

SECOND REGULAR SESSION

SENATE BILL NO. 824

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

Pre-filed December 21, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5555S.011

AN ACT

To repeal sections 335.036, 335.066, and 335.067, RSMo, and to enact in lieu thereof three new sections relating to nurses.

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

Section A. Sections 335.036, 335.066, and 335.067, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 335.036,
3 335.066, and 335.067, to read as follows:

335.036. 1. The board shall:

2 (1) Elect for a one-year term a president and a secretary, who shall also
3 be treasurer, and the board may appoint, employ and fix the compensation of a
4 legal counsel and such board personnel as defined in subdivision (4) of subsection
5 10 of section 324.001 as are necessary to administer the provisions of sections
6 335.011 to 335.096;

7 (2) Adopt and revise such rules and regulations as may be necessary to
8 enable it to carry into effect the provisions of sections 335.011 to 335.096;

9 (3) Prescribe minimum standards for educational programs preparing
10 persons for licensure pursuant to the provisions of sections 335.011 to 335.096;

11 (4) Provide for surveys of such programs every five years and in addition
12 at such times as it may deem necessary;

13 (5) Designate as "approved" such programs as meet the requirements of
14 sections 335.011 to 335.096 and the rules and regulations enacted pursuant to
15 such sections; and the board shall annually publish a list of such programs;

16 (6) Deny or withdraw approval from educational programs for failure to
17 meet prescribed minimum standards;

18 (7) Examine, license, and cause to be renewed the licenses of duly

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

19 qualified applicants;

20 (8) Cause the prosecution of all persons violating provisions of sections
21 335.011 to 335.096, and may incur such necessary expenses therefor;

22 (9) Keep a record of all the proceedings; and make an annual report to the
23 governor and to the director of the department of insurance, financial institutions
24 and professional registration[;

25 (10) Establish an impaired nurse program].

26 2. The board shall set the amount of the fees which this chapter
27 authorizes and requires by rules and regulations. The fees shall be set at a level
28 to produce revenue which shall not substantially exceed the cost and expense of
29 administering this chapter.

30 3. All fees received by the board pursuant to the provisions of sections
31 335.011 to 335.096 shall be deposited in the state treasury and be placed to the
32 credit of the state board of nursing fund. All administrative costs and expenses
33 of the board shall be paid from appropriations made for those purposes. The
34 board is authorized to provide funding for the nursing education incentive
35 program established in sections 335.200 to 335.203.

36 4. The provisions of section 33.080 to the contrary notwithstanding, money
37 in this fund shall not be transferred and placed to the credit of general revenue
38 until the amount in the fund at the end of the biennium exceeds two times the
39 amount of the appropriation from the board's funds for the preceding fiscal year
40 or, if the board requires by rule, permit renewal less frequently than yearly, then
41 three times the appropriation from the board's funds for the preceding fiscal
42 year. The amount, if any, in the fund which shall lapse is that amount in the
43 fund which exceeds the appropriate multiple of the appropriations from the
44 board's funds for the preceding fiscal year.

45 5. Any rule or portion of a rule, as that term is defined in section 536.010,
46 that is created under the authority delegated in this chapter shall become
47 effective only if it complies with and is subject to all of the provisions of chapter
48 536 and, if applicable, section 536.028. All rulemaking authority delegated prior
49 to August 28, 1999, is of no force and effect and repealed. Nothing in this section
50 shall be interpreted to repeal or affect the validity of any rule filed or adopted
51 prior to August 28, 1999, if it fully complied with all applicable provisions of
52 law. This section and chapter 536 are nonseverable and if any of the powers
53 vested with the general assembly pursuant to chapter 536 to review, to delay the
54 effective date or to disapprove and annul a rule are subsequently held

55 unconstitutional, then the grant of rulemaking authority and any rule proposed
56 or adopted after August 28, 1999, shall be invalid and void.

