

FIRST REGULAR SESSION

HOUSE BILL NO. 37

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE POLLOCK (123).

0121H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 167.181, 174.335, 210.003, 210.110, 210.115, 334.099, and 334.100, RSMo, and to enact in lieu thereof nine new sections relating to immunizations.

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

Section A. Sections 167.181, 174.335, 210.003, 210.110, 210.115, 334.099, and 334.100, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 167.181, 167.186, 174.335, 210.003, 210.110, 210.115, 334.099, 334.100, and 334.291, to read as follows:

167.181. 1. The department of health and senior services, after consultation with the department of elementary and secondary education, shall promulgate rules and regulations governing the immunization against poliomyelitis, rubella, rubeola, mumps, tetanus, pertussis, diphtheria, and hepatitis B, to be required of children attending public~~[- private, parochial, or parish]~~ schools. Such rules and regulations ~~[may modify the]~~ **shall not require** immunizations **against diseases** that are ~~[required of children]~~ **not listed** in this subsection. The immunizations required and the manner and frequency of their administration shall conform to recognized standards of medical practice. The department of health and senior services shall supervise and secure the enforcement of the required immunization program.

2. It is unlawful for any student to attend **public** school unless he **or she** has been immunized as required under the rules and regulations of the department of health and senior services~~[-]~~ and can provide satisfactory evidence of such immunization, **or unless he or she can provide satisfactory evidence of acquired immunity**; except that if he **or she** produces satisfactory evidence of having begun the process of immunization, he **or she** may continue to attend school as long as the immunization process is being accomplished in the prescribed

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 manner. It is unlawful for any parent or guardian to refuse or neglect to have his **or her** child
17 immunized as required by this section, unless the child is properly exempted.

18 3. This section shall not apply to any child if one parent or guardian objects in writing
19 to his **or her** school administrator against the immunization of the child, because of religious **or**
20 **conscientious** beliefs or medical contraindications. In cases where any such objection is for
21 reasons of medical contraindications, a statement from a duly licensed physician must also be
22 provided to the school administrator. **The written religious or conscientious belief objection**
23 **may be a written statement of the parent or guardian as long as the written statement**
24 **includes the child's name and the parent's or guardian's name and signature. Each public**
25 **school shall accept the written religious or conscientious belief objection as described under**
26 **this subsection or the religious or conscientious belief exemption form as described under**
27 **section 167.186 and shall not require any additional actions including, but not limited to,**
28 **submitting additional forms, making an appointment with the local health department,**
29 **obtaining an official stamp or seal, watching a video, or attending a lecture.**

30 4. Each school superintendent~~[, whether]~~ of a public~~[, private, parochial or parish]~~
31 school~~;~~ shall cause to be prepared a record showing the immunization status of every child
32 enrolled in or attending a school under his **or her** jurisdiction. The name of any parent or
33 guardian who neglects or refuses to permit a nonexempted child to be immunized against
34 diseases as required by the rules and regulations promulgated pursuant to the provisions of this
35 section shall be reported by the school superintendent to the department of health and senior
36 services.

37 5. The immunization required may be done by any duly licensed physician or by
38 someone under his **or her** direction. If the parent or guardian is unable to pay, the child shall be
39 immunized at public expense by a physician or nurse at or from the county, district, city public
40 health center or a school nurse or by a nurse or physician in the private office or clinic of the
41 child's personal physician with the costs of immunization paid through the state Medicaid
42 program, private insurance or in a manner to be determined by the department of health and
43 senior services subject to state and federal appropriations, and after consultation with the school
44 superintendent and the advisory committee established in section 192.630. When a child
45 receives his or her immunization, the treating physician may also administer the appropriate
46 fluoride treatment to the child's teeth.

47 6. Funds for the administration of this section and for the purchase of vaccines for
48 children of families unable to afford them shall be appropriated to the department of health and
49 senior services from general revenue or from federal funds if available.

