

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1133

101ST GENERAL ASSEMBLY

5564S.02C

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 338.055, RSMo, and to enact in lieu thereof one new section relating to pharmacist dispensation of certain medications.

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

Section A. Section 338.055, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 338.055,
3 to read as follows:

338.055. 1. The board may refuse to issue any
2 certificate of registration or authority, permit or license
3 required pursuant to this chapter for one or any combination
4 of causes stated in subsection 2 of this section or if the
5 designated pharmacist-in-charge, manager-in-charge, or any
6 officer, owner, manager, or controlling shareholder of the
7 applicant has committed any act or practice in subsection 2
8 of this section. The board shall notify the applicant in
9 writing of the reasons for the refusal and shall advise the
10 applicant of his or her right to file a complaint with the
11 administrative hearing commission as provided by chapter 621.

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

17 certificate of registration or authority, permit or license
18 for any one or any combination of the following causes:

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

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

32 (3) Use of fraud, deception, misrepresentation or
33 bribery in securing any certificate of registration or
34 authority, permit or license issued pursuant to this chapter
35 or in obtaining permission to take any examination given or
36 required pursuant to this chapter;

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

40 (5) Incompetence, misconduct, gross negligence, fraud,
41 misrepresentation or dishonesty in the performance of the
42 functions or duties of any profession licensed or regulated
43 by this chapter;

44 (6) Violation of, or assisting or enabling any person
45 to violate, any provision of this chapter, or of any lawful
46 rule or regulation adopted pursuant to this chapter;

47 (7) Impersonation of any person holding a certificate
48 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) Denial of licensure to an applicant or disciplinary action against an applicant or the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency, or country whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, surrender of the license upon grounds for which denial or discipline is authorized in this state;

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

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

(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 this chapter or any rule promulgated hereunder;

(13) Violation of any professional trust or confidence;

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

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

(16) The intentional act of substituting or otherwise changing the content, formula or brand of any drug

81 prescribed by written, electronic, or oral prescription
82 without prior written or oral approval from the prescriber
83 for the respective change in each prescription; provided,
84 however, that nothing contained herein shall prohibit a
85 pharmacist from substituting or changing the brand of any
86 drug as provided under section 338.056, and any such
87 substituting or changing of the brand of any drug as
88 provided for in section 338.056 shall not be deemed
89 unprofessional or dishonorable conduct unless a violation of
90 section 338.056 occurs;

91 (17) Personal use or consumption of any controlled
92 substance unless it is prescribed, dispensed, or
93 administered by a health care provider who is authorized by
94 law to do so.

95 3. After the filing of such complaint, the proceedings
96 shall be conducted in accordance with the provisions of
97 chapter 621. Upon a finding by the administrative hearing
98 commission that the grounds, provided in subsection 2 of
99 this section, for disciplinary action are met, the board
100 may, singly or in combination, censure or place the person
101 named in the complaint on probation on such terms and
102 conditions as the board deems appropriate for a period not
103 to exceed five years, or may suspend, for a period not to
104 exceed three years, or revoke the license, certificate, or
105 permit. The board may impose additional discipline on a
106 licensee, registrant, or permittee found to have violated
107 any disciplinary terms previously imposed under this section
108 or by agreement. The additional discipline may include,
109 singly or in combination, censure, placing the licensee,
110 registrant, or permittee named in the complaint on
111 additional probation on such terms and conditions as the
112 board deems appropriate, which additional probation shall

not exceed five years, or suspension for a period not to exceed three years, or revocation of the license, certificate, or permit.

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

5. If the administrative hearing commission grants temporary authority to the board to restrict or suspend the licensee's or registrant's license, such temporary authority of the board shall become final authority if there is no request by the licensee or registrant for a full hearing within thirty days of the preliminary hearing. The

administrative hearing commission shall, if requested by the licensee or registrant named in the complaint, set a date to hold a full hearing under the provisions of chapter 621 regarding the activities alleged in the initial complaint filed by the board.

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

7. The board shall not deny, revoke, or suspend, or otherwise take any disciplinary action against, a certificate of registration or authority, permit, or license required by this chapter for any person due to the dispensing, distributing, or selling of ivermectin tablets or hydroxychloroquine sulfate tablets for human use. No person licensed under this chapter who dispenses, distributes, or sells ivermectin tablets or hydroxychloroquine sulfate tablets for human use shall ask the patient, or otherwise require of the patient, the reason or purpose for which the medications shall be used.

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