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] **monitoring** by the [impaired nurse] **intervention**
7 program **and alternative program** as provided in section 335.067. The board
8 shall notify the applicant in writing of the reasons for the refusal and shall advise
9 the applicant of his or her right to file a complaint with the administrative
10 hearing commission as provided by chapter 621.

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

17 (1) Use or unlawful possession of any controlled substance, as defined in
18 chapter 195, **by the federal government, or by the department of health**
19 **and senior services by regulation, regardless of impairment,** or alcoholic
20 beverage to an extent that such use impairs a person's ability to perform the work
21 of any profession licensed or regulated by sections 335.011 to 335.096. **A blood**
22 **alcohol content of .08 shall create a presumption of impairment;**

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

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

34 (4) Obtaining or attempting to obtain any fee, charge, tuition or other

35 compensation by fraud, deception or misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 71 **thirty days of changing residence;**
- 72 (m) Any other conduct that is unethical or unprofessional involving a
73 minor;
- 74 **(n) A departure from or failure to conform to nursing standards;**
- 75 **(o) Failure to maintain professional boundaries with a current**
76 **or former patient, client, or resident or a member of a patient's,**
77 **client's, or resident's immediate family;**
- 78 **(p) Violating the confidentiality or privacy rights of the patient,**
79 **resident, or client;**
- 80 **(q) Failing to assess, accurately document, or report the status**
81 **of a patient, resident, or client, or falsely assessing, documenting, or**
82 **reporting the status of a patient, resident, or client;**
- 83 **(r) Intentionally or negligently causing physical or emotional**
84 **harm to a patient, resident, or client;**
- 85 **(s) Failing to furnish appropriate details of a patient's, client's,**
86 **or resident's nursing needs to succeeding nurses legally qualified to**
87 **provide continuing nursing services to a patient, client, or resident;**
- 88 (7) Violation of, or assisting or enabling any person to violate, any
89 provision of sections 335.011 to 335.096, or of any lawful rule or regulation
90 adopted pursuant to sections 335.011 to 335.096;
- 91 (8) Impersonation of any person holding a certificate of registration or
92 authority, permit or license or allowing any person to use his or her certificate of
93 registration or authority, permit, license or diploma from any school;
- 94 (9) Disciplinary action against the holder of a license or other right to
95 practice any profession regulated by sections 335.011 to 335.096 granted by
96 another state, territory, federal agency or country upon grounds for which
97 revocation or suspension is authorized in this state;
- 98 (10) A person is finally adjudged insane or incompetent by a court of
99 competent jurisdiction;
- 100 (11) Assisting or enabling any person to practice or offer to practice any
101 profession licensed or regulated by sections 335.011 to 335.096 who is not
102 registered and currently eligible to practice pursuant to sections 335.011 to
103 335.096;
- 104 (12) Issuance of a certificate of registration or authority, permit or license
105 based upon a material mistake of fact;
- 106 (13) Violation of any professional trust or confidence;

107 (14) Use of any advertisement or solicitation which is false, misleading or
108 deceptive to the general public or persons to whom the advertisement or
109 solicitation is primarily directed;

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

112 (16) Placement on an employee disqualification list or other related
113 restriction or finding pertaining to employment within a health-related profession
114 issued by any state or federal government or agency following final disposition by
115 such state or federal government or agency;

116 (17) Failure to successfully complete the [impaired nurse program]
117 **intervention or alternative program for substance use disorder;**

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

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

128 (20) A pattern of personal use or consumption of any controlled substance
129 **or any substance which requires a prescription** unless it is prescribed,
130 dispensed, or administered by a provider who is authorized by law to do so **or a**
131 **pattern of abuse of any prescription medication;**

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

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

138 **(23) Failure to submit to a drug or alcohol screening when**
139 **requested by an employer or by the board. Failure to submit to a drug**
140 **or alcohol screening shall create the presumption that the test would**
141 **have been positive for a drug for which the individual did not have a**
142 **prescription in a drug screening or positive for alcohol in an alcohol**