50 7. No rule or portion of a rule promulgated under the authority of this section shall
51 become effective unless it has been promulgated pursuant to the provisions of chapter 536. Any

52 rule or portion of a rule, as that term is defined in section 536.010, that is created under the
53 authority delegated in this section shall become effective only if it complies with and is subject
54 to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and
55 chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant
56 to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are
57 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed
58 or adopted after August 28, 2001, shall be invalid and void.

**167.186. 1. The department of health and senior services shall develop an
2 informational brochure outlining the process on how to obtain a medical contraindication
3 exemption or religious or conscientious belief exemption from the immunizations required
4 under sections 167.181, 174.335, and 210.003.**

**5 2. The brochure shall include the religious or conscientious belief exemption form,
6 the medical contraindication exemption form, and a statement that a student without
7 immunizations cannot, on the basis of not having immunizations, be prohibited from
8 attending a public school, a public institution of higher education, or a public day care
9 center, preschool, or nursery school if the student has an exemption described under
10 section 167.181, 174.335, or 210.003.**

**11 3. The department shall make the brochure available on its website. Every public
12 school, public institution of higher education, and public day care center, preschool, and
13 nursery school shall provide notice of the brochure to each student or, if the student is
14 under eighteen years of age, to the student's parent or guardian.**

**15 4. The department shall develop and make a religious or conscientious belief
16 exemption form available on its website. The religious or conscientious belief exemption
17 form shall not require any information other than the date; the student's name; the
18 student's signature or, if the student is a minor, the name and signature of the parent or
19 guardian; and a list of the immunizations to which the student or the student's parent or
20 guardian objects.**

174.335. 1. Beginning with the 2004-05 school year and for each school year thereafter,
2 every public institution of higher education in this state shall require all students who reside in
3 on-campus housing to have received the meningococcal vaccine not more than five years prior
4 to enrollment and in accordance with the latest recommendations of the Advisory Committee on
5 Immunization Practices of the Centers for Disease Control and Prevention, unless a signed
6 statement of medical **exemption** or religious or **conscientious belief** exemption is on file with
7 the institution's administration. A student shall be exempted from the immunization requirement
8 of this section upon signed certification by a physician licensed under chapter 334 indicating that
9 either the immunization would seriously endanger the student's health or life or the student has

10 documentation of the disease or laboratory evidence of immunity to the disease. A student shall
11 be exempted from the immunization requirement of this section if he or she objects in writing
12 to the institution's administration that immunization violates his or her religious or
13 **conscientious** beliefs. **The written religious or conscientious belief objection may be a**
14 **written statement of the student as long as the written statement includes the student's**
15 **name and signature. Each public institution of higher education shall accept the written**
16 **religious or conscientious belief objection as described under this subsection or the**
17 **religious or conscientious belief exemption form as described under section 167.186 and**
18 **shall not require any additional actions including, but not limited to, submitting additional**
19 **forms, making an appointment with the local health department, obtaining an official**
20 **stamp or seal, watching a video, or attending a lecture.**

21 2. Each public university or college in this state shall maintain records on the
22 meningococcal vaccination status of every student residing in on-campus housing at the
23 university or college.

24 3. Nothing in this section shall be construed as requiring any institution of higher
25 education to provide or pay for vaccinations against meningococcal disease.

26 4. For purposes of this section, the term "on-campus housing" shall **only** include~~[-but~~
27 ~~not be limited to, any fraternity or sorority residence, regardless of whether such residence is~~
28 ~~privately owned, on or near the campus of a public institution of higher education]~~ **publicly**
29 **owned property.**

210.003. 1. No child shall be permitted to enroll in or attend any public~~[-private or~~
2 ~~parochial]~~ day care center, preschool, or nursery school ~~[earing for ten or more children]~~ unless
3 such child has been adequately immunized against ~~[vaccine-preventable childhood illnesses~~
4 ~~specified by the department of health and senior services in accordance with recommendations~~
5 ~~of the Centers for Disease Control and Prevention Advisory Committee on Immunization~~
6 ~~Practices (ACIP). The parent or guardian of such child shall provide satisfactory evidence of the~~
7 ~~required immunizations]~~ **poliomyelitis, rubella, rubeola, mumps, tetanus, pertussis,**
8 **diphtheria, and hepatitis B.**

