

FIRST REGULAR SESSION

SENATE BILL NO. 372

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS YECKEL, CLEMENS, CHILDERS AND COLEMAN.

Read 1st time January 28, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1194L.011

AN ACT

To amend chapter 334, RSMo, by adding thereto seventeen new sections relating to the regulation and licensing of the practice of naturopathic medicine, with penalty provisions.

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

Section A. Chapter 334, RSMo, is amended by adding thereto seventeen new sections, to be known as sections 334.1000, 334.1003, 334.1006, 334.1009, 334.1012, 334.1015, 334.1018, 334.1021, 334.1024, 334.1027, 334.1030, 334.1033, 334.1036, 334.1039, 334.1042, 334.1045, and 334.1048, to read as follows:

334.1000. 1. As used in sections 334.1000 to 334.1048 the following terms mean:

(1) "Approved naturopathic college", a college or residential program granting the degree of doctor of naturopathy or doctor of naturopathic medicine that:

(a) Is accredited for training for persons licensed pursuant to chapter 331, RSMo, or sections 334.010 to 334.140, or as graduate medical education for persons licensed pursuant to chapter 331, RSMo, or sections 334.010 to 334.140;

(b) Is accredited by an agency recognized by the federal government or regional agency or which is approved by the board;

(c) Has candidate for accreditation status with the accrediting agency; or

(d) Has been approved by the board after the college or program was investigated and found to meet education standards equivalent to those established by the accrediting agency;

(2) "Board", the state board of registration for the healing arts;

(3) "Department", the department of economic development;

(4) "Diagnose", to examine in any manner another person, parts of a person's

body, or substances, fluids, or materials excreted, taken or removed from a person's body, or produced by a person's body to determine the source, kind, or extent of a disease or other physical condition;

(5) "Natural medicine", includes:

(a) Food, food extracts, and dietary supplements as defined by the Federal Food, Drug and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended;

(b) Plant, animal, mineral, and microbial substances that are not designated as prescription drugs or controlled substances; and

(c) Homeopathic remedies and substances prepared according to the Homeopathic Pharmacopeia of the United States;

(6) "Naturopathic physician" or "naturopath", a person licensed to practice naturopathic medicine pursuant to sections 334.1000 to 334.1048;

(7) "Naturopathic medicine" or "naturopathy", a system of primary health care for the prevention, diagnosis, and care of human health conditions, injuries, and diseases that uses education and natural substances and remedies to support and stimulate the individual's intrinsic self-processes;

(8) "Naturopathic mobilization therapy", manually administering mechanical treatment of body structures or tissues to restore the normal physiological function of the body by normalizing and balancing the musculoskeletal system of the body. The term does not include osseous manipulation;

(9) "Naturopathic physical medicine", the use of the physical agents of air, water, heat, cold, sound, light, and electromagnetic nonionizing radiation and the physical modalities of electrotherapy, biofeedback, diathermy, ultraviolet light, ultrasound, hydrotherapy, naturopathic mobilization therapy, exercise, and other electrical devices as approved by the board. The term does not include the practice of physical therapy, acupuncture, or chiropractic;

(10) "Topical preparations", topical analgesics, anesthetics, antiseptics, scabicides, antifungals, and antibacterials.

2. Any person who is not currently a certified or licensed naturopathic doctor within the meaning of the law to practice naturopathic medicine in any of its departments shall not engage in the practice of naturopathic medicine, cure or attempt to treat the sick and others afflicted with bodily or mental infirmities, or engage in the practice of any aspect of naturopathic medicine in this state except as provided by sections 334.1000 to 334.1048.

3. As used in the laws of this state, the terms "naturopath", "naturopathic physician", "practitioner of naturopathic medicine", "naturopathy", "N.M.D." (Doctor of Naturopathic Medicine), "N.D." (naturopathic doctor), or similar terms shall be

construed to mean naturopathic physicians licensed pursuant to this chapter.

4. The term "naturopathic physician", and the designation "N.D." shall be used in any sign, letterhead, advertisement, solicitation, or other method of addressing the public.