143 screening;

144 (24) Adjudged by a court in need of a guardian or conservator,
145 or both, obtaining a guardian or conservator, or both, and who has not
146 been restored to capacity;

147 (25) Diversion or attempting to divert any medication, controlled
148 substance, or medical supplies;

149 (26) Failure to answer, failure to disclose, or failure to fully
150 provide all information requested on any application or renewal for a
151 license. This includes disclosing all pleas of guilt or findings of guilt
152 in a case where the imposition of sentence was suspended, whether or
153 not the case is now confidential;

154 (27) Physical or mental illness, including but not limited to
155 deterioration through the aging process or loss of motor skill, or
156 disability that impairs the licensee's ability to practice the profession
157 with reasonable judgment, skill, or safety. This does not include
158 temporary illness which is expected to resolve within a short period of
159 time;

160 (28) Any conduct that constitutes a serious danger to the health,
161 safety, or welfare of a patient or the public.

162 3. After the filing of such complaint, the proceedings shall be conducted
163 in accordance with the provisions of chapter 621. Upon a finding by the
164 administrative hearing commission that the grounds, provided in subsection 2 of
165 this section, for disciplinary action are met, the board may, singly or in
166 combination, censure or place the person named in the complaint on probation on
167 such terms and conditions as the board deems appropriate for a period not to
168 exceed five years, or may suspend, for a period not to exceed three years, or
169 revoke the license, certificate, or permit.

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

177 5. An individual whose license has been revoked shall wait one year from
178 the date of revocation to apply for relicensure. Relicensure shall be at the

179 discretion of the board after compliance with all the requirements of sections
180 335.011 to 335.096 relative to the licensing of an applicant for the first time.

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

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

189 8. The board may apply to the administrative hearing commission for an
190 emergency suspension or restriction of a license for the following causes:

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

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

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

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

200 (5) The licensee is adjudicated incapacitated or disabled by a court of
201 competent jurisdiction;

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

206 (7) A report from a board-approved facility or a professional health
207 program stating the licensee is not fit to practice. For purposes of this section,
208 a licensee is deemed to have waived all objections to the admissibility of
209 testimony from the provider of the examination and admissibility of the
210 examination reports. The licensee shall sign all necessary releases for the board
211 to obtain and use the examination during a hearing; or

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

214 9. The board shall submit existing affidavits and existing certified court

215 records together with a complaint alleging the facts in support of the board's
216 request for an emergency suspension or restriction to the administrative hearing
217 commission and shall supply the administrative hearing commission with the last
218 home or business addresses on file with the board for the licensee. Within one
219 business day of the filing of the complaint, the administrative hearing commission
220 shall return a service packet to the board. The service packet shall include the
221 board's complaint and any affidavits or records the board intends to rely on that
222 have been filed with the administrative hearing commission. The service packet
223 may contain other information in the discretion of the administrative hearing
224 commission. Within twenty-four hours of receiving the packet, the board shall
225 either personally serve the licensee or leave a copy of the service packet at all of
226 the licensee's current addresses on file with the board. Prior to the hearing, the
227 licensee may file affidavits and certified court records for consideration by the
228 administrative hearing commission.

229 10. Within five days of the board's filing of the complaint, the
230 administrative hearing commission shall review the information submitted by the
231 board and the licensee and shall determine based on that information if probable
232 cause exists pursuant to subsection 8 of this section and shall issue its findings
233 of fact and conclusions of law. If the administrative hearing commission finds
234 that there is probable cause, the administrative hearing commission shall enter
235 the order requested by the board. The order shall be effective upon personal
236 service or by leaving a copy at all of the licensee's current addresses on file with
237 the board.

