

FIRST REGULAR SESSION

# SENATE BILL NO. 370

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

Read 1st time February 25, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1535S.011

## AN ACT

To repeal section 335.066, RSMo, and to enact in lieu thereof one new section relating to the discipline of a nursing license.

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

Section A. Section 335.066, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 335.066, to read as follows:

335.066. 1. The board may refuse to issue or reinstate any certificate of  
2 registration or authority, permit or license required pursuant to chapter 335 for  
3 one or any combination of causes stated in subsection 2 of this section or the  
4 board may, as a condition to issuing or reinstating any such permit or license,  
5 require a person to submit himself or herself for identification, intervention,  
6 treatment, or rehabilitation by the impaired nurse program as provided in section  
7 335.067. The board shall notify the applicant in writing of the reasons for the  
8 refusal and shall advise the applicant of his or her right to file a complaint with  
9 the administrative hearing commission as provided by chapter 621.

10 2. The board may cause a complaint to be filed with the administrative  
11 hearing commission as provided by chapter 621 against any holder of any  
12 certificate of registration or authority, permit or license required by sections  
13 335.011 to 335.096 or any person who has failed to renew or has surrendered his  
14 or her certificate of registration or authority, permit or license for any one or any  
15 combination of the following causes:

16 (1) Use or unlawful possession of any controlled substance, as defined in  
17 chapter 195, or alcoholic beverage to an extent that such use impairs a person's  
18 ability to perform the work of any profession licensed or regulated by sections  
19 335.011 to 335.096;

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

20 (2) The person has been finally adjudicated and found guilty, or entered  
21 a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws  
22 of any state or of the United States, for any offense reasonably related to the  
23 qualifications, functions or duties of any profession licensed or regulated  
24 pursuant to sections 335.011 to 335.096, for any offense an essential element of  
25 which is fraud, dishonesty or an act of violence, or for any offense involving moral  
26 turpitude, whether or not sentence is imposed;

27 (3) Use of fraud, deception, misrepresentation or bribery in securing any  
28 certificate of registration or authority, permit or license issued pursuant to  
29 sections 335.011 to 335.096 or in obtaining permission to take any examination  
30 given or required pursuant to sections 335.011 to 335.096;

31 (4) Obtaining or attempting to obtain any fee, charge, tuition or other  
32 compensation by fraud, deception or misrepresentation;

33 (5) Incompetency, [misconduct,] gross negligence, [fraud,  
34 misrepresentation or dishonesty] **or repeated negligence** in the performance  
35 of the functions or duties of any profession licensed or regulated by [sections  
36 335.011 to 335.096] **chapter 335. For the purposes of this subdivision,**  
37 **"repeated negligence" means the failure, on more than one occasion, to**  
38 **use that degree of skill and learning ordinarily used under the same or**  
39 **similar circumstances by the member of the applicant's or licensee's**  
40 **profession;**

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

45 (a) **Willfully and continually overcharging or overtreating**  
46 **patients; or charging for visits which did not occur unless the services**  
47 **were contracted for in advance, or for services which were not**  
48 **rendered or documented in the patient's records;**

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

52 (c) **Willfully and continually performing inappropriate or**  
53 **unnecessary treatment, diagnostic tests, or nursing services;**

54 (d) **Delegating professional responsibilities to a person who is**  
55 **not qualified by training, skill, competency, age, experience, or**

56 **licensure to perform such responsibilities;**

57 **(e) Performing nursing services beyond the authorized scope of**  
58 **practice for which the individual is licensed in this state;**

59 **(f) Exercising influence within a nurse-patient relationship for**  
60 **purposes of engaging a patient in sexual activity;**

61 **(g) Being listed on any state or federal sexual offender registry;**

62 **(h) Failure of any applicant or licensee to cooperate with the**  
63 **board during any investigation;**

64 **(i) Failure to comply with any subpoena or subpoena duces**  
65 **tecum from the board or an order of the board;**

66 **(j) Failure to timely pay license renewal fees specified in this**  
67 **chapter;**

68 **(k) Violating a probation agreement, order, or other settlement**  
69 **agreement with this board or any other licensing agency;**