334.1003. Candidates for licensure as naturopathic physicians shall furnish satisfactory evidence of their good moral character and their preliminary qualifications as follows:

- (1) File an application with the department;
- (2) Earned a degree of doctor of naturopathy from an approved naturopathic college;
- (3) Have experience as a naturopathic physician satisfactory to the board and in accordance with the board's regulations;
- (4) Pass the naturopathic physician's licensing exam (NPLEX), or its successor or equivalent examination, as determined by the board;
- (5) Be at least twenty-one years of age;
- (6) Be a United States citizen or an alien lawfully admitted for permanent residence in the United States; and
- (7) Pay all application and examination fees required by the board.

334.1006. 1. There is hereby established an "Advisory Commission for Naturopathic Medicine" for the purpose of advising the state board of registration for the healing arts on the licensing and supervising of all naturopathic physicians. The commission shall consist of six members, including one voting public member, to be appointed by the governor with the advice and consent of the senate. At least four members of the commission shall be licensed naturopaths. Each naturopath member of the commission shall be a citizen of the United States, actively engaged in the practice of naturopathy immediately preceding his or her appointment. One member shall be appointed from an appropriate healing profession, including medicine, as a person licensed pursuant to this chapter. No more than four members shall be affiliated with the same political party. All members shall be appointed for a term of four years. Each member shall receive compensation in an amount set by the commission not to exceed fifty dollars for each day devoted to the duties of the commission, and shall be entitled to reimbursement for the member's expenses necessarily incurred in the discharge of his or her official duties.

2. The commission's initial naturopathic physician members shall be professional members of the Missouri Association of Naturopathic Physicians:

- (1) Be actively practicing naturopathic medicine; or
- (2) Hold an active license to practice naturopathic medicine in another state

where such license requires passage of a professional naturopathic medical licensing examination.

The naturopathic physician members appointed to the initial commission shall be licensed in accordance with sections 334.1000 to 334.1048 not later than one year after establishment of the licensing rules and regulations. If for any reason such a member cannot be licensed within such time period, a new member shall be appointed.

3. The initial appointments to the commission shall be one member for a term of one year, one member for a term of two years, one member for a term of three years, and two members for a term of four years.

4. The public member shall, at the time of his or her appointment, be a citizen of the United States, a resident of this state for a period of one year, and a registered voter. The public member shall not be a person who is or ever was a member of any profession licensed or regulated pursuant to this chapter or the spouse of such person, and a person who has or has ever had a material financial interest in providing for the professional services regulated by this chapter, or an activity or organization directly related to any profession licensed or regulated pursuant to this chapter. All members, including public members, shall be chosen from a list submitted by the director of the department of economic development. The duties of the public member shall not include the determination of technical requirements for licensure or whether any person meets such technical requirements or of the technical competence or judgment of a licensee or candidate.

334.1009. 1. The president or secretary of the commission may administer oaths, subpoena witnesses, issue subpoenas duces tecum, and require production of documents and records. Subpoenas, including subpoenas duces tecum, shall be served by a person authorized to serve subpoenas of courts of record. In lieu of requiring attendance of a person to produce original documents in response to a subpoena duces tecum, the commission may require sworn copies of such documents to be filed with the commission or delivered to the commission's designated representative.

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

334.1012. Any person who reports or provides information to the board or commission or any person who assists the board or commission, including but not limited to applicants or licensees who are the subject of an investigation, physicians serving on competency panels, medical records custodians, consultants, attorneys, board members, agents, employees, or expert witnesses, in the course of any investigation, hearing, or other proceeding conducted by or before the board or commission pursuant to this chapter and who does so in good faith and without malice shall not be subject to an action for civil damages as a result thereof, and no cause of action of any nature shall arise against such person. The attorney general shall defend such persons in any such action or proceedings.

