536 for a contested case, except those provisions or
41 amendments which are in conflict with this section, shall apply to and govern the
42 proceedings contained in this subsection and the rights and duties of the parties involved.
43 The person appealing such an action shall be entitled to present evidence under chapter
44 536 relevant to the allegations.

45 2. Failure to submit to the examination when directed shall be cause for the
46 revocation of the license of the licensee or denial of the application. No license may be

47 reinstated or application granted until such time as the examination is completed and
48 delivered to the board or the board withdraws its order.

49 **3. Neither the record of proceedings nor the orders entered by the board shall be**
50 **used against a licensee or applicant in any other proceeding, except for a proceeding in**
51 **which the board or its members are a party.**

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

57 **5. For purposes of this section, "examination" means a skills, multidisciplinary, or**
58 **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",** the failure[, on more than one occasion,] to use that degree of skill
104 and learning ordinarily used under the same or similar circumstances by the member of the
105 applicant's or licensee's profession, **in the treatment of one or more patients whether or not**
106 **actual injury or harm occurs to the patient as a result of any such negligence;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

158 [(19)] (20) Any candidate for licensure or person licensed to practice as a physical
159 therapist, paying or offering to pay a referral fee or, notwithstanding section 334.010 to the
160 contrary, practicing or offering to practice professional physical therapy independent of the
161 prescription and direction of a person licensed and registered as a physician and surgeon pursuant
162 to this chapter, as a dentist pursuant to chapter 332, as a podiatrist pursuant to chapter 330, as
163 an advanced practice registered nurse under chapter 335, or any licensed and registered
164 physician, dentist, podiatrist, or advanced practice registered nurse practicing in another
165 jurisdiction, whose license is in good standing;

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

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

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

184 [(23)] **(24) Habitual intoxication or dependence on alcohol, evidence of which may**
185 **include more than one alcohol-related enforcement contact as defined by section 302.525;**
186 **(25) Failure to comply with a treatment program or an aftercare program entered**
187 **into as part of a board order, settlement agreement or licensee's professional health**
188 **program;**

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

192 [(24)] **(27)** For a physician to operate, conduct, manage, or establish an abortion facility,
193 or for a physician to perform an abortion in an abortion facility, if such facility comes under the
194 definition of an ambulatory surgical center pursuant to sections 197.200 to 197.240, and such
195 facility has failed to obtain or renew a license as an ambulatory surgical center;

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

200 (a) In enforcing this subdivision the board shall, after a hearing by the board, upon a
201 finding of probable cause, require a physician to submit to a reexamination for the purpose of
202 establishing his or her competency to practice as a physician or surgeon or with a specialty
203 conducted in accordance with rules adopted for this purpose by the board, including rules to
204 allow the examination of the pattern and practice of such physician's or surgeon's professional

205 conduct, or to submit to a mental or physical examination or combination thereof by at least three
206 physicians, one selected by the physician compelled to take the examination, one selected by the
207 board, and one selected by the two physicians so selected who are graduates of a professional
208 school approved and accredited as reputable by the association which has approved and
209 accredited as reputable the professional school from which the licentiate graduated. However,
210 if the physician is a graduate of a medical school not accredited by the American Medical
211 Association or American Osteopathic Association, then each party shall choose any physician
212 who is a graduate of a medical school accredited by the American Medical Association or the
213 American Osteopathic Association;

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

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

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

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

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

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

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

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

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

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

262 7. In any investigation, hearing or other proceeding to determine a licensee's or
263 applicant's fitness to practice, any record relating to any patient of the licensee or applicant shall
264 be discoverable by the board and admissible into evidence, regardless of any statutory or
265 common law privilege which such licensee, applicant, record custodian or patient might
266 otherwise invoke. In addition, no such licensee, applicant, or record custodian may withhold
267 records or testimony bearing upon a licensee's or applicant's fitness to practice on the ground of
268 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 determine if probable cause exists on the basis of sworn
94 affidavits or certified court records without notice to the licensee.

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

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

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

99 (3) Copies of any affidavits or certified records the board considered in making its
100 decision; and

101 (4) Notice of the hearing date.