238 11. (1) The administrative hearing commission shall hold a hearing
239 within forty-five days of the board's filing of the complaint to determine if cause
240 for discipline exists. The administrative hearing commission may grant a request
241 for a continuance, but shall in any event hold the hearing within one hundred
242 twenty days of the board's initial filing. The board shall be granted leave to
243 amend its complaint if it is more than thirty days prior to the hearing. If less
244 than thirty days, the board may be granted leave to amend if public safety
245 requires.

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

249 (3) If cause for discipline exists, the administrative hearing commission
250 shall issue findings of fact and conclusions of law and order the emergency

251 suspension or restriction to remain in full force and effect pending a disciplinary
252 hearing before the board. The board shall hold a hearing following the
253 certification of the record by the administrative hearing commission and may
254 impose any discipline otherwise authorized by state law.

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

258 13. If the administrative hearing commission does not find probable cause
259 and does not grant the emergency suspension or restriction, the board shall
260 remove all reference to such emergency suspension or restriction from its public
261 records. Records relating to the suspension or restriction shall be maintained in
262 the board's files. The board or licensee may use such records in the course of any
263 litigation to which they are both parties. Additionally, such records may be
264 released upon a specific, written request of the licensee.

265 14. If the administrative hearing commission grants temporary authority
266 to the board to restrict or suspend the nurse's license, such temporary authority
267 of the board shall become final authority if there is no request by the nurse for
268 a full hearing within thirty days of the preliminary hearing. The administrative
269 hearing commission shall, if requested by the nurse named in the complaint, set
270 a date to hold a full hearing under the provisions of chapter 621 regarding the
271 activities alleged in the initial complaint filed by the board.

272 15. If the administrative hearing commission refuses to grant temporary
273 authority to the board or restrict or suspend the nurse's license under subsection
274 8 of this section, such dismissal shall not bar the board from initiating a
275 subsequent disciplinary action on the same grounds.

276 16. (1) The board may initiate a hearing before the board for discipline
277 of any licensee's license or certificate upon receipt of one of the following:

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

284 (b) Evidence of final disciplinary action against the licensee's license,
285 certification, or registration issued by any other state, by any other agency or
286 entity of this state or any other state, or the United States or its territories, or

287 any other country;

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

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

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

335.067. 1. The state board of nursing may establish an [impaired nurse]
2 **intervention program and an alternative** program to promote the [early]
3 identification, intervention, treatment, and [rehabilitation] **monitoring** of nurses
4 **or applicants for a nursing license** who may be impaired by [reasons of
5 illness,] **reason of** substance abuse[, or as a result of any mental condition. This
6 program shall be available to anyone holding a current license and may be
7 entered voluntarily, as part of an agreement with the board of nursing, or as a
8 condition of a disciplinary order entered by the board of nursing] **or the**
9 **potential for substance abuse.**

10 2. [The board may enter into a contractual agreement with a nonprofit
11 corporation or a nursing association for the purpose of creating, supporting, and
12 maintaining a program to be designated as the impaired nurse program.] **The**
13 **intervention program is available, upon board discretion, to licensees**
14 **and applicants for licensure who self-refer, test positive in a pre-**
15 **employment or for-cause drug or alcohol screen, individuals who have**
16 **pled guilty to or been found guilty of any drug offense, whether felony**
17 **or misdemeanor, or individuals who have pled guilty to or been found**
18 **guilty of three or more criminal offenses resulting from or related to**
19 **the use of drugs or alcohol, whether a felony or misdemeanor. The**
20 **program shall be a minimum of one year in duration and require**
21 **random drug and alcohol testing at the participant's expense.**

22 3. **The alternative program is available, upon board discretion,**
23 **to licensees and applicants for licensure who admit to having a**
24 **substance use disorder. The program shall be from three to five years**
25 **in duration and at a minimum require random drug and alcohol testing**
26 **at the participant's expense.**

27 4. **Upon receiving a complaint or an application, the board shall**
28 **screen the information submitted to determine whether the individual**

29 may be eligible for the intervention or alternative program. If eligible
30 for one of the programs, the board may contact the individual and offer
31 the program. If accepted, the board and individual may enter into a
32 written agreement setting forth the requirements of the program. If
33 declined, the board may proceed with its regular process of
34 investigating a complaint or application as set forth in this chapter and
35 chapter 324. The board shall retain sole discretion to offer the program
36 at any time.

