

HOUSE BILL No. 4723

May 3, 2005, Introduced by Reps. Sak, Lemmons, III, Waters and Wojno and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7105, 7106, 7303a, 7311, 7401, 7405, 16106, 16221, 16226, 17708, 17751, 17759, 17763, and 17766 (MCL 333.7105, 333.7106, 333.7303a, 333.7311, 333.7401, 333.7405, 333.16106, 333.16221, 333.16226, 333.17708, 333.17751, 333.17759, 333.17763, and 333.17766), sections 7105 and 7311 as amended by 1993 PA 80, section 7303a as added by 1993 PA 305, section 7401 as amended by 2002 PA 710, sections 7405 and 17763 as amended by 2004 PA 536, sections 17708 and 17751 as amended by 1997 PA 153, section 16106 as amended by 2002 PA 643, sections 16221 and 16226 as amended by 2004 PA 214, and section 17766 as amended by 2004

PA 329.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7105. (1) "Deliver" or "delivery" means the actual,
2 constructive, or attempted transfer from 1 person to another of a
3 controlled substance, whether or not there is an agency
4 relationship.

5 (2) "Disciplinary subcommittee" means the disciplinary
6 subcommittee for the board of pharmacy appointed under section
7 16216.

8 (3) "Dispense" means to deliver or issue a controlled
9 substance to an ultimate user or research subject by or pursuant
10 to the lawful order of a practitioner, including the prescribing,
11 administering, or compounding necessary to prepare the substance
12 for the delivery or issuance.

13 (4) "Dispenser" means a practitioner who dispenses.

14 (5) "Distribute" means to deliver other than by
15 administering or dispensing a controlled substance.

16 (6) "Distributor" means a person who distributes.

17 (7) "Drug" means a substance recognized as a drug in the
18 official United States pharmacopoeia, official homeopathic
19 pharmacopoeia of the United States, or official national
20 formulary, or any supplement to any of them; a substance intended
21 for use in the diagnosis, cure, mitigation, treatment, or
22 prevention of disease in human beings or animals; a substance
23 other than food intended to affect the structure or any function
24 of the body of human beings or animals; or, a substance intended
25 for use as a component of any article specified in this

1 subsection. It does not include a device or its components,
2 parts, or accessories.

3 (8) **"HARMFUL CONTROLLED SUBSTANCE" MEANS A CONTROLLED**
4 **SUBSTANCE INTENDED FOR USE BY HUMAN BEINGS THAT IS HARMFUL**
5 **BECAUSE OF ITS TOXICITY, HABIT-FORMING NATURE, OR OTHER POTENTIAL**
6 **ADVERSE EFFECT, THE METHOD OF ITS USE, OR THE COLLATERAL MEASURES**
7 **NECESSARY TO ITS SAFE AND EFFECTIVE USE, AND THAT IS DESIGNATED**
8 **AS HARMFUL BY THE BOARD ACCORDING TO RULE.**

9 (9) ~~(8)~~ "Human consumption" means application, injection,
10 inhalation, or ingestion by a human being.

11 Sec. 7106. (1) "Immediate precursor" means a substance
12 ~~which~~ **THAT** the administrator has found to be and by rule
13 designates as being the principal compound commonly used or
14 produced primarily for use, and ~~which~~ **THAT** is an immediate
15 chemical intermediary used or likely to be used in the
16 manufacture of a controlled substance, the control of which is
17 necessary to prevent, curtail, or limit manufacture.

18 (2) **"INTERNET" MEANS THAT TERM AS DEFINED IN SECTION 230 OF**
19 **TITLE II OF THE COMMUNICATIONS ACT OF 1934, 47 USC 230.**

20 (3) ~~(2)~~ "Manufacture" means the production, preparation,
21 propagation, compounding, conversion, or processing of a
22 controlled substance, directly or indirectly by extraction from
23 substances of natural origin, or independently by means of
24 chemical synthesis, or by a combination of extraction and
25 chemical synthesis. ~~It~~ **MANUFACTURE** includes the packaging or
26 repackaging of the substance or labeling or relabeling of its
27 container, except that ~~it~~ **THE TERM** does not include **THE**

1 **FOLLOWING:**

2 (a) The preparation or compounding of a controlled substance
3 by an individual for his or her own use.