334.1015. 1. The state board of registration for the healing arts shall:

(1) Adopt rules that are necessary or proper for the administration of sections 334.1000 to 334.1048;

(2) Administer and enforce all provisions of sections 334.1000 to 334.1048 and all rules adopted by the board pursuant to the authority granted in sections 334.1000 to 334.1048;

(3) Set the amount of the fees which sections 334.1000 to 334.1048 authorizes and requires by rules and regulations promulgated pursuant to section 536.021, RSMo. The fees shall be set at a level to produce revenue which shall not substantially exceed the cost and expense of administering sections 334.1000 to 334.1048;

(4) Deposit all funds received pursuant to sections 334.1000 to 334.1048 in the board of registration for the healing arts fund established in section 334.050, RSMo; and

(5) Adopt rules for conducting licensing examinations required by sections 334.1000 to 334.1048.

2. The board may:

(1) Adopt rules that prescribe continuing medical education for the renewal of licenses issued pursuant to sections 334.1000 to 334.1048;

(2) Employ permanent or temporary personnel it deems necessary to carry out the purposes of sections 334.1000 to 334.1048 and designate their duties.

3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 334.1000 to 334.1048 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to

disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

334.1018. 1. A person who holds a license or certificate pursuant to sections 334.1000 to 334.1048 shall display such document in a conspicuous place that is accessible to view by the public.

2. A person who practices, conducts affairs, or is employed at more than one location and who maintains a continuing activity as authorized by the license or certificate shall display a duplicate of such document issued by the board at each location.

334.1021. 1. All persons desiring to practice as a naturopathic physician in this state shall be examined as to their fitness to engage in such practice by the board. All persons applying for examination shall file an application with the board at least thirty days before the date set for the examination upon applications furnished by the board.

2. The examination shall be sufficient to test the applicant's fitness to practice as a doctor of naturopathic medicine. The examination shall be conducted in such a manner as to conceal the identity of the applicant until all examinations have been scored. In all such examinations an average score of not less than seventy-five percent is required to pass.

3. The examination required for a license pursuant to sections 334.1000 to 334.1048 shall be the naturopathic physician's licensing examination (NPLEX) or its successor examination or equivalent as determined by the board.

334.1024. Sections 334.1000 to 334.1048 do not apply to the following persons:

(1) Any naturopathic physician who is employed as a resident in a public hospital, provided such practice is limited to such hospital and is under the supervision of a licensed naturopathic physician;

(2) Any naturopathic physician who is licensed in a bordering state and who resides near a border of this state, provided such practice is limited in this state to the vicinity of such border and provided such naturopathic physician does not maintain an office or place to meet patients or receive calls within this state;

(3) Any naturopathic physician who is licensed in another state or country and who is meeting a naturopathic physician licensed in this state, for purposes of consultation, provided such practice is limited to such consultation;

(4) Any naturopathic physician who is licensed in another state or country, who is visiting a naturopathic or other medical school or teaching hospital in this state to conduct naturopathic instruction for a period not to exceed six months,

provided such practice is limited to such instruction and is under the supervision of a licensed naturopathic physician pursuant to sections 334.1000 to 334.1048;

(5) Any naturopathic physician who is authorized by a foreign government to practice in relation to its diplomatic, consular, or maritime staffs, provided such practice is limited to such staffs;

(6) Any commissioned medical officer who as a licensed naturopathic physician is serving in the United States armed forces or public health service or any naturopathic physician who is employed in the United States Veterans Administration, provided such practice is limited to such service or employment. It is not intended by sections 334.1000 to 334.1048 to prohibit isolated or occasional gratuitous service to and treatment of the afflicted, and sections 334.1000 to 334.1048 shall not apply to physicians and surgeons commissioned as officers of the armed forces of the United States or of the public health services of the United States while in the performance of their official duties, nor to any licensed practitioner of medicine and surgery in a border state attending the sick in this state, if he or she does not maintain an office or appointed place to meet patients or receive calls within the limits of this state, and if he or she complies with the statutes of Missouri and the rules and regulations of the department of social services relating to the reports of births, deaths, and contagious diseases; and section 334.1000 to 334.1048 shall not apply to Christian Science practitioners who endeavor to cure or prevent disease or suffering exclusively by spiritual means or prayer, so long as quarantine regulations relating to contagious diseases are not infringed upon; but no provision of this section shall be construed or held in any way to interfere with the enforcement of the rules and regulations adopted and approved by the department of health and senior services or any municipality under the laws of this state for the control of communicable or contagious diseases;