102 4. (1) The suspension or restriction may be appealed to the circuit court of the
103 county of residence of the licensee or if the licensee is not a resident of Missouri, to the
104 circuit court of Cole County.

105 (2) Such appeal shall be filed within thirty days of the effective date of the
106 suspension or restriction.

107 (3) The circuit court may modify or stay the emergency suspension or restriction
108 upon a finding that the board's action:

109 (a) Was unsupported by competent and substantial evidence upon the whole
110 record;

111 (b) Was arbitrary or capricious; or

112 (c) Involved an abuse of discretion.

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

116 **5. (1) Unless the circuit court vacates the order, the board shall hold a hearing on**
117 **the causes pled for discipline within ninety days.**

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

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

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

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

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

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

131 **8. (1) The board may initiate a hearing before the board for discipline of any**
132 **licensee's license or certificate upon receipt of:**

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

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

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

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

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

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

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

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

157 **(4) The board's decision regarding discipline of a license shall be subject to judicial**
158 **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 shall not apply to treatment**
17 **provided in a hospital as defined in section 197.020, in a hospice program as defined in**
18 **section 197.250, in accordance with a collaborative practice agreement as defined in section**
19 **334.104, in conjunction with a licensed physician assistant, or in consultation with another**
20 **physician who has an ongoing professional relationship with the patient, and who has**
21 **agreed to supervise the patient's treatment, including use of any prescribed medications,**
22 **and 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.**

338.010. 1. The "practice of pharmacy" means the interpretation, implementation, and
2 evaluation of medical prescription orders, including **any legend drugs under 21 U.S.C. Section**
3 **353**; receipt, transmission, or handling of such orders or facilitating the dispensing of such
4 orders; the designing, initiating, implementing, and monitoring of a medication therapeutic plan
5 as defined by the prescription order so long as the prescription order is specific to each patient
6 for care by a pharmacist; the compounding, dispensing, labeling, and administration of drugs and
7 devices pursuant to medical prescription orders and administration of viral influenza, pneumonia,
8 shingles and meningitis vaccines by written protocol authorized by a physician for persons
9 twelve years of age or older as authorized by rule or the administration of pneumonia, shingles,
10 and meningitis vaccines by written protocol authorized by a physician for a specific patient as
11 authorized by rule; the participation in drug selection according to state law and participation in
12 drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance
13 of proper records thereof; consultation with patients and other health care practitioners, **and**
14 **veterinarians and their clients about legend drugs**, about the safe and effective use of drugs
15 and devices; and the offering or performing of those acts, services, operations, or transactions
16 necessary in the conduct, operation, management and control of a pharmacy. No person shall
17 engage in the practice of pharmacy unless he is licensed under the provisions of this chapter.
18 This chapter shall not be construed to prohibit the use of auxiliary personnel under the direct
19 supervision of a pharmacist from assisting the pharmacist in any of his **or her** duties. This
20 assistance in no way is intended to relieve the pharmacist from his **or her** responsibilities for
21 compliance with this chapter and he **or she** will be responsible for the actions of the auxiliary
22 personnel acting in his **or her** assistance. This chapter shall also not be construed to prohibit or
23 interfere with any legally registered practitioner of medicine, dentistry, **or** podiatry, or veterinary
24 medicine **only for use in animals**, or the practice of optometry in accordance with and as
25 provided in sections 195.070 and 336.220 in the compounding, **administering, prescribing,** or
26 dispensing of his **or her** own prescriptions.

27 2. Any pharmacist who accepts a prescription order for a medication therapeutic plan
28 shall have a written protocol from the physician who refers the patient for medication therapy
29 services. The written protocol and the prescription order for a medication therapeutic plan shall
30 come from the physician only, and shall not come from a nurse engaged in a collaborative
31 practice arrangement under section 334.104, or from a physician assistant engaged in a
32 supervision agreement under section 334.735.

33 3. Nothing in this section shall be construed as to prevent any person, firm or corporation
34 from owning a pharmacy regulated by sections 338.210 to 338.315, provided that a licensed
35 pharmacist is in charge of such pharmacy.