4 (b) The preparation, compounding packaging, or labeling of a
5 controlled substance:

6 (i) By a practitioner as an incident to the practitioner's
7 administering or dispensing of a controlled substance in the
8 course of his or her professional practice.

9 (ii) By a practitioner, or by the practitioner's authorized
10 agent under his or her supervision, for the purpose of, or as an
11 incident to, research, teaching, or chemical analysis and not for
12 sale.

13 (4) ~~-(3)-~~ "Marihuana" means all parts of the plant *Canabis*
14 *sativa* L., growing or not; the seeds thereof; the resin extracted
15 from any part of the plant; and every compound, manufacture,
16 salt, derivative, mixture, or preparation of the plant or its
17 seeds or resin. It does not include the mature stalks of the
18 plant, fiber produced from the stalks, oil or cake made from the
19 seeds of the plant, any other compound, manufacture, salt,
20 derivative, mixture, or preparation of the mature stalks, except
21 the resin extracted therefrom, fiber, oil or cake, or the
22 sterilized seed of the plant ~~which~~ **THAT** is incapable of
23 germination.

24 Sec. 7303a. (1) A prescriber who holds a controlled
25 substances license may administer or dispense a controlled
26 substance listed in schedules 2 to 5 without a separate
27 controlled substances license for those activities.

1 (2) Before prescribing or dispensing a controlled substance
2 to a patient, a licensed prescriber shall ask the patient about
3 other controlled substances the patient may be using. The
4 prescriber shall record the patient's response in the patient's
5 medical or clinical record.

6 **(3) BEFORE PRESCRIBING OR DISPENSING A HARMFUL CONTROLLED**
7 **SUBSTANCE, A LICENSED PRESCRIBER SHALL CONDUCT A GOOD FAITH PRIOR**
8 **EXAMINATION OF THE PATIENT FOR WHOM THAT CONTROLLED SUBSTANCE IS**
9 **BEING PRESCRIBED OR DISPENSED AND EXPRESSLY INDICATE ON THE**
10 **ORIGINAL PRESCRIPTION THAT AN EXAMINATION WAS CONDUCTED. A**
11 **PRESCRIBER SHALL NOT DISPENSE A HARMFUL CONTROLLED SUBSTANCE VIA**
12 **THE INTERNET WITHOUT A PRESCRIPTION THAT EXPRESSLY INDICATES THAT**
13 **THE PRESCRIPTION IS ISSUED PURSUANT TO A GOOD FAITH PRIOR**
14 **EXAMINATION CONDUCTED BY THE ORIGINAL PRESCRIBER.**

15 (4) ~~—(3)—~~ A licensed prescriber who dispenses controlled
16 substances shall maintain all of the following records separately
17 from other prescription records:

18 (a) All invoices and other acquisition records for each
19 controlled substance acquired by the prescriber for not less than
20 5 years after the date the prescriber acquires the controlled
21 substance.

22 (b) A log of all controlled substances dispensed by the
23 prescriber for not less than 5 years after the date the
24 controlled substance is dispensed.

25 (c) Records of all other dispositions of controlled
26 substances under the licensee's control for not less than 5 years
27 after the date of the disposition.

1 (5) ~~-(4)-~~ The requirement under section 7303 for a license
2 is waived in the following circumstances:

3 (a) When a controlled substance listed in schedules 2 to 5
4 is administered on the order of a licensed prescriber by an
5 individual who is licensed under article 15 as a practical nurse,
6 a registered professional nurse, or a physician's assistant.