(7) Any intern or resident who is employed by a hospital and who is a graduate of a naturopathic school in the United States or Canada meeting the requirements of sections 334.1000 to 334.1048, provided such practice is limited to such hospital and is under the supervision of a licensed naturopathic physician;

(8) Any naturopathic student who is performing a clinical clerkship or similar function in a hospital and who is matriculated in a naturopathic school which meets standards satisfactory to the department, provided such practice is limited to such clerkship or similar function in such hospital;

(9) A person engaged in the sale of vitamins, health foods, dietary supplements, herbs, or other products of nature the sale of which is not otherwise prohibited under state or federal law;

(10) A person providing nutritional advice, giving advice concerning proper nutrition, or giving information as to the use and role of food and food ingredients, including dietary supplements, except that providing nutritional advice pursuant to the provisions of this section does not include the authority to practice medicine or surgery, to undertake the treatment or cure of a disease, pain, injury, deformity, or physical or mental condition, or to state that a product might cure a disease, pain, injury, deformity, or other condition;

(11) Any other person licensed in this state in any health care profession while the person is practicing within the scope of the license;

(12) A naturopathic physician licensed to practice naturopathic medicine in another state, province of Canada, a territory of the United States, or the District of Columbia, if the state, territory, or the District of Columbia requires credentials equivalent to those in sections 334.1000 to 334.1048, during a period when the physician is incidentally called into this state for consultation with a naturopathic physician.

334.1027. 1. Notwithstanding the provisions of sections 334.1015 to 334.1018, a person may be licensed as a naturopathic physician without meeting the requirements of section 334.1015 if the applicant:

(1) Is a resident of this state;

(2) Is at least twenty-one years of age;

(3) Provides proof acceptable to the board, as established by rule of the board, that the person has been actively engaged in naturopathic health care and has held the person out to the public as qualified to practice naturopathy for at least fifteen years before August 28, 2003;

(4) Derives the majority of the person's income from the practice of naturopathic medicine; and

(5) Applies for a license pursuant to this section before January 1, 2005.

2. The board by rule may provide for limitations on the practice of a person licensed pursuant to subsection 1 of this section. The board may require a person licensed pursuant to this section to be identified as a person whose practice is limited.

3. A person licensed pursuant to this section may:

(1) Use the title naturopathic physician and any other title allowed pursuant to sections 334.1000 to 334.1048; and

(2) Practice naturopathy only within the scope of practice that reflects the limits of the person's training and experience.

334.1030. Any person who violates any provision of sections 334.1000 to 334.1048 is guilty of a class A misdemeanor.

334.1033. The board shall not renew any certificate of registration unless the licensee provides satisfactory evidence that the licensee has complied with the board's minimum requirements for continuing education. All persons once licensed to practice naturopathic medicine in this state shall, on or before the license renewal date, furnish to the board satisfactory evidence of completion of the requisite number of hours of postsecondary study, which shall be twenty-four hours during each twelve months of the registration period immediately preceding the filing of the registration renewal application. The postgraduate study required shall be from a board-approved continuing education program.

334.1036. 1. Every person licensed pursuant to the provisions of sections 334.1000 to 334.1048 shall renew his or her certificate of registration on or before the registration renewal date. The application shall be made under oath on a form furnished by the board. The application shall include, but not be limited to, disclosure of the following:

(1) The applicant's full name, the applicant's office and residence address, and the date and number of his or her license;

(2) All final disciplinary actions taken against the applicant; and

(3) Information concerning the applicant's current physical and mental fitness to practice as a naturopathic physician.

2. A blank form for application for registration shall be mailed to each person licensed in this state at the person's last known office or residence address. The failure to receive it does not, however, relieve any person of the duty to register and pay the fee required by this chapter nor exempt him or her from the penalties provided by sections 334.1000 to 334.1048 for failure to register.

