

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend SS/House Bill No. 2149, Page 13, Section 334.036, Line 115,

2 by inserting after all of said line the following:

3 "334.100. 1. The board may refuse to issue or renew
4 any certificate of registration or authority, permit or
5 license required pursuant to this chapter for one or any
6 combination of causes stated in subsection 2 of this
7 section. The board shall notify the applicant in writing of
8 the reasons for the refusal and shall advise the applicant
9 of the applicant's right to file a complaint with the
10 administrative hearing commission as provided by chapter
11 621. As an alternative to a refusal to issue or renew any
12 certificate, registration or authority, the board may, at
13 its discretion, issue a license which is subject to
14 probation, restriction or limitation to an applicant for
15 licensure for any one or any combination of causes stated in
16 subsection 2 of this section. The board's order of
17 probation, limitation or restriction shall contain a
18 statement of the discipline imposed, the basis therefor, the
19 date such action shall become effective, and a statement
20 that the applicant has thirty days to request in writing a
21 hearing before the administrative hearing commission. If
22 the board issues a probationary, limited or restricted
23 license to an applicant for licensure, either party may file
24 a written petition with the administrative hearing
25 commission within thirty days of the effective date of the
26 probationary, limited or restricted license seeking review

27 of the board's determination. If no written request for a
28 hearing is received by the administrative hearing commission
29 within the thirty-day period, the right to seek review of
30 the board's decision shall be considered as waived.

31 2. The board may cause a complaint to be filed with
32 the administrative hearing commission as provided by chapter
33 621 against any holder of any certificate of registration or
34 authority, permit or license required by this chapter or any
35 person who has failed to renew or has surrendered the
36 person's certificate of registration or authority, permit or
37 license for any one or any combination of the following
38 causes:

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

43 (2) The person has been finally adjudicated and found
44 guilty, or entered a plea of guilty or nolo contendere, in a
45 criminal prosecution under the laws of any state or of the
46 United States, for any offense reasonably related to the
47 qualifications, functions or duties of any profession
48 licensed or regulated pursuant to this chapter, for any
49 offense involving fraud, dishonesty or an act of violence,
50 or for any offense involving moral turpitude, whether or not
51 sentence is imposed;

52 (3) Use of fraud, deception, misrepresentation or
53 bribery in securing any certificate of registration or
54 authority, permit or license issued pursuant to this chapter
55 or in obtaining permission to take any examination given or
56 required pursuant to this chapter;

57 (4) Misconduct, fraud, misrepresentation, dishonesty,
58 unethical conduct or unprofessional conduct in the
59 performance of the functions or duties of any profession

60 licensed or regulated by this chapter, including, but not
61 limited to, the following:

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

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

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

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

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

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

86 (g) Final disciplinary action by any professional
87 medical or osteopathic association or society or licensed
88 hospital or medical staff of such hospital in this or any
89 other state or territory, whether agreed to voluntarily or
90 not, and including, but not limited to, any removal,
91 suspension, limitation, or restriction of the person's
92 license or staff or hospital privileges, failure to renew

93 such privileges or license for cause, or other final
94 disciplinary action, if the action was in any way related to
95 unprofessional conduct, professional incompetence,
96 malpractice or any other violation of any provision of this
97 chapter;

98 (h) Signing a blank prescription form; or dispensing,
99 prescribing, administering or otherwise distributing any
100 drug, controlled substance or other treatment without
101 sufficient examination including failing to establish a
102 valid physician-patient relationship pursuant to section
103 334.108, or for other than medically accepted therapeutic or
104 experimental or investigative purposes duly authorized by a
105 state or federal agency, or not in the course of
106 professional practice, or not in good faith to relieve pain
107 and suffering, or not to cure an ailment, physical infirmity
108 or disease, except as authorized in section 334.104;

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

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

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

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

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

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

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

127 (p) Violating a probation agreement, order, or other
128 settlement agreement with this board or any other licensing
129 agency;

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

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

141 (s) Any other conduct that is unethical or
142 unprofessional involving a minor;