7 (b) When methadone or a methadone congener is dispensed on
8 the order of a licensed prescriber in a methadone treatment
9 program licensed under article 6 or when a controlled substance
10 listed in schedules 2 to 5 is dispensed on the order of a
11 licensed prescriber in a hospice rendering emergency care
12 services in a patient's home as described in section 17746 by a
13 registered professional nurse or a physician's assistant licensed
14 under article 15.

15 Sec. 7311. (1) A license under section 7306 to manufacture,
16 distribute, prescribe, or dispense a controlled substance may be
17 denied, suspended, or revoked or a licensee may be fined,
18 reprimanded, ordered to perform community service or make
19 restitution, or placed on probation by the disciplinary
20 subcommittee upon a finding that an applicant for licensure or a
21 licensee is subject to ~~any~~ **1 OR MORE** of the following:

22 (a) The applicant or licensee has furnished false or
23 fraudulent material information in an application filed under
24 this article.

25 (b) The applicant's or licensee's federal registration to
26 manufacture, distribute, or dispense controlled substances has
27 been surrendered, suspended, or revoked.

1 (c) The applicant or licensee has promoted a controlled
2 substance to the general public.

3 (d) The applicant or licensee is not a practitioner,
4 manufacturer, or distributor.

5 (e) The applicant or licensee has not maintained effective
6 controls against diversion of controlled substances to other than
7 legitimate and professionally recognized therapeutic, scientific,
8 or industrial uses.

9 (f) The applicant or licensee is not in compliance with
10 applicable federal, state, and local laws.

11 (g) The applicant or licensee has manufactured, distributed,
12 or dispensed a controlled substance for other than legitimate or
13 professionally recognized therapeutic, scientific, or industrial
14 purposes or outside the scope of practice of the practitioner-
15 licensee or applicant.

16 **(H) THE APPLICANT OR LICENSEE HAS PRESCRIBED OR DISPENSED A**
17 **HARMFUL CONTROLLED SUBSTANCE VIA THE INTERNET WITHOUT A**
18 **PRESCRIPTION THAT EXPRESSLY INDICATES THAT THE PRESCRIPTION IS**
19 **ISSUED PURSUANT TO A GOOD FAITH PRIOR EXAMINATION OF THE PATIENT**
20 **FOR WHOM THAT CONTROLLED SUBSTANCE WAS PRESCRIBED OR DISPENSED.**

21 **(I) —(h)—** The applicant or licensee has violated or
22 attempted to violate, directly or indirectly, assisted in or
23 abetted the violation of, or conspired to violate this article or
24 ~~rules~~ **A RULE** of the administrator promulgated under this
25 article.

26 (2) The disciplinary subcommittee may limit a license under
27 subsection (1) to a particular controlled substance.

1 (3) A license under section 7306 to manufacture, distribute,
2 prescribe, or dispense a controlled substance shall be denied or
3 revoked by the disciplinary subcommittee if the applicant or
4 licensee has been convicted of a felony under a state or federal
5 law relating to a controlled substance.

6 (4) If the disciplinary subcommittee suspends or revokes a
7 license or if a license is void under subsection (6), all
8 controlled substances owned or possessed by the licensee at the
9 time of suspension or the effective date of the revocation order
10 may be placed under seal or seized at the discretion of the
11 disciplinary subcommittee. The department shall not dispose of
12 controlled substances under seal or seizure until the time for
13 taking an appeal has elapsed or until all appeals have been
14 concluded, unless a court, upon application therefor, orders the
15 sale of perishable controlled substances and the deposit of the
16 proceeds of the sale with the court. Upon a revocation order
17 becoming final or after a license becomes void under subsection
18 (6) because the licensee's license to practice is revoked under
19 article 15 and that revocation order becomes final, the
20 disciplinary subcommittee may order all controlled substances
21 under seal or seizure to be forfeited to this state.