70 **(l) Failing to inform the board of the nurse's current residence;**

71 **(m) Any other conduct that is unethical or unprofessional**  
72 **involving a minor;**

73 **[(6)] (7) Violation of, or assisting or enabling any person to violate, any**  
74 **provision of sections 335.011 to 335.096, or of any lawful rule or regulation**  
75 **adopted pursuant to sections 335.011 to 335.096;**

76 **[(7)] (8) Impersonation of any person holding a certificate of registration**  
77 **or authority, permit or license or allowing any person to use his or her certificate**  
78 **of registration or authority, permit, license or diploma from any school;**

79 **[(8)] (9) Disciplinary action against the holder of a license or other right**  
80 **to practice any profession regulated by sections 335.011 to 335.096 granted by**  
81 **another state, territory, federal agency or country upon grounds for which**  
82 **revocation or suspension is authorized in this state;**

83 **[(9)] (10) A person is finally adjudged insane or incompetent by a court**  
84 **of competent jurisdiction;**

85 **[(10)] (11) Assisting or enabling any person to practice or offer to**  
86 **practice any profession licensed or regulated by sections 335.011 to 335.096 who**  
87 **is not registered and currently eligible to practice pursuant to sections 335.011**  
88 **to 335.096;**

89 **[(11)] (12) Issuance of a certificate of registration or authority, permit**  
90 **or license based upon a material mistake of fact;**

91 **[(12)] (13) Violation of any professional trust or confidence;**

92            [(13)] **(14)** Use of any advertisement or solicitation which is false,  
93 misleading or deceptive to the general public or persons to whom the  
94 advertisement or solicitation is primarily directed;

95            [(14)] **(15)** Violation of the drug laws or rules and regulations of this  
96 state, any other state or the federal government;

97            [(15)] **(16)** Placement on an employee disqualification list or other related  
98 restriction or finding pertaining to employment within a health-related profession  
99 issued by any state or federal government or agency following final disposition by  
100 such state or federal government or agency;

101           [(16)] **(17)** Failure to successfully complete the impaired nurse program;  
102           **(18) Knowingly making or causing to be made a false statement**  
103 **or misrepresentation of a material fact, with intent to defraud, for**  
104 **payment pursuant to the provisions of chapter 208 or chapter 630, or**  
105 **for payment from Title XVIII or Title XIX of the federal Medicare**  
106 **program;**

107           **(19) Failure or refusal to properly guard against contagious,**  
108 **infectious, or communicable diseases or the spread thereof; maintaining**  
109 **an unsanitary office or performing professional services under**  
110 **unsanitary conditions; or failure to report the existence of an**  
111 **unsanitary condition in the office of a physician or in any health care**  
112 **facility to the board, in writing, within thirty days after the discovery**  
113 **thereof;**

114           **(20) A pattern of personal use or consumption of any controlled**  
115 **substance unless it is prescribed, dispensed, or administered by a**  
116 **provider who is authorized by law to do so;**

117           **(21) Habitual intoxication or dependence on alcohol, evidence of**  
118 **which may include more than one alcohol-related enforcement contact**  
119 **as defined by section 302.525;**

120           **(22) Failure to comply with a treatment program or an aftercare**  
121 **program entered into as part of a board order, settlement agreement,**  
122 **or licensee's professional health program.**

123           3. After the filing of such complaint, the proceedings shall be conducted  
124 in accordance with the provisions of chapter 621. Upon a finding by the  
125 administrative hearing commission that the grounds, provided in subsection 2 of  
126 this section, for disciplinary action are met, the board may, singly or in  
127 combination, censure or place the person named in the complaint on probation on

128 such terms and conditions as the board deems appropriate for a period not to  
129 exceed five years, or may suspend, for a period not to exceed three years, or  
130 revoke the license, certificate, or permit.

131 4. For any hearing before the full board, the board shall cause the notice  
132 of the hearing to be served upon such licensee in person or by certified mail to the  
133 licensee at the licensee's last known address. If service cannot be accomplished  
134 in person or by certified mail, notice by publication as described in subsection 3  
135 of section 506.160 shall be allowed; any representative of the board is authorized  
136 to act as a court or judge would in that section; any employee of the board is  
137 authorized to act as a clerk would in that section.