143 (5) Any conduct or practice which is or might be
144 harmful or dangerous to the mental or physical health of a
145 patient or the public; or incompetency, gross negligence or
146 repeated negligence in the performance of the functions or
147 duties of any profession licensed or regulated by this
148 chapter. For the purposes of this subdivision, "repeated
149 negligence" means the failure, on more than one occasion, to
150 use that degree of skill and learning ordinarily used under
151 the same or similar circumstances by the member of the
152 applicant's or licensee's profession;

153 (6) Violation of, or attempting to violate, directly
154 or indirectly, or assisting or enabling any person to
155 violate, any provision of this chapter or chapter 324, or of
156 any lawful rule or regulation adopted pursuant to this
157 chapter or chapter 324;

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

162 (8) Revocation, suspension, restriction, modification,
163 limitation, reprimand, warning, censure, probation or other
164 final disciplinary action against the holder of or applicant
165 for a license or other right to practice any profession
166 regulated by this chapter by another state, territory,
167 federal agency or country, whether or not voluntarily agreed
168 to by the licensee or applicant, including, but not limited
169 to, the denial of licensure, surrender of the license,
170 allowing the license to expire or lapse, or discontinuing or
171 limiting the practice of medicine while subject to an
172 investigation or while actually under investigation by any
173 licensing authority, medical facility, branch of the Armed
174 Forces of the United States of America, insurance company,
175 court, agency of the state or federal government, or
176 employer;

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

179 (10) Assisting or enabling any person to practice or
180 offer to practice any profession licensed or regulated by
181 this chapter who is not registered and currently eligible to
182 practice pursuant to this chapter; or knowingly performing
183 any act which in any way aids, assists, procures, advises,
184 or encourages any person to practice medicine who is not
185 registered and currently eligible to practice pursuant to
186 this chapter. A physician who works in accordance with
187 standing orders or protocols or in accordance with the
188 provisions of section 334.104 shall not be in violation of
189 this subdivision;

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

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

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

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

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

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

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

219 (18) Knowingly making or causing to be made a false
220 statement or misrepresentation of a material fact, with
221 intent to defraud, for payment pursuant to the provisions of

222 chapter 208 or chapter 630 or for payment from Title XVIII
223 or Title XIX of the Social Security Act;

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

232 (20) Any candidate for licensure or person licensed to
233 practice as a physical therapist, paying or offering to pay
234 a referral fee or, notwithstanding section 334.010 to the
235 contrary, practicing or offering to practice professional
236 physical therapy independent of the prescription and
237 direction of a person licensed and registered as a physician
238 and surgeon pursuant to this chapter, as a dentist pursuant
239 to chapter 332, as a podiatrist pursuant to chapter 330, as
240 an advanced practice registered nurse under chapter 335, or
241 any licensed and registered physician, dentist, podiatrist,
242 or advanced practice registered nurse practicing in another
243 jurisdiction, whose license is in good standing;

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

249 (22) Any person licensed to practice as a physician or
250 surgeon, requiring, as a condition of the physician-patient
251 relationship, that the patient receive prescribed drugs,
252 devices or other professional services directly from
253 facilities of that physician's office or other entities
254 under that physician's ownership or control. A physician

255 shall provide the patient with a prescription which may be
256 taken to the facility selected by the patient and a
257 physician knowingly failing to disclose to a patient on a
258 form approved by the advisory commission for professional
259 physical therapists as established by section 334.625 which
260 is dated and signed by a patient or guardian acknowledging
261 that the patient or guardian has read and understands that
262 the physician has a pecuniary interest in a physical therapy
263 or rehabilitation service providing prescribed treatment and
264 that the prescribed treatment is available on a competitive
265 basis. This subdivision shall not apply to a referral by
266 one physician to another physician within a group of
267 physicians practicing together;

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

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

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

279 (26) Revocation, suspension, limitation, probation, or
280 restriction of any kind whatsoever of any controlled
281 substance authority, whether agreed to voluntarily or not,
282 or voluntary termination of a controlled substance authority
283 while under investigation;

284 (27) For a physician to operate, conduct, manage, or
285 establish an abortion facility, or for a physician to
286 perform an abortion in an abortion facility, if such
287 facility comes under the definition of an ambulatory

288 surgical center pursuant to sections 197.200 to 197.240, and
289 such facility has failed to obtain or renew a license as an
290 ambulatory surgical center.