22 (5) The disciplinary subcommittee shall promptly notify the
23 bureau of all orders suspending or revoking a license and all
24 forfeitures of controlled substances.

25 (6) A license under section 7306 to manufacture, distribute,
26 prescribe, or dispense a controlled substance is automatically
27 void if the licensee's license to practice is suspended or

1 revoked under article 15.

2 (7) Subject to subsection (8), if the administrator or the
3 disciplinary subcommittee finds that an applicant or licensee has
4 been convicted of a misdemeanor or a felony under a state or
5 federal law relating to a controlled substance, the applicant or
6 licensee shall not have a direct financial interest in or be
7 employed by a person who is licensed under this article to
8 manufacture, distribute, prescribe, or dispense a controlled
9 substance in a capacity in which the individual has direct access
10 to controlled substances for a period of not less than 3 years
11 after the date of conviction. An individual who violates this
12 subsection is subject to a civil fine of not more than \$25,000.00
13 in a proceeding in the circuit court.

14 (8) Subsection (7) applies only to a conviction for a
15 misdemeanor that is directly related to the manufacture,
16 delivery, possession, possession with intent to manufacture or
17 deliver, use, distribution, prescription, or dispensing of a
18 controlled substance. Subsection (7) does not apply to a
19 conviction for a misdemeanor based upon an unintentional error or
20 omission involving a clerical or record-keeping function.

21 Sec. 7401. (1) Except as authorized by this article, a
22 person shall not manufacture, create, deliver, or possess with
23 intent to manufacture, create, or deliver a controlled substance,
24 a prescription form, or a counterfeit prescription form. A
25 practitioner licensed by the administrator under this article
26 shall not dispense, prescribe, or administer a controlled
27 substance for other than legitimate and professionally recognized

1 therapeutic or scientific purposes or outside the scope of
2 practice of the practitioner, licensee, or applicant. **A**
3 **PRACTITIONER LICENSED BY THE ADMINISTRATOR UNDER THIS ARTICLE**
4 **SHALL NOT DISPENSE OR ADMINISTER A HARMFUL CONTROLLED SUBSTANCE**
5 **FOR A PATIENT VIA THE INTERNET WITHOUT A PRESCRIPTION THAT**
6 **EXPRESSLY INDICATES THAT THE PRESCRIPTION IS ISSUED PURSUANT TO A**
7 **GOOD FAITH EXAMINATION CONDUCTED BY THE PRESCRIBER.**

8 (2) A person who violates this section as to:

9 (a) A controlled substance classified in schedule 1 or 2
10 that is a narcotic drug or a drug described in section 7214(a)(iv)
11 and:

12 (i) ~~which~~ **THAT** is in an amount of 1,000 grams or more of
13 any mixture containing that substance is guilty of a felony
14 punishable by imprisonment for life or any term of years or a
15 fine of not more than \$1,000,000.00, or both.

16 (ii) ~~which~~ **THAT** is in an amount of 450 grams or more, but
17 less than 1,000 grams, of any mixture containing that substance
18 is guilty of a felony and punishable by imprisonment for not more
19 than 30 years or a fine of not more than \$500,000.00, or both.

20 (iii) ~~which~~ **THAT** is in an amount of 50 grams or more, but
21 less than 450 grams, of any mixture containing that substance is
22 guilty of a felony punishable by imprisonment for not more than
23 20 years or a fine of not more than \$250,000.00, or both.

24 (iv) ~~which~~ **THAT** is in an amount less than 50 grams, of any
25 mixture containing that substance is guilty of a felony
26 punishable by imprisonment for not more than 20 years or a fine
27 of not more than \$25,000.00, or both.

1 (b) Either of the following:

2 (i) A substance described in section 7214(c)(ii) is guilty of
3 a felony punishable by imprisonment for not more than 20 years or
4 a fine of not more than \$25,000.00, or both.