9 2. A child who has not completed all immunizations **required under this section that**
10 **are** appropriate for his or her age may enroll~~[;]~~ if:

11 (1) Satisfactory evidence is produced that such child has begun the process of
12 immunization. The child may continue to attend as long as the immunization process is being
13 accomplished according to the ~~[ACIP/Missouri]~~ **schedule recommended by the** department of
14 health and senior services ~~[recommended schedule];~~

15 (2) The parent or guardian has signed and placed on file with the day care administrator
16 a statement of exemption which may be either of the following:

17 (a) A medical exemption, by which a child shall be exempted from the requirements of
18 this section upon certification by a licensed physician that such immunization would seriously
19 endanger the child's health or life; or

20 (b) A ~~parent or guardian~~ **religious or conscientious belief** exemption, by which a child
21 shall be exempted from the requirements of this section if one parent or guardian files a written
22 objection to immunization with the day care administrator; or

23 (3) The child is homeless or in the custody of the children's division and cannot provide
24 satisfactory evidence of the required immunizations. Satisfactory evidence shall be presented
25 within thirty days of enrollment and shall confirm either that the child has completed all
26 immunizations **required under this section that are** appropriate for his or her age or has begun
27 the process of immunization. If the child has begun the process of immunization, he or she may
28 continue to attend as long as the process is being accomplished according to the schedule
29 recommended by the department of health and senior services.

30

31 ~~[Exemptions shall be accepted by the day care administrator when the necessary information as~~
32 ~~determined by the department of health and senior services is filed with the day care~~
33 ~~administrator by the parent or guardian. Exemption forms shall be provided by the department~~
34 ~~of health and senior services]~~ **The written religious or conscientious belief objection may be**
35 **a written statement of the parent or guardian as long as the written statement includes the**
36 **child's name and the parent's or guardian's name and signature. Each public day care**
37 **center, preschool, and nursery school shall accept the written religious or conscientious**
38 **belief objection as described under this subsection or the religious or conscientious belief**
39 **exemption form as described under section 167.186 and shall not require any additional**
40 **actions including, but not limited to, submitting additional forms, making an appointment**
41 **with the local health department, obtaining an official stamp or seal, watching a video, or**
42 **attending a lecture.**

43 3. In the event of an outbreak or suspected outbreak of a vaccine-preventable disease
44 within a particular facility, the administrator of the facility shall follow the control measures
45 instituted by the local health authority or the department of health and senior services or both the
46 local health authority and the department of health and senior services, as established in Rule 19
47 CSR 20-20.040, "Measures for the Control of Communicable, Environmental and Occupational
48 Diseases".

49 4. The administrator of each public~~, private or parochial~~ day care center, preschool, or
50 nursery school shall cause to be prepared a record of immunization of every child enrolled in or
51 attending a facility under his or her jurisdiction. An annual summary report shall be made by
52 January fifteenth showing the immunization status of each child enrolled, using forms provided

53 for this purpose by the department of health and senior services. The immunization records shall
54 be available for review by department of health and senior services personnel upon request.

55 5. For purposes of this section, "satisfactory evidence of immunization" means a
56 statement, certificate or record from a physician or other recognized health facility or personnel,
57 stating that the required immunizations have been given to the child and verifying the type of
58 vaccine and the month, day and year of administration.

59 6. Nothing in this section shall preclude any political subdivision from adopting more
60 stringent rules regarding the immunization of preschool children.