36 4. Nothing in this section shall be construed to apply to or interfere with the sale of
37 nonprescription drugs and the ordinary household remedies and such drugs or medicines as are
38 normally sold by those engaged in the sale of general merchandise.

39 5. No health carrier as defined in chapter 376 shall require any physician with which they
40 contract to enter into a written protocol with a pharmacist for medication therapeutic services.

41 6. This section shall not be construed to allow a pharmacist to diagnose or independently
42 prescribe pharmaceuticals.

43 7. The state board of registration for the healing arts, under section 334.125, and the state
44 board of pharmacy, under section 338.140, shall jointly promulgate rules regulating the use of
45 protocols for prescription orders for medication therapy services and administration of viral
46 influenza vaccines. Such rules shall require protocols to include provisions allowing for timely
47 communication between the pharmacist and the referring physician, and any other patient
48 protection provisions deemed appropriate by both boards. In order to take effect, such rules shall
49 be approved by a majority vote of a quorum of each board. Neither board shall separately
50 promulgate rules regulating the use of protocols for prescription orders for medication therapy
51 services and administration of viral influenza vaccines. Any rule or portion of a rule, as that term
52 is defined in section 536.010, that is created under the authority delegated in this section shall
53 become effective only if it complies with and is subject to all of the provisions of chapter 536
54 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of
55 the powers vested with the general assembly pursuant to chapter 536 to review, to delay the
56 effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
57 grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be
58 invalid and void.

59 8. The state board of pharmacy may grant a certificate of medication therapeutic plan
60 authority to a licensed pharmacist who submits proof of successful completion of a
61 board-approved course of academic clinical study beyond a bachelor of science in pharmacy,
62 including but not limited to clinical assessment skills, from a nationally accredited college or
63 university, or a certification of equivalence issued by a nationally recognized professional
64 organization and approved by the board of pharmacy.

65 9. Any pharmacist who has received a certificate of medication therapeutic plan authority
66 may engage in the designing, initiating, implementing, and monitoring of a medication
67 therapeutic plan as defined by a prescription order from a physician that is specific to each
68 patient for care by a pharmacist.

69 10. Nothing in this section shall be construed to allow a pharmacist to make a therapeutic
70 substitution of a pharmaceutical prescribed by a physician unless authorized by the written
71 protocol or the physician's prescription order.

338.140. 1. The board of pharmacy shall have a common seal, and shall have power to
2 adopt such rules and bylaws not inconsistent with law as may be necessary for the regulation of
3 its proceedings and for the discharge of the duties imposed pursuant to sections 338.010 to
4 338.198, and shall have power to employ an attorney to conduct prosecutions or to assist in the
5 conduct of prosecutions pursuant to sections 338.010 to 338.198.

6 2. The board shall keep a record of its proceedings.

7 3. The board of pharmacy shall make annually to the governor and, upon written request,
8 to persons licensed pursuant to the provisions of this chapter a written report of its proceedings.

9 4. The board of pharmacy shall appoint an advisory committee composed of [five] **six**
10 members, one of whom shall be a representative of pharmacy but who shall not be a member of
11 the pharmacy board, three of whom shall be representatives of wholesale drug distributors as
12 defined in section 338.330, [and] one of whom shall be a representative of drug manufacturers,
13 **and one of whom shall be a licensed veterinarian recommended to the board of pharmacy**
14 **by the board of veterinary medicine.** The committee shall review and make recommendations
15 to the board on the merit of all rules and regulations dealing with pharmacy distributors,
16 wholesale drug distributors [and] , drug manufacturers, **and veterinary legend drugs** which are
17 proposed by the board.

18 5. A majority of the board shall constitute a quorum for the transaction of business.

19 6. Notwithstanding any other provisions of law to the contrary, the board may issue
20 letters of reprimand, censure or warning to any holder of a license or registration required
21 pursuant to this chapter for any violations that could result in disciplinary action as defined in
22 section 338.055.