37 5. Upon successful completion of the intervention or alternative
38 program, the licensee shall be deemed to have no disciplinary action
39 against his or her license and shall not be required to disclose
40 participation in the program. All records shall be deemed confidential
41 and not public records under chapter 610 and not subject to court or
42 administration subpoena or subject to discovery or introduction as
43 evidence in any civil, criminal, or administrative proceedings.

44 6. If a licensee or applicant violates any term of the intervention
45 program and the licensee or applicant denies the violation, the board
46 may convene a hearing, after due notice to the licensee or applicant to
47 determine whether such violation has occurred. The hearing shall be
48 confidential and not open to the public under chapter 610. Records
49 from the program shall be deemed admissible in the hearing. If the
50 licensee or applicant admits to the violation, no hearing is required. If
51 a violation is found by the board or admitted to by the licensee or
52 applicant, the licensee's license shall be indefinitely suspended or the
53 applicant's application shall not be acted upon until the licensee or
54 applicant continues to fully participate in the program, has one year
55 with no positive drug or alcohol screens, and completes a sobriety
56 notebook. The licensee may then request that his or her license be
57 reinstated or the applicant may then request the board act upon his or
58 her application.

59 7. If a licensee does not successfully complete the intervention
60 program, the board may pursue disciplinary action as set forth in
61 section 335.066 and chapter 621. If an applicant does not successfully
62 complete the intervention program, the board may issue an order
63 pursuant to the provisions of chapters 324, 335, 536, and 621. Records
64 from the program may be used as evidence in any such proceedings
65 initiated under chapters 324, 335, 536, and 621. Any such licensee

66 **disciplined by the board pursuant to this section or applicant subject**
67 **to an order pursuant to this section shall not be eligible to participate**
68 **in the alternative program.**

69 **8. If a licensee or applicant violates any term of the alternative**
70 **program and the licensee or applicant denies the violation, the board**
71 **may convene a hearing, after due notice to the licensee or applicant to**
72 **determine whether such violation has occurred. The hearing shall be**
73 **confidential and not open to the public under chapter 610. Records**
74 **from the program shall be deemed admissible in the hearing. If the**
75 **licensee or applicant admits to the violation, no hearing is required. If**
76 **a violation is found by the board or admitted to by the licensee or**
77 **applicant, the licensee's license shall be indefinitely suspended or the**
78 **applicant's application shall not be acted upon until the licensee or**
79 **applicant continues to fully participate in the program, has one year**
80 **with no positive drug or alcohol screens, and completes a sobriety**
81 **notebook. The licensee may then request that his or her license be**
82 **reinstated or the applicant may then request the board act upon his or**
83 **her application.**

84 **9. If a licensee does not successfully complete the alternative**
85 **program, the board may pursue disciplinary action as set forth in**
86 **section 335.066 and chapter 621. If an applicant does not successfully**
87 **complete the alternative program, the board may issue an order**
88 **pursuant to the provisions of chapters 324, 335, and 621. Records from**
89 **the program may be used as evidence in any such proceedings**
90 **conducted pursuant to the provisions of chapters 324, 335, and 621.**

91 **10. The board may promulgate administrative rules subject to the**
92 **provisions of this section and chapter 536 to effectuate and implement any**
93 **[program] programs formed pursuant to this section.**

94 **[3.] 11. The board may expend appropriated funds necessary to provide**
95 **for operational expenses of the [program] programs formed pursuant to this**
96 **section.**

97 **[4.] 12. Any board member, board staff member, members of the**
98 **[program] programs, as well as any administrator, staff member, consultant,**
99 **agent, or employee of the [program] programs, acting within the scope of his or**
100 **her duties and without actual malice, and all other persons who furnish**
101 **information to the [program] programs in good faith and without actual malice,**
102 **shall not be liable for any claim of damages as a result of any statement, decision,**