61 7. All public~~[-private, and parochial]~~ day care centers, preschools, and nursery schools
62 shall notify the parent or guardian of each child at the time of initial enrollment in or attendance
63 at the facility that the parent or guardian may request notice of whether there are children
64 currently enrolled in or attending the facility for whom an immunization exemption has been
65 filed. Beginning December 1, 2015, all public~~[-private, and parochial]~~ day care centers,
66 preschools, and nursery schools shall notify the parent or guardian of each child currently
67 enrolled in or attending the facility that the parent or guardian may request notice of whether
68 there are children currently enrolled in or attending the facility for whom an immunization
69 exemption has been filed. Any public~~[-private, or parochial]~~ day care center, preschool, or
70 nursery school shall notify the parent or guardian of a child enrolled in or attending the facility,
71 upon request, of whether there are children currently enrolled in or attending the facility for
72 whom an immunization exemption has been filed.

210.110. As used in sections 210.109 to 210.165, and sections 210.180 to 210.183, the
2 following terms mean:

3 (1) "Abuse", any physical injury, sexual abuse, or emotional abuse inflicted on a child
4 other than by accidental means by those responsible for the child's care, custody, and control,
5 except that discipline including spanking, administered in a reasonable manner, **or a decision**
6 **by those responsible for the child's care, custody, and control to not immunize a child** shall
7 not be construed to be abuse. Victims of abuse shall also include any victims of sex trafficking
8 or severe forms of trafficking as those terms are defined in 22 U.S.C. [78] Section 7102[(9)-(10)]
9 , **as amended;**

10 (2) "Assessment and treatment services for children", an approach to be developed by
11 the children's division which will recognize and treat the specific needs of at-risk and abused or
12 neglected children. The developmental and medical assessment may be a broad physical,
13 developmental, and mental health screening to be completed within thirty days of a child's entry
14 into custody and in accordance with the periodicity schedule set forth by the American Academy
15 of Pediatrics thereafter as long as the child remains in care. Screenings may be offered at a
16 centralized location and include, at a minimum, the following:

17 (a) Complete physical to be performed by a pediatrician familiar with the effects of abuse
18 and neglect on young children;

19 (b) Developmental, behavioral, and emotional screening in addition to early periodic
20 screening, diagnosis, and treatment services, including a core set of standardized and recognized
21 instruments as well as interviews with the child and appropriate caregivers. The screening
22 battery may be performed by a licensed mental health professional familiar with the effects of
23 abuse and neglect on young children, who will then serve as the liaison between all service
24 providers in ensuring that needed services are provided. Such treatment services may include
25 in-home services, out-of-home placement, intensive twenty-four-hour treatment services, family
26 counseling, parenting training and other best practices.

27

28 Children whose screenings indicate an area of concern may complete a comprehensive, in-depth
29 health, psychodiagnostic, or developmental assessment within sixty days of entry into custody;

30 (3) "Central registry", a registry of persons where the division has found probable cause
31 to believe prior to August 28, 2004, or by a preponderance of the evidence after August 28, 2004,
32 or a court has substantiated through court adjudication that the individual has committed child
33 abuse or neglect or the person has pled guilty or has been found guilty of a crime pursuant to
34 section 565.020, 565.021, 565.023, 565.024, 565.050, 566.030, 566.060, or 567.050 if the victim
35 is a child less than eighteen years of age, or any other crime pursuant to chapter 566 if the victim
36 is a child less than eighteen years of age and the perpetrator is twenty-one years of age or older,
37 a crime under section 568.020, 568.030, 568.045, 568.050, 568.060, 568.080, 568.090, 573.023,
38 573.025, 573.035, 573.037, 573.040, 573.200, or 573.205, or an attempt to commit any such
39 crimes. Any persons placed on the registry prior to August 28, 2004, shall remain on the registry
40 for the duration of time required by section 210.152;

41 (4) "Child", any person, regardless of physical or mental condition, under eighteen years
42 of age;

43 (5) "Children's services providers and agencies", any public, quasi-public, or private
44 entity with the appropriate and relevant training and expertise in delivering services to children
45 and their families as determined by the children's division, and capable of providing direct
46 services and other family services for children in the custody of the children's division or any
47 such entities or agencies that are receiving state moneys for such services;

48 (6) "Director", the director of the Missouri children's division within the department of
49 social services;

50 (7) "Division", the Missouri children's division within the department of social services;