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

294 4. After the filing of such complaint before the
295 administrative hearing commission, the proceedings shall be
296 conducted in accordance with the provisions of chapter 621.
297 Upon a finding by the administrative hearing commission that
298 the grounds, provided in subsection 2 of this section, for
299 disciplinary action are met, the board may, singly or in
300 combination, warn, censure or place the person named in the
301 complaint on probation on such terms and conditions as the
302 board deems appropriate for a period not to exceed ten
303 years, or may suspend the person's license, certificate or
304 permit for a period not to exceed three years, or restrict
305 or limit the person's license, certificate or permit for an
306 indefinite period of time, or revoke the person's license,
307 certificate, or permit, or administer a public or private
308 reprimand, or deny the person's application for a license,
309 or permanently withhold issuance of a license or require the
310 person to submit to the care, counseling or treatment of
311 physicians designated by the board at the expense of the
312 individual to be examined, or require the person to attend
313 such continuing educational courses and pass such
314 examinations as the board may direct.

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

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

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

338 8. The act of lawfully dispensing, prescribing,
339 administering, or otherwise distributing ivermectin tablets
340 or hydroxychloroquine sulfate tablets for human use shall
341 not be grounds for denial, suspension, revocation, or other
342 disciplinary action by the board."; and

343 Further amend said bill, page 17, Section 334.655, line
344 70, by inserting after all of said line the following:

345 "338.055. 1. The board may refuse to issue any
346 certificate of registration or authority, permit or license
347 required pursuant to this chapter for one or any combination
348 of causes stated in subsection 2 of this section or if the
349 designated pharmacist-in-charge, manager-in-charge, or any
350 officer, owner, manager, or controlling shareholder of the
351 applicant has committed any act or practice in subsection 2
352 of this section. The board shall notify the applicant in

353 writing of the reasons for the refusal and shall advise the
354 applicant of his or her right to file a complaint with the
355 administrative hearing commission as provided by chapter 621.

356 2. The board may cause a complaint to be filed with
357 the administrative hearing commission as provided by chapter
358 621 against any holder of any certificate of registration or
359 authority, permit or license required by this chapter or any
360 person who has failed to renew or has surrendered his or her
361 certificate of registration or authority, permit or license
362 for any one or any combination of the following causes:

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

367 (2) The person has been finally adjudicated and found
368 guilty, or entered a plea of guilty or nolo contendere, in a
369 criminal prosecution under the laws of any state or of the
370 United States, for any offense reasonably related to the
371 qualifications, functions or duties of any profession
372 licensed or regulated under this chapter, for any offense an
373 essential element of which is fraud, dishonesty or an act of
374 violence, or for any offense involving moral turpitude,
375 whether or not sentence is imposed;

376 (3) Use of fraud, deception, misrepresentation or
377 bribery in securing any certificate of registration or
378 authority, permit or license issued pursuant to this chapter
379 or in obtaining permission to take any examination given or
380 required pursuant to this chapter;

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

384 (5) Incompetence, misconduct, gross negligence, fraud,
385 misrepresentation or dishonesty in the performance of the

386 functions or duties of any profession licensed or regulated
387 by this chapter;

388 (6) Violation of, or assisting or enabling any person
389 to violate, any provision of this chapter, or of any lawful
390 rule or regulation adopted pursuant to this chapter;

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

395 (8) Denial of licensure to an applicant or
396 disciplinary action against an applicant or the holder of a
397 license or other right to practice any profession regulated
398 by this chapter granted by another state, territory, federal
399 agency, or country whether or not voluntarily agreed to by
400 the licensee or applicant, including, but not limited to,
401 surrender of the license upon grounds for which denial or
402 discipline is authorized in this state;

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

405 (10) Assisting or enabling any person to practice or
406 offer to practice any profession licensed or regulated by
407 this chapter who is not registered and currently eligible to
408 practice under this chapter;

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

412 (12) Failure to display a valid certificate or license
413 if so required by this chapter or any rule promulgated
414 hereunder;

415 (13) Violation of any professional trust or confidence;

416 (14) Use of any advertisement or solicitation which is
417 false, misleading or deceptive to the general public or

418 persons to whom the advertisement or solicitation is
419 primarily directed;