103 opinion, investigation, or action taken by the [program] **programs**, or by any
104 individual member of the [program] **programs, by any board member, or by**
105 **any board staff member.**

106 [5.] **13.** All information, interviews, reports, statements, memoranda,
107 **drug or alcohol testing results**, or other documents furnished to or produced
108 by the [program] **programs**, as well as communications to or from the [program]
109 **programs**, any findings, conclusions, interventions, treatment, rehabilitation, or
110 other proceedings of the [program] **programs** which in any way pertain to a
111 licensee who may be, or who actually is, impaired shall be privileged and
112 confidential, **except that the board may share information with the**
113 **licensee's employer or potential employer upon verification with the**
114 **licensee that he or she is employed with the employer or actively**
115 **seeking employment with the potential employer. Any records**
116 **produced in conjunction with either program shall not be considered**
117 **public records under chapter 610 and shall not be subject to court**
118 **subpoena or subject to discovery or introduction as evidence in any**
119 **civil, criminal, or administrative proceedings except as set forth in**
120 **subsections 14 and 15 of this section.**

121 [6. All records and proceedings of the program which pertain or refer to
122 a licensee who may be, or who actually is, impaired shall be privileged and
123 confidential and shall be used by the program and its members only in the
124 exercise of the proper function of the program and shall not be considered public
125 records under chapter 610 and shall not be subject to court subpoena or subject
126 to discovery or introduction as evidence in any civil, criminal, or administrative
127 proceedings except as provided in subsection 7 of this section.

128 7. The program shall disclose]

129 **14.** Information **may be disclosed** relative to [an impaired] a licensee
130 **or applicant in either program** only when:

131 (1) It is essential to disclose the information to further the intervention,
132 treatment, or rehabilitation needs of the [impaired] licensee **or applicant** and
133 only to those persons or organizations with a need to know;

134 (2) Its release is authorized in writing by the [impaired] licensee **or**
135 **applicant;**

136 (3) A licensee has breached his or her contract with the program[. In this
137 instance, the breach may be reported only to the board of nursing]; or

138 (4) The information is subject to a court order.

139 [8. When pursuing discipline against a licensed practical nurse, registered
140 nurse, or advanced practice registered nurse for violating one or more causes
141 stated in subsection 2 of section 335.066, the board may, if the violation is related
142 to chemical dependency or mental health, require that the licensed practical
143 nurse, registered nurse, or advanced practice registered nurse complete the
144 impaired nurse program under such terms and conditions as are agreed to by the
145 board and the licensee for a period not to exceed five years. If the licensee
146 violates a term or condition of an impaired nurse program agreement entered into
147 under this section, the board may elect to pursue discipline against the licensee
148 pursuant to chapter 621 for the original conduct that resulted in the impaired
149 nurse program agreement, or for any subsequent violation of subsection 2 of
150 section 335.066. While the licensee participates in the impaired nurse program,
151 the time limitations of section 620.154 shall toll under subsection 7 of section
152 620.154. All records pertaining to the impaired nurse program agreements are
153 confidential and may only be released under subdivision (7) of subsection 14 of
154 section 620.010.

155 9. The board may disclose information and records to the impaired nurse
156 program to assist the program in the identification, intervention, treatment, and
157 rehabilitation of licensed practical nurses, registered nurses, or advanced practice
158 registered nurses who may be impaired by reason of illness, substance abuse, or
159 as the result of any physical or mental condition. The program shall keep all
160 information and records provided by the board confidential to the extent the
161 board is required to treat the information and records closed to the public under
162 chapter 620.]

163 **15. The statute of limitations set forth in section 324.043 shall be**
164 **tolled while a licensee or applicant is participating in either the**
165 **intervention program or the alternative program.**

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