3. If a person licensed, certified, or registered by the board does not renew such license, certification, or registration by the license expiration date, such license, certification, or registration shall be deemed void. If such person's license is deemed void, he or she may apply for a reinstatement of such license, certification, or registration pursuant to the procedures established by the board.

334.1039. 1. Each applicant for registration pursuant to sections 334.1000 to 334.1048 shall accompany the application for registration with a registration fee to be paid to the director of revenue. If the application is filed and the fee paid after the registration renewal date, a delinquent fee shall be paid; but whenever in the opinion of the board the applicant's failure to register is caused by extenuating circumstances including illness of the applicant, as defined by rule, the delinquent fee may be waived by the board. Whenever any new license is granted to any person pursuant to the provisions of sections 334.1000 to 334.1048, the board shall, upon application, issue to

such licensee a certificate of registration covering a period from the date of the issuance of the license to the next renewal date without the payment of any registration fee.

2. The board shall set the amount of the fees which sections 334.1000 to 334.1048 authorizes and requires by rules promulgated pursuant to chapter 536, RSMo. The fees shall be set at a level to produce revenue which shall not substantially exceed the cost and expense of administering sections 334.1000 to 334.1048.

334.1042. 1. The board may refuse to issue or renew any certificate of registration or authority, permit, or license required pursuant to sections 334.1000 to 334.1048 for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo. As an alternative to a refusal to issue or renew any certificate, registration, or authority, the board may, at its discretion, issue a license which is subject to probation, restriction, or limitation to an applicant for licensure for any one or any combination of causes stated in subsection 2 of this section. The board's order of probation, limitation, or restriction shall contain a statement of the discipline imposed, the basis therefor, the date such action shall become effective, and a statement that the applicant has thirty days to request in writing a hearing before the administrative hearing commission. If the board issues a probationary, limited, or restricted license to an applicant for licensure, either party may file a written petition with the administrative hearing commission within thirty days of the effective date of the probationary, limited or restricted license seeking review of the board's determination. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered as waived.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit, or license required by sections 334.1000 to 334.1048 or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit, or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 334.1000 to 334.1048;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions, or duties of any profession licensed or regulated pursuant to sections 334.1000 to 334.1048, for any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude, regardless of whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation, or bribery in securing any certificate of registration or authority, permit, or license issued pursuant to sections 334.1000 to 334.1048, or in obtaining permission to take any examination given or required pursuant to sections 334.1000 to 334.1048;

(4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct, or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by sections 334.1000 to 334.1048 including, but not limited to, the following:

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

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

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

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

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

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

(g) Final disciplinary action by the board or licensed hospital or medical staff of such hospital in this or any other state or territory, whether agreed to voluntarily, and including, but not limited to, any removal, suspension, limitation, or restriction of the person's license or staff or hospital privileges, failure to renew such privileges

or license for cause, or other final disciplinary action, if the action was in any way related to unprofessional conduct, professional incompetence, malpractice, or any other violation of any provision of sections 334.1000 to 334.1048;

(h) Signing a blank prescription form or dispensing, prescribing, administering, or otherwise distributing any drug, controlled substance, or other treatment without sufficient examination, or for other than medically accepted therapeutic or experimental or investigative purposes duly authorized by a state or federal agency, or not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity, or disease;

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

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

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

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

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

(n) Failure to timely pay license renewal fees specified in sections 334.1000 to 334.1048;

(o) Violating a probation agreement with this board or any other licensing agency;

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

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

(5) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public; or incompetency, gross negligence, or repeated negligence in the performance of the functions or duties of any profession licensed or regulated by sections 334.1000 to 334.1048. For the

purposes of this subdivision, "repeated negligence" means the failure, on more than one occasion, to use that degree of skill and learning ordinarily used under the same or similar circumstances by the member of the applicant's or licensee's profession;