138 5. An individual whose license has been revoked shall wait one year from  
139 the date of revocation to apply for relicensure. Relicensure shall be at the  
140 discretion of the board after compliance with all the requirements of sections  
141 335.011 to 335.096 relative to the licensing of an applicant for the first time.

142 6. The board may notify the proper licensing authority of any other state  
143 concerning the final disciplinary action determined by the board on a license in  
144 which the person whose license was suspended or revoked was also licensed of the  
145 suspension or revocation.

146 7. Any person, organization, association or corporation who reports or  
147 provides information to the board of nursing pursuant to the provisions of  
148 sections 335.011 to 335.259 and who does so in good faith shall not be subject to  
149 an action for civil damages as a result thereof.

150 8. [If the board concludes that a nurse has committed an act or is  
151 engaging in a course of conduct which would be grounds for disciplinary action  
152 which constitutes a clear and present danger to the public health and safety, the  
153 board may file a complaint before the administrative hearing commission  
154 requesting an expedited hearing and specifying the activities which give rise to  
155 the danger and the nature of the proposed restriction or suspension of the nurse's  
156 license. Within fifteen days after service of the complaint on the nurse, the  
157 administrative hearing commission shall conduct a preliminary hearing to  
158 determine whether the alleged activities of the nurse appear to constitute a clear  
159 and present danger to the public health and safety which justify that the nurse's  
160 license be immediately restricted or suspended. The burden of proving that a  
161 nurse is a clear and present danger to the public health and safety shall be upon  
162 the state board of nursing. The administrative hearing commission shall issue  
163 its decision immediately after the hearing and shall either grant to the board the

164 authority to suspend or restrict the license or dismiss the action.] **The board**  
165 **may apply to the administrative hearing commission for an emergency**  
166 **suspension or restriction of a license for the following causes:**

167 (1) **Engaging in sexual conduct in as defined in section 566.010,**  
168 **with a patient who is not the licensee's spouse, regardless of whether**  
169 **the patient consented;**

170 (2) **Engaging in sexual misconduct with a minor or person the**  
171 **licensee believes to be a minor. "Sexual misconduct" means any conduct**  
172 **of a sexual nature which would be illegal under state or federal law;**

173 (3) **Possession of a controlled substance in violation of chapter**  
174 **195 or any state or federal law, rule, or regulation, excluding record-**  
175 **keeping violations;**

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

177 (5) **The licensee is adjudicated incapacitated or disabled by a**  
178 **court of competent jurisdiction;**

179 (6) **Habitual intoxication or dependence upon alcohol or**  
180 **controlled substances or failure to comply with a treatment or aftercare**  
181 **program entered into pursuant to a board order, settlement agreement,**  
182 **or as part of the licensee's professional health program;**

183 (7) **A report from a board-approved facility or a professional**  
184 **health program stating the licensee is not fit to practice. For purposes**  
185 **of this section, a licensee is deemed to have waived all objections to the**  
186 **admissibility of testimony from the provider of the examination and**  
187 **admissibility of the examination reports. The licensee shall sign all**  
188 **necessary releases for the board to obtain and use the examination**  
189 **during a hearing; or**

190 (8) **Any conduct for which the board may discipline that**  
191 **constitutes a serious danger to the health, safety, or welfare of a**  
192 **patient or the public.**

193 9. **The board shall submit existing affidavits and existing**  
194 **certified court records together with a complaint alleging the facts in**  
195 **support of the board's request for an emergency suspension or**  
196 **restriction to the administrative hearing commission and shall supply**  
197 **the administrative hearing commission with the last home or business**  
198 **addresses on file with the board for the licensee. Within one business**  
199 **day of the filing of the complaint, the administrative hearing**  
200 **commission shall return a service packet to the board. The service**

201 packet shall include the board's complaint and any affidavits or records  
202 the board intends to rely on that have been filed with the  
203 administrative hearing commission. The service packet may contain  
204 other information in the discretion of the administrative hearing  
205 commission. Within twenty-four hours of receiving the packet, the  
206 board shall either personally serve the licensee or leave a copy of the  
207 service packet at all of the licensee's current addresses on file with the  
208 board. Prior to the hearing, the licensee may file affidavits and  
209 certified court records for consideration by the administrative hearing  
210 commission.