338.150. Any person authorized by the board of pharmacy is hereby given the right of
2 entry and inspection upon all open premises purporting or appearing to be drug or chemical
3 stores, apothecary shops, pharmacies or places of business for exposing for sale, or the
4 dispensing or selling of drugs, pharmaceuticals, medicines, chemicals or poisons or for the
5 compounding of physicians' **or veterinarians'** prescriptions.

338.210. 1. Pharmacy refers to any location where the practice of pharmacy occurs or
2 such activities are offered or provided by a pharmacist or another acting under the supervision
3 and authority of a pharmacist, including every premises or other place:

4 (1) Where the practice of pharmacy is offered or conducted;

5 (2) Where drugs, chemicals, medicines, **any legend drugs under 21 U.S.C. Section**
6 **353**, prescriptions, or poisons are compounded, prepared, dispensed or sold or offered for sale
7 at retail;

8 (3) Where the words "pharmacist", "apothecary", "drugstore", "drugs", and any other
9 symbols, words or phrases of similar meaning or understanding are used in any form to advertise
10 retail products or services;

11 (4) Where patient records or other information is maintained for the purpose of engaging
12 or offering to engage in the practice of pharmacy or to comply with any relevant laws regulating
13 the acquisition, possession, handling, transfer, sale or destruction of drugs, chemicals, medicines,
14 prescriptions or poisons.

15 2. All activity or conduct involving the practice of pharmacy as it relates to an
16 identifiable prescription or drug order shall occur at the pharmacy location where such
17 identifiable prescription or drug order is first presented by the patient or the patient's authorized
18 agent for preparation or dispensing, unless otherwise expressly authorized by the board.

19 3. The requirements set forth in subsection 2 of this section shall not be construed to bar
20 the complete transfer of an identifiable prescription or drug order pursuant to a verbal request
21 by or the written consent of the patient or the patient's authorized agent.

22 4. The board is hereby authorized to enact rules waiving the requirements of subsection
23 2 of this section and establishing such terms and conditions as it deems necessary, whereby any
24 activities related to the preparation, dispensing or recording of an identifiable prescription or
25 drug order may be shared between separately licensed facilities.

26 5. If a violation of this chapter or other relevant law occurs in connection with or adjunct
27 to the preparation or dispensing of a prescription or drug order, any permit holder or
28 pharmacist-in-charge at any facility participating in the preparation, dispensing, or distribution
29 of a prescription or drug order may be deemed liable for such violation.

30 6. Nothing in this section shall be construed to supersede the provisions of section
31 197.100.

338.220. 1. It shall be unlawful for any person, copartnership, association, corporation
2 or any other business entity to open, establish, operate, or maintain any pharmacy as defined by
3 statute without first obtaining a permit or license to do so from the Missouri board of pharmacy.
4 A permit shall not be required for an individual licensed pharmacist to perform nondispensing
5 activities outside of a pharmacy, as provided by the rules of the board. A permit shall not be
6 required for an individual licensed pharmacist to administer drugs, vaccines, and biologicals by
7 protocol, as permitted by law, outside of a pharmacy. The following classes of pharmacy permits
8 or licenses are hereby established:

9 (1) Class A: Community/ambulatory;

- 10 (2) Class B: Hospital outpatient pharmacy;
11 (3) Class C: Long-term care;
12 (4) Class D: Nonsterile compounding;
13 (5) Class E: Radio pharmaceutical;
14 (6) Class F: Renal dialysis;
15 (7) Class G: Medical gas;
16 (8) Class H: Sterile product compounding;
17 (9) Class I: Consultant services;
18 (10) Class J: Shared service;
19 (11) Class K: Internet;
20 (12) Class L: Veterinary.

21 2. Application for such permit or license shall be made upon a form furnished to the
22 applicant; shall contain a statement that it is made under oath or affirmation and that its
23 representations are true and correct to the best knowledge and belief of the person signing same,
24 subject to the penalties of making a false affidavit or declaration; and shall be accompanied by
25 a permit or license fee. The permit or license issued shall be renewable upon payment of a
26 renewal fee. Separate applications shall be made and separate permits or licenses required for
27 each pharmacy opened, established, operated, or maintained by the same owner.