(6) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 334.1000 to 334.1048, or of any lawful rule or regulation adopted pursuant to sections 334.1000 to 334.1048;

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

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

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

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by sections 334.1000 to 334.1048, who is not registered and currently eligible to practice pursuant to sections 334.1000 to 334.1048; or knowingly performing any act which in any way aids, assists, procures, advises, or encourages any person to practice medicine who is not registered and currently eligible to practice pursuant to this chapter. A naturopathic physician who works in accordance with standing orders or protocols or in accordance with the provisions of section 334.104, shall not be in violation of this subdivision;

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

(12) Failure to display a valid certificate or license if so required by sections 334.1000 to 334.1048 or any rule promulgated pursuant to sections 334.1000 to 334.1048;

(13) Violation of the drug laws or rules and regulations of this state, any other state, or the federal government;

(14) Knowingly making, or causing to be made, or aiding, or abetting in the making of, a false statement in any birth, death, or other certificate or document

executed in connection with the practice of the person's profession;

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

(16) Knowingly making or causing to be made a false statement or misrepresentation of a material fact, with intent to defraud, for payment pursuant to the provisions of chapter 208, RSMo, or chapter 630, RSMo, or for payment from Title XVIII or Title XIX of the federal Medicare program;

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

(18) Being unable to practice as a naturopathic physician or with a specialty with reasonable skill and safety to patients by reasons of naturopathic incompetency, or because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or as a result of any mental or physical condition. The following shall apply to this subdivision:

(a) In enforcing this subdivision the board shall, after a hearing by the board, upon a finding of probable cause, require a naturopathic physician to submit to a reexamination for the purpose of establishing his or her competency to practice as a naturopathic physician or with a specialty conducted in accordance with rules adopted for this purpose by the board, including rules to allow the examination of the pattern and practice of such naturopathic physician's professional conduct, or to submit to a mental or physical examination or combination thereof by at least three naturopathic physicians, one selected by the naturopathic physician compelled to take the examination, one selected by the board, and one selected by the two naturopathic physicians so selected who are graduates of a professional school approved and accredited as reputable by the state association which has approved and accredited as reputable the professional school from which the licensee graduated;

(b) For the purpose of this subdivision, every naturopathic physician licensed pursuant to this chapter is deemed to have consented to submit to a mental or physical examination when directed in writing by the board and further to have

waived all objections to the admissibility of the examining naturopathic physician's testimony or examination reports on the ground that the examining naturopathic physician's testimony or examination is privileged;

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

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

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

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

3. Protocols and standing orders shall be in writing and signed and dated by a naturopathic physician prior to their implementation.

4. After the filing of such complaint before the administrative hearing commission, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, warn, censure, or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed ten years, or may suspend the person's license, certificate,

or permit for a period not to exceed three years, or restrict or limit the person's license, certificate, or permit for an indefinite period of time, or revoke the person's license, certificate, or permit, or administer a public or private reprimand, or deny the person's application for a license, or permanently withhold issuance of a license or require the person to submit to the care, counseling, or treatment of naturopathic physicians designated by the board at the expense of the individual to be examined, or require the person to attend such continuing educational courses and pass such examinations as the board may direct.

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

6. Before restoring to good standing a license, certificate or permit issued pursuant to sections 334.1000 to 334.1048 which has been in a revoked, suspended, or inactive state for any cause for more than two years, the board may require the applicant to attend such continuing education courses and pass such examinations as the board may direct.

7. In any investigation, hearing, or other proceeding to determine a licensee's or applicant's fitness to practice, any record relating to any patient of the licensee or applicant shall be discoverable by the board and admissible into evidence, regardless of any statutory or common law privilege which such licensee, applicant, record custodian, or patient might otherwise invoke. In addition, no such licensee, applicant, or record custodian may withhold records or testimony bearing upon a licensee's or applicant's fitness to practice on the ground of privilege between such licensee, applicant, or record custodian and a patient.