51 (8) "Family assessment and services", an approach to be developed by the children's
52 division which will provide for a prompt assessment of a child who has been reported to the

53 division as a victim of abuse or neglect by a person responsible for that child's care, custody or
54 control and of that child's family, including risk of abuse and neglect and, if necessary, the
55 provision of community-based services to reduce the risk and support the family;

56 (9) "Family support team meeting" or "team meeting", a meeting convened by the
57 division or children's services provider in behalf of the family and/or child for the purpose of
58 determining service and treatment needs, determining the need for placement and developing a
59 plan for reunification or other permanency options, determining the appropriate placement of the
60 child, evaluating case progress, and establishing and revising the case plan;

61 (10) "Investigation", the collection of physical and verbal evidence to determine if a
62 child has been abused or neglected;

63 (11) "Jail or detention center personnel", employees and volunteers working in any
64 premises or institution where incarceration, evaluation, care, treatment or rehabilitation is
65 provided to persons who are being held under custody of the law;

66 (12) "Neglect", failure to provide, by those responsible for the care, custody, and control
67 of the child, the proper or necessary support, education as required by law, nutrition or medical,
68 surgical, or any other care necessary for the child's well-being. Victims of neglect shall also
69 include any victims of sex trafficking or severe forms of trafficking as those terms are defined
70 in 22 U.S.C. [78] Section 7102[(9)-(10)], **as amended. "Neglect" shall not include a decision**
71 **by those responsible for the child's custody, care, and control to not immunize a child;**

72 (13) "Preponderance of the evidence", that degree of evidence that is of greater weight
73 or more convincing than the evidence which is offered in opposition to it or evidence which as
74 a whole shows the fact to be proved to be more probable than not;

75 (14) "Probable cause", available facts when viewed in the light of surrounding
76 circumstances which would cause a reasonable person to believe a child was abused or
77 neglected;

78 (15) "Report", the communication of an allegation of child abuse or neglect to the
79 division pursuant to section 210.115;

80 (16) "Those responsible for the care, custody, and control of the child", includes, but is
81 not limited to:

82 (a) The parents or legal guardians of a child;

83 (b) Other members of the child's household;

84 (c) Those exercising supervision over a child for any part of a twenty-four-hour day;

85 (d) Any adult person who has access to the child based on relationship to the parents of
86 the child or members of the child's household or the family;

87 (e) Any person who takes control of the child by deception, force, or coercion; or

88 (f) School personnel, contractors, and volunteers, if the relationship with the child was
89 established through the school or through school-related activities, even if the alleged abuse or
90 neglect occurred outside of school hours or off school grounds.

210.115. 1. When any physician, medical examiner, coroner, dentist, chiropractor,
2 optometrist, podiatrist, resident, intern, nurse, hospital or clinic personnel that are engaged in the
3 examination, care, treatment or research of persons, and any other health practitioner,
4 psychologist, mental health professional, social worker, day care center worker or other
5 child-care worker, juvenile officer, probation or parole officer, jail or detention center personnel,
6 teacher, principal or other school official, minister as provided by section 352.400, peace officer
7 or law enforcement official, volunteer or personnel of a community service program that offers
8 support services for families in crisis to assist in the delegation of any powers regarding the care
9 and custody of a child by a properly executed power of attorney pursuant to sections 475.600 to
10 475.604, or other person with responsibility for the care of children has reasonable cause to
11 suspect that a child has been or may be subjected to abuse or neglect or observes a child being
12 subjected to conditions or circumstances which would reasonably result in abuse or neglect, that
13 person shall immediately report to the division in accordance with the provisions of sections
14 210.109 to 210.183. No internal investigation shall be initiated until such a report has been
15 made. As used in this section, the term "abuse" is not limited to abuse inflicted by a person
16 responsible for the child's care, custody and control as specified in section 210.110, but shall also
17 include abuse inflicted by any other person.