211 10. Within five days of the board's filing of the complaint, the  
212 administrative hearing commission shall review the information  
213 submitted by the board and the licensee and shall determine based on  
214 that information if probable cause exists pursuant to subsection 8 of  
215 this section and shall issue its findings of fact and conclusions of law.  
216 If the administrative hearing commission finds that there is probable  
217 cause, the administrative hearing commission shall enter the order  
218 requested by the board. The order shall be effective upon personal  
219 service or by leaving a copy at all of the licensee's current addresses on  
220 file with the board.

221 11. (1) The administrative hearing commission shall hold a  
222 hearing within forty-five days of the board's filing of the complaint to  
223 determine if cause for discipline exists. The administrative hearing  
224 commission may grant a request for a continuance, but shall in any  
225 event hold the hearing within one hundred twenty days of the board's  
226 initial filing. The board shall be granted leave to amend its complaint  
227 if it is more than thirty days prior to the hearing. If less than thirty  
228 days, the board may be granted leave to amend if public safety  
229 requires.

230 (2) If no cause for discipline exists, the administrative hearing  
231 commission shall issue findings of fact, conclusions of law, and an order  
232 terminating the emergency suspension or restriction.

233 (3) If cause for discipline exists, the administrative hearing  
234 commission shall issue findings of fact and conclusions of law and  
235 order the emergency suspension or restriction to remain in full force  
236 and effect pending a disciplinary hearing before the board. The board  
237 shall hold a hearing following the certification of the record by the

238 **administrative hearing commission and may impose any discipline**  
239 **otherwise authorized by state law.**

240 **12. Any action under this section shall be in addition to and not**  
241 **in lieu of any discipline otherwise in the board's power to impose and**  
242 **may be brought concurrently with other actions.**

243 **13. If the administrative hearing commission does not find**  
244 **probable cause and does not grant the emergency suspension or**  
245 **restriction, the board shall remove all reference to such emergency**  
246 **suspension or restriction from its public records. Records relating to**  
247 **the suspension or restriction shall be maintained in the board's**  
248 **files. The board or licensee may use such records in the course of any**  
249 **litigation to which they are both parties. Additionally, such records**  
250 **may be released upon a specific, written request of the licensee.**

251 **[9.] 14. If the administrative hearing commission grants temporary**  
252 **authority to the board to restrict or suspend the nurse's license, such temporary**  
253 **authority of the board shall become final authority if there is no request by the**  
254 **nurse for a full hearing within thirty days of the preliminary hearing. The**  
255 **administrative hearing commission shall, if requested by the nurse named in the**  
256 **complaint, set a date to hold a full hearing under the provisions of chapter 621**  
257 **regarding the activities alleged in the initial complaint filed by the board.**

258 **[10.] 15. If the administrative hearing commission refuses to grant**  
259 **temporary authority to the board or restrict or suspend the nurse's license under**  
260 **subsection 8 of this section, such dismissal shall not bar the board from initiating**  
261 **a subsequent disciplinary action on the same grounds.**

262 **16. (1) The board may initiate a hearing before the board for**  
263 **discipline of any licensee's license or certificate upon receipt of one of**  
264 **the following:**

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

272 **(b) Evidence of final disciplinary action against the licensee's**  
273 **license, certification, or registration issued by any other state, by any**  
274 **other agency or entity of this state, or any other state or the United**



275 States or its territories, or any other country;

276 (c) Evidence of certified court records finding the licensee has  
277 been judged incapacitated or disabled under Missouri law or under the  
278 laws of any other state or of the United States or its territories.

279 (2) The board shall provide the licensee not less than ten days  
280 notice of any hearing held pursuant to chapter 536.

281 (3) Upon a finding that cause exists to discipline a licensee's  
282 license the board may impose any discipline otherwise available.

Unofficial ✓

Bill

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