334.1045. 1. Notwithstanding any other provisions of section 620.010, RSMo, to the contrary, the board shall, at least quarterly, publish a list of the names and addresses of all persons who hold licenses pursuant to the provisions of sections 334.1000 to 334.1048, and shall publish a list of all persons whose licenses have been suspended, revoked, surrendered, restricted, denied, or withheld. The board shall mail a copy of such lists to any person, upon request.

2. Other provisions of chapter 610, RSMo, to the contrary notwithstanding, in addition, the board shall prepare and make available to the public a report upon the disciplinary matters submitted to them where the board recommends disciplinary action except in those instances when persons possessing licenses voluntarily enter treatment and monitoring programs for purposes of rehabilitation and, in these instances, only this specific action shall not be reported with any other actions taken

prior to, as part of, or following voluntary entrance into such treatment programs. The report shall set forth findings of fact and any final disciplinary actions of the board. Where the board does not recommend disciplinary action, a report stating that no action is recommended shall be prepared and forwarded to the complaining party.

334.1048. 1. Upon receipt of information that the holder of any certificate of registration or authority, permit, or license issued pursuant to sections 334.1000 to 334.1048 may present a clear and present danger to the public health and safety, the executive secretary or director shall direct that the information be brought to the board in the form of sworn testimony or affidavits during a meeting of the board.

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

(1) The licensee's acts, conduct, or condition may have violated subsection 2 of section 334.1042;

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

(3) Either a licensee is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to the extent that the licensee's condition or actions significantly affect the licensee's ability to practice, or another state, territory, federal agency, or country has issued an order suspending or restricting the holder of a license or other right to practice a profession regulated by sections 334.1000 to 334.1048, or the licensee has engaged in repeated acts of life-threatening negligence as defined in subsection 2 of section 334.1042; and

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

The board or the administrative hearing commission shall serve the licensee, in person or by certified mail, with a copy of the order of suspension or restriction and all sworn testimony or affidavits presented to the board, a copy of the complaint and the request for expedited hearing, and a notice of the place of and the date upon which the preliminary hearing will be held. The order of restriction shall be effective upon service of the documents required in subdivision (2) of this subsection. The order of suspension shall become effective upon the entry of the preliminary order of the administrative hearing commission. The licensee may seek a stay order from the circuit court of Cole County from the preliminary order of suspension, pending the issuance of a final order by the administrative hearing commission.

3. The board shall file a complaint with the administrative hearing commission with a request for expedited preliminary hearing and shall certify the order of

suspension or restriction and all sworn testimony or affidavits presented to the board. Immediately upon receipt of a complaint filed pursuant to this section, the administrative hearing commission shall set the place and date of the expedited preliminary hearing which shall be conducted as soon as possible, but not later than five days after the date of service upon the licensee. The administrative hearing commission shall grant a licensee's request for a continuance of the preliminary hearing; however, the board's order shall remain in full force and effect until the preliminary hearing, which shall be held not later than forty-five days after service of the documents required in subsection 2 of this section.

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

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

6. Upon receipt of a request for full hearing, the administrative hearing commission shall set a date for hearing and notify the parties in writing of the time and place of the hearing. If a request for full hearing is timely filed, the preliminary order of the administrative hearing commission shall remain in effect until the administrative hearing commission enters an order terminating, modifying, or dismissing its preliminary order or until the board issues an order of discipline following its consideration of the decision of the administrative hearing commission pursuant to section 621.110, RSMo, and subsection 3 of section 334.1042.

7. In cases where the board initiates summary suspension or restriction proceedings against a naturopathic physician licensed pursuant to sections 334.1000 to 334.1048, and such petition is subsequently denied by the administrative hearing commission, in addition to any award made pursuant to sections 536.085 and 536.087, RSMo, the board, but not individual members of the board, shall pay actual damages incurred during any period of suspension or restriction.

8. Notwithstanding the provisions of this chapter or chapter 610, RSMo, or chapter 621, RSMo, to the contrary, the proceedings pursuant to this section shall be closed and no order shall be made public until it is final, for purposes of appeal.

9. The burden of proving the elements listed in subsection 2 of this section shall be upon the state board of naturopathic physicians.

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