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

423 (16) The intentional act of substituting or otherwise
424 changing the content, formula or brand of any drug
425 prescribed by written, electronic, or oral prescription
426 without prior written or oral approval from the prescriber
427 for the respective change in each prescription; provided,
428 however, that nothing contained herein shall prohibit a
429 pharmacist from substituting or changing the brand of any
430 drug as provided under section 338.056, and any such
431 substituting or changing of the brand of any drug as
432 provided for in section 338.056 shall not be deemed
433 unprofessional or dishonorable conduct unless a violation of
434 section 338.056 occurs;

435 (17) Personal use or consumption of any controlled
436 substance unless it is prescribed, dispensed, or
437 administered by a health care provider who is authorized by
438 law to do so.

439 3. After the filing of such complaint, the proceedings
440 shall be conducted in accordance with the provisions of
441 chapter 621. Upon a finding by the administrative hearing
442 commission that the grounds, provided in subsection 2 of
443 this section, for disciplinary action are met, the board
444 may, singly or in combination, censure or place the person
445 named in the complaint on probation on such terms and
446 conditions as the board deems appropriate for a period not
447 to exceed five years, or may suspend, for a period not to
448 exceed three years, or revoke the license, certificate, or
449 permit. The board may impose additional discipline on a
450 licensee, registrant, or permittee found to have violated

451 any disciplinary terms previously imposed under this section
452 or by agreement. The additional discipline may include,
453 singly or in combination, censure, placing the licensee,
454 registrant, or permittee named in the complaint on
455 additional probation on such terms and conditions as the
456 board deems appropriate, which additional probation shall
457 not exceed five years, or suspension for a period not to
458 exceed three years, or revocation of the license,
459 certificate, or permit.

460 4. If the board concludes that a licensee or
461 registrant has committed an act or is engaging in a course
462 of conduct which would be grounds for disciplinary action
463 which constitutes a clear and present danger to the public
464 health and safety, the board may file a complaint before the
465 administrative hearing commission requesting an expedited
466 hearing and specifying the activities which give rise to the
467 danger and the nature of the proposed restriction or
468 suspension of the licensee's or registrant's license.
469 Within fifteen days after service of the complaint on the
470 licensee or registrant, the administrative hearing
471 commission shall conduct a preliminary hearing to determine
472 whether the alleged activities of the licensee or registrant
473 appear to constitute a clear and present danger to the
474 public health and safety which justify that the licensee's
475 or registrant's license or registration be immediately
476 restricted or suspended. The burden of proving that the
477 actions of a licensee or registrant constitute a clear and
478 present danger to the public health and safety shall be upon
479 the state board of pharmacy. The administrative hearing
480 commission shall issue its decision immediately after the
481 hearing and shall either grant to the board the authority to
482 suspend or restrict the license or dismiss the action.

483 5. If the administrative hearing commission grants
484 temporary authority to the board to restrict or suspend the
485 licensee's or registrant's license, such temporary authority
486 of the board shall become final authority if there is no
487 request by the licensee or registrant for a full hearing
488 within thirty days of the preliminary hearing. The
489 administrative hearing commission shall, if requested by the
490 licensee or registrant named in the complaint, set a date to
491 hold a full hearing under the provisions of chapter 621
492 regarding the activities alleged in the initial complaint
493 filed by the board.

494 6. If the administrative hearing commission dismisses
495 the action filed by the board pursuant to subsection 4 of
496 this section, such dismissal shall not bar the board from
497 initiating a subsequent action on the same grounds.

498 7. The board shall not deny, revoke, or suspend, or
499 otherwise take any disciplinary action against, a
500 certificate of registration or authority, permit, or license
501 required by this chapter for any person due to the lawful
502 dispensing, distributing, or selling of ivermectin tablets
503 or hydroxychloroquine sulfate tablets for human use in
504 accordance with prescriber directions. No person licensed
505 under this chapter who dispenses, distributes, or sells
506 ivermectin tablets or hydroxychloroquine sulfate tablets for
507 human use shall ask the patient or prescriber, or otherwise
508 require of the patient or prescriber, the reason or purpose
509 for which the medications shall be used, except in
510 circumstances in which it is necessary for purposes of the
511 patient's health insurance or to clarify dosage for the
512 health and safety of the patient."; and

513 Further amend the title and enacting clause accordingly.