18 2. If two or more members of a medical institution who are required to report jointly
19 have knowledge of a known or suspected instance of child abuse or neglect, a single report may
20 be made by a designated member of that medical team. Any member who has knowledge that
21 the member designated to report has failed to do so shall thereafter immediately make the report.
22 Nothing in this section, however, is meant to preclude any person from reporting abuse or
23 neglect.

24 3. The reporting requirements under this section are individual, and no supervisor or
25 administrator may impede or inhibit any reporting under this section. No person making a report
26 under this section shall be subject to any sanction, including any adverse employment action, for
27 making such report. Every employer shall ensure that any employee required to report pursuant
28 to subsection 1 of this section has immediate and unrestricted access to communications
29 technology necessary to make an immediate report and is temporarily relieved of other work
30 duties for such time as is required to make any report required under subsection 1 of this section.

31 4. Notwithstanding any other provision of sections 210.109 to 210.183, any child ~~who~~
32 ~~does~~ not ~~receive~~ **receiving** specified medical treatment by reason of the legitimate practice of
33 the religious belief of the child's parents, guardian, or others legally responsible for the child;

34 ~~for that reason alone,] or not receiving immunizations by reason of the religious or~~
35 **conscientious belief of the child's parents, guardian, or others legally responsible for the**
36 **child** shall not be ~~[found to be]~~ **a contributing factor for a finding of** an abused or neglected
37 child, and such parents, guardian or other persons legally responsible for the child shall not be
38 entered into the central registry. However, the division may accept reports concerning such a
39 child and may subsequently investigate or conduct a family assessment as a result of that report;
40 **except that, a child not receiving immunizations shall not be a contributing factor in the**
41 **division's decision to accept reports concerning such a child or to investigate or conduct**
42 **a family assessment.** Such an exception shall not limit the administrative or judicial authority
43 of the state to ensure that medical services are provided to the child when the child's health
44 requires it.

45 5. In addition to those persons and officials required to report actual or suspected abuse
46 or neglect, any other person may report in accordance with sections 210.109 to 210.183 if such
47 person has reasonable cause to suspect that a child has been or may be subjected to abuse or
48 neglect or observes a child being subjected to conditions or circumstances which would
49 reasonably result in abuse or neglect.

50 6. Any person or official required to report pursuant to this section, including employees
51 of the division, who has probable cause to suspect that a child who is or may be under the age
52 of eighteen, who is eligible to receive a certificate of live birth, has died shall report that fact to
53 the appropriate medical examiner or coroner. If, upon review of the circumstances and medical
54 information, the medical examiner or coroner determines that the child died of natural causes
55 while under medical care for an established natural disease, the coroner, medical examiner or
56 physician shall notify the division of the child's death and that the child's attending physician
57 shall be signing the death certificate. In all other cases, the medical examiner or coroner shall
58 accept the report for investigation, shall immediately notify the division of the child's death as
59 required in section 58.452 and shall report the findings to the child fatality review panel
60 established pursuant to section 210.192.

61 7. Any person or individual required to report may also report the suspicion of abuse or
62 neglect to any law enforcement agency or juvenile office. Such report shall not, however, take
63 the place of reporting to the division.

64 8. If an individual required to report suspected instances of abuse or neglect pursuant to
65 this section has reason to believe that the victim of such abuse or neglect is a resident of another
66 state or was injured as a result of an act which occurred in another state, the person required to
67 report such abuse or neglect may, in lieu of reporting to the Missouri children's division, make
68 such a report to the child protection agency of the other state with the authority to receive such

69 reports pursuant to the laws of such other state. If such agency accepts the report, no report is
70 required to be made, but may be made, to the children's division.

334.099. 1. (1) The board may initiate a contested hearing to determine if reasonable
2 cause exists to believe that a licensee or applicant is unable to practice his or her profession with
3 reasonable skill and safety to the public by reason of medical or osteopathic incompetency,
4 mental or physical incapacity, or due to the excessive use or abuse of alcohol or controlled
5 substances. **The board shall not initiate a contested hearing on the basis of, or in retaliation**
6 **for, any licensee or applicant providing an immunization exemption statement or**
7 **certification under section 167.181, 174.335, or 210.003.**

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

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

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

28 (5) For purposes of this subsection, every licensee or applicant is deemed to have
29 consented to an examination upon a showing of reasonable cause. The applicant or licensee shall
30 be deemed to have waived all objections to the admissibility of testimony by the provider of the
31 examination and to the admissibility of examination reports on the grounds that the provider of
32 the examination's testimony or the examination is confidential or privileged.