28 3. All permits, licenses or renewal fees collected pursuant to the provisions of sections
29 338.210 to 338.370 shall be deposited in the state treasury to the credit of the Missouri board of
30 pharmacy fund, to be used by the Missouri board of pharmacy in the enforcement of the
31 provisions of sections 338.210 to 338.370, when appropriated for that purpose by the general
32 assembly.

33 4. Class L: veterinary permit shall not be construed to prohibit or interfere with any
34 legally registered practitioner of veterinary medicine in the compounding, **administering,**
35 **prescribing,** or dispensing of their own prescriptions, **medicine, drug, or pharmaceutical**
36 **product to be used for animals.**

37 5. [Notwithstanding any other law to the contrary] **Except for any legend drugs under**
38 **21 U.S.C. Section 353,** the provisions of this section shall not apply to the sale, dispensing, or
39 filling of a pharmaceutical product or drug used for treating animals.

338.240. 1. Upon evidence satisfactory to the said Missouri board of pharmacy:

- 2 (1) That the pharmacy for which a permit, or renewal thereof, is sought, will be
3 conducted in full compliance with sections 338.210 to 338.300, with existing laws, and with the
4 rules and regulations as established hereunder by said board;
5 (2) That the equipment and facilities of such pharmacy are such that it can be operated
6 in a manner not to endanger the public health or safety;

7 (3) That such pharmacy is equipped with proper pharmaceutical and sanitary appliances
8 and kept in a clean, sanitary and orderly manner;

9 (4) That the management of said pharmacy is under the supervision of either a registered
10 pharmacist, or an owner or employee of the owner, who has at his **or her** place of business a
11 registered pharmacist employed for the purpose of compounding physician's **or veterinarian's**
12 prescriptions in the event any such prescriptions are compounded or sold;

13 (5) That said pharmacy is operated in compliance with the rules and regulations legally
14 prescribed with respect thereto by the Missouri board of pharmacy, a permit or renewal thereof
15 shall be issued to such persons as the said board of pharmacy shall deem qualified to conduct
16 such pharmacy.

17 **2. In lieu of a registered pharmacist as required by subdivision (4) of subsection 1**
18 **of this section, a pharmacy permit holder that only holds a class L veterinary permit and**
19 **no other pharmacy permit, may designate a supervising registered pharmacist who shall**
20 **be responsible for reviewing the activities and records of the class L pharmacy permit**
21 **holder as established by the board by rule. The supervising registered pharmacist shall**
22 **not be required to be physically present on site during the business operations of a class**
23 **L pharmacy permit holder identified in subdivision (5) of subsection 1 of this section when**
24 **noncontrolled legend drugs under 21 U.S.C. Section 353 are being dispensed for use in**
25 **animals, but shall be specifically present on site when any noncontrolled drugs for use in**
26 **animals are being compounded.**

339.190. 1. A real estate licensee shall be immune from liability for statements made
2 by engineers, land surveyors, geologists, environmental hazard experts, wood- destroying
3 inspection and control experts, termite inspectors, mortgage brokers, home inspectors, or other
4 home inspection experts unless:

5 (1) The statement was made by a person employed by the licensee or the broker with
6 whom the licensee is associated;

7 (2) The person making the statement was selected by and engaged by the licensee. **For**
8 **purposes of this section, the ordering of a report or inspection alone shall not constitute**
9 **selecting or engaging a person;** or

10 (3) The licensee knew prior to closing that the statement was false or the licensee acted
11 in reckless disregard as to whether the statement was true or false.

12 2. A real estate licensee shall not be the subject of any action and no action shall be
13 instituted against a real estate licensee for any information contained in a seller's disclosure for
14 residential, commercial, industrial, farm, or vacant real estate furnished to a buyer, unless the real
15 estate licensee is a signatory to such or the licensee knew prior to closing that the statement was
16 false or the licensee acted in reckless disregard as to whether the statement was true or false.