33 (6) Written notice of the order for an examination shall be sent to the applicant or
34 licensee by registered mail, addressed to the licensee or applicant at the licensee's or applicant's

35 last known address on file with the board, or shall be personally served on the applicant or
36 licensee. The order shall state the cause for the examination, how to obtain information about
37 approved facilities, and a time limit for obtaining the examination. The licensee or applicant
38 shall cause a report of the examination to be sent to the board.

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

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

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

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

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

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

68 5. The board shall promulgate rules and regulations to carry out the provisions of this
69 section.

70 6. For purposes of this section, "examination" means a skills, multidisciplinary, or
71 substance abuse evaluation.

 334.100. 1. **(1)** The board may refuse to issue or renew any certificate of registration
2 or authority, permit, or license required pursuant to this chapter for one or any combination of
3 causes stated in subsection 2 of this section. The board shall notify the applicant in writing of
4 the reasons for the refusal and shall advise the applicant of the applicant's right to file a
5 complaint with the administrative hearing commission as provided by chapter 621. As an
6 alternative to a refusal to issue or renew any certificate, registration, or authority, the board may,
7 at its discretion, issue a license which is subject to probation, restriction, or limitation to an
8 applicant for licensure for any one or any combination of causes stated in subsection 2 of this
9 section. The board's order of probation, limitation, or restriction shall contain a statement of the
10 discipline imposed, the basis therefor, the date such action shall become effective, and a
11 statement that the applicant has thirty days to request in writing a hearing before the
12 administrative hearing commission. If the board issues a probationary, limited, or restricted
13 license to an applicant for licensure, either party may file a written petition with the
14 administrative hearing commission within thirty days of the effective date of the probationary,
15 limited, or restricted license seeking review of the board's determination. If no written request
16 for a hearing is received by the administrative hearing commission within the thirty-day period,
17 the right to seek review of the board's decision shall be considered as waived.

18 **(2) The board shall not refuse to issue or renew any certificate of registration or**
19 **authority, permit, or license required by this chapter on the basis of, or in retaliation for,**
20 **providing an immunization exemption statement or certification under section 167.181,**
21 **174.335, or 210.003. The board shall not issue a license that is subject to probation,**
22 **restriction, or limitation on the basis of, or in retaliation for, providing an immunization**
23 **exemption statement or certification under section 167.181, 174.335, or 210.003.**

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

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

32 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty
33 or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,
34 for any offense reasonably related to the qualifications, functions, or duties of any profession

35 licensed or regulated pursuant to this chapter, for any offense involving fraud, dishonesty, or an
36 act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

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

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

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

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

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

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

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

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

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

65 (h) Signing a blank prescription form; or dispensing, prescribing, administering, or
66 otherwise distributing any drug, controlled substance, or other treatment without sufficient
67 examination including failing to establish a valid physician-patient relationship pursuant to
68 section 334.108, or for other than medically accepted therapeutic or experimental or investigative
69 purposes duly authorized by a state or federal agency, or not in the course of professional

70 practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical
71 infirmity, or disease, except as authorized in section 334.104;

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

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

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

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

80 (m) Failure of any applicant or licensee to cooperate with the board during any
81 investigation;

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

84 (o) Failure to timely pay license renewal fees specified in this chapter;

85 (p) Violating a probation agreement, order, or other settlement agreement with this board
86 or any other licensing agency;

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

88 (r) Advertising by an applicant or licensee which is false or misleading, or which violates
89 any rule of the board, or which claims without substantiation the positive cure of any disease, or
90 professional superiority to or greater skill than that possessed by any other physician. An
91 applicant or licensee shall also be in violation of this provision if the applicant or licensee has
92 a financial interest in any organization, corporation, or association which issues or conducts such
93 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 failure,
99 on more than one occasion, to use that degree of skill and learning ordinarily used under the
100 same or similar circumstances by the member of the applicant's or licensee's profession;

101 (6) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling
102 any person to violate, any provision of this chapter or chapter 324, or of any lawful rule or
103 regulation adopted pursuant to this chapter or chapter 324;

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

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

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

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

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

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

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

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

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

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

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

143 (18) Knowingly making or causing to be made a false statement or misrepresentation of
144 a material fact, with intent to defraud, for payment pursuant to the provisions of chapter 208 or
145 chapter 630 or for payment from Title XVIII or Title XIX of the Social Security Act;

146 (19) Failure or refusal to properly guard against contagious, infectious, or communicable
147 diseases or the spread thereof; maintaining an unsanitary office or performing professional
148 services under unsanitary conditions; or failure to report the existence of an unsanitary condition
149 in the office of a physician or in any health care facility to the board, in writing, within thirty
150 days after the discovery thereof;

151 (20) Any candidate for licensure or person licensed to practice as a physical therapist,
152 paying or offering to pay a referral fee or, notwithstanding section 334.010 to the contrary,
153 practicing or offering to practice professional physical therapy independent of the prescription
154 and direction of a person licensed and registered as a physician and surgeon pursuant to this
155 chapter, as a dentist pursuant to chapter 332, as a podiatrist pursuant to chapter 330, as an
156 advanced practice registered nurse under chapter 335, or any licensed and registered physician,
157 dentist, podiatrist, or advanced practice registered nurse practicing in another jurisdiction, whose
158 license is in good standing;

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

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

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

176 (24) Habitual intoxication or dependence on alcohol, evidence of which may include
177 more than one alcohol-related enforcement contact as defined by section 302.525;

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

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

183 (27) For a physician to operate, conduct, manage, or establish an abortion facility, or for
184 a physician to perform an abortion in an abortion facility, if such facility comes under the
185 definition of an ambulatory surgical center pursuant to sections 197.200 to 197.240, and such
186 facility has failed to obtain or renew a license as an ambulatory surgical center.

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

189 4. After the filing of such complaint before the administrative hearing commission, the
190 proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding
191 by the administrative hearing commission that the grounds, provided in subsection 2 of this
192 section, for disciplinary action are met, the board may, singly or in combination, warn, censure,
193 or place the person named in the complaint on probation on such terms and conditions as the
194 board deems appropriate for a period not to exceed ten years, or may suspend the person's
195 license, certificate, or permit for a period not to exceed three years, or restrict or limit the
196 person's license, certificate, or permit for an indefinite period of time, or revoke the person's
197 license, certificate, or permit, or administer a public or private reprimand, or deny the person's
198 application for a license, or permanently withhold issuance of a license or require the person to
199 submit to the care, counseling, or treatment of physicians designated by the board at the expense
200 of the individual to be examined, or require the person to attend such continuing educational
201 courses and pass such examinations as the board may direct.

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

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

209 7. In any investigation, hearing, or other proceeding to determine a licensee's or
210 applicant's fitness to practice, any record relating to any patient of the licensee or applicant shall
211 be discoverable by the board and admissible into evidence, regardless of any statutory or

212 common law privilege which such licensee, applicant, record custodian, or patient might
213 otherwise invoke. In addition, no such licensee, applicant, or record custodian may withhold
214 records or testimony bearing upon a licensee's or applicant's fitness to practice on the ground of
215 privilege between such licensee, applicant, or record custodian and a patient.

**334.291. No health care provider shall deny life-saving treatment or life-saving
2 surgery including, but not limited to, dialysis, organ transplants, or extracorporeal
3 membrane oxygenation to a child under eighteen years of age on the basis of the child not
4 being immunized if the child has completed an immunization exemption statement or form
5 under section 167.181, 174.335, or 210.003.**

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