17 3. A real estate licensee acting as a courier of documents referenced in this section shall
18 not be considered to be making the statements contained in such documents.

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.

**537.033. 1. As used in this section, unless the context clearly indicates otherwise,
2 the following words shall mean:**

3 (1) **"Design professional", an architect, landscape architect, professional land
4 surveyor or professional engineer, licensed under the provisions of chapter 327 or any
5 corporation authorized to practice architecture, landscape architecture, land surveying,
6 or engineering under section 327.401 while acting within his or her scope of practice;**

7 (2) **"Peer review process", a process through which design professionals evaluate,
8 maintain, or monitor the quality and utilization of architectural, landscape architectural,
9 land surveying or engineering services, prepare internal lessons-learned, or exercise any
10 combination of such responsibilities.**

11 **2. A peer review process may be performed by the following, each of whom shall
12 be deemed a peer reviewer:**

13 (1) **An individual design professional or committee of design professionals
14 appointed by a state, county or local society of design professionals;**

15 (2) **An individual design professional or committee of design professionals
16 appointed by the partners, shareholders, or employed design professionals of a partnership
17 or of a corporation authorized under section 327.401;**

18 (3) **Any individual design professional or committee of design professionals
19 appointed by the partners, board of directors, chief executive officer, or the quality control
20 director of a partnership or a corporation authorized under section 327.401 to practice
21 architecture, landscape architecture, land surveying, or engineering, or by the owner of a
22 sole proprietorship engaged in one or more of such professions.**

23 **3. Each peer reviewer, member of a peer review committee, and each person,**
24 **corporate director, partner, quality control director, or other design professional who**
25 **testifies before, or provides information to, acts upon the recommendation of, or otherwise**
26 **participates in the operation of, such a process shall be immune from civil liability for such**
27 **acts so long as the acts are performed in good faith, without malice, and are reasonably**
28 **related to the scope of inquiry of the peer review process.**

29 **4. Except as otherwise provided in this section, the interviews, memoranda,**
30 **proceedings, findings, deliberations, reports, and minutes of the peer review process, or the**
31 **existence of the same, concerning the professional services provided to a client or member**
32 **of the public are privileged and shall not be subject to discovery, subpoena, or other means**
33 **of legal compulsion for their release to any person or entity or be admissible into evidence**
34 **in any judicial or administrative action for failure to provide appropriate architectural,**
35 **landscape architectural, land surveying, or engineering services. Except as otherwise**
36 **provided in this section, no person who was in attendance at or participated in any peer**
37 **review process or proceedings shall be permitted or required to disclose any information**
38 **acquired in connection with or in the course of such proceeding, or to disclose any opinion,**
39 **recommendation, or evaluation of the peer reviewer or any member of a peer review**
40 **committee; provided, however, that information otherwise discoverable or admissible from**
41 **original sources shall not be construed as immune from discovery or use in any proceeding**
42 **merely because it was presented during proceedings before a peer reviewer, nor shall a**
43 **member, employee, or agent involved in any such process, or other person appearing**
44 **before a peer reviewer be prevented from testifying as to matters within his or her personal**
45 **knowledge and in accordance with the other provisions of this section; except that, such**
46 **witness shall not be questioned about testimony or other proceedings before any peer**
47 **review process or peer reviewer or about opinions formed as a result of such process. The**
48 **disclosure of any interview, memoranda, proceedings, findings, deliberations, reports, or**
49 **minutes to any person or entity, including but not limited to governmental agencies,**
50 **professional accrediting agencies, or other design professionals, whether proper or**
51 **improper, shall not waive or have any effect upon its confidentiality, nondiscoverability,**
52 **or nonadmissibility.**

53 **5. Nothing in this section shall limit authority otherwise provided by law of the**
54 **Missouri board for architects, professional engineers, professional land surveyors and**
55 **landscape architects to obtain information by subpoena or other authorized process from**
56 **a peer reviewer or to require disclosure of otherwise confidential information developed**
57 **outside of the peer review process which relate to matters and investigations within the**
58 **jurisdiction of such licensing board.**

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.