5 (ii) Any other controlled substance classified in schedule 1,
6 2, or 3, except marihuana is guilty of a felony punishable by
7 imprisonment for not more than 7 years or a fine of not more than
8 \$10,000.00, or both.

9 (c) A substance classified in schedule 4 is guilty of a
10 felony punishable by imprisonment for not more than 4 years or a
11 fine of not more than \$2,000.00, or both.

12 (d) Marihuana or a mixture containing marihuana is guilty of
13 a felony punishable as follows:

14 (i) If the amount is 45 kilograms or more, or 200 plants or
15 more, by imprisonment for not more than 15 years or a fine of not
16 more than \$10,000,000.00, or both.

17 (ii) If the amount is 5 kilograms or more but less than 45
18 kilograms, or 20 plants or more but fewer than 200 plants, by
19 imprisonment for not more than 7 years or a fine of not more than
20 \$500,000.00, or both.

21 (iii) If the amount is less than 5 kilograms or fewer than 20
22 plants, by imprisonment for not more than 4 years or a fine of
23 not more than \$20,000.00, or both.

24 (e) A substance classified in schedule 5 is guilty of a
25 felony punishable by imprisonment for not more than 2 years or a
26 fine of not more than \$2,000.00, or both.

27 (f) A prescription form or a counterfeit prescription form

1 is guilty of a felony punishable by imprisonment for not more
2 than 7 years or a fine of not more than \$5,000.00, or both.

3 (3) A term of imprisonment imposed under subsection (2)(a)
4 may be imposed to run consecutively with any term of imprisonment
5 imposed for the commission of another felony.

6 (4) If an individual was sentenced to lifetime probation
7 under subsection (2)(a)(iv) before ~~the effective date of the~~
8 ~~amendatory act that added this subsection~~ **MARCH 1, 2003** and the
9 individual has served 5 or more years of that probationary
10 period, the probation officer for that individual may recommend
11 to the court that the court discharge the individual from
12 probation. If an individual's probation officer does not
13 recommend discharge as provided in this subsection, with notice
14 to the prosecutor, the individual may petition the court seeking
15 resentencing under the court rules. The court may discharge an
16 individual from probation as provided in this subsection. An
17 individual may file more than 1 motion seeking resentencing under
18 this subsection.

19 (5) As used in this section, "plant" means a marihuana plant
20 that has produced cotyledons or a cutting of a marihuana plant
21 that has produced cotyledons.

22 Sec. 7405. (1) A person:

23 (a) Who is licensed by the administrator under this article
24 shall not distribute, prescribe, or dispense a controlled
25 substance in violation of section 7333.

26 (b) Who is a licensee shall not manufacture a controlled
27 substance not authorized by his or her license or distribute,

1 prescribe, or dispense a controlled substance not authorized by
2 his or her license to another licensee or other authorized
3 person, except as authorized by rules promulgated by the
4 administrator.

5 (c) Shall not refuse an entry into any premises for an
6 inspection authorized by this article.

7 (d) Shall not knowingly keep or maintain a store, shop,
8 warehouse, dwelling, building, vehicle, boat, aircraft, or other
9 structure or place, that is frequented by persons using
10 controlled substances in violation of this article for the
11 purpose of using controlled substances, or that is used for
12 keeping or selling controlled substances in violation of this
13 article.

14 (e) Who is a practitioner shall not dispense a prescription
15 for a controlled substance written and signed or transmitted by a
16 physician prescriber licensed to practice in a state other than
17 Michigan, unless the prescription is issued by a physician
18 prescriber who resides adjacent to the land border between this
19 state and an adjoining state or resides in Illinois or Minnesota
20 and who is authorized under the laws of that state to practice
21 medicine or osteopathic medicine and surgery and to prescribe
22 controlled substances and whose practice may extend into this
23 state, but who does not maintain an office or designate a place
24 to meet patients or receive calls in this state.

25 **(F) WHO IS A PRACTITIONER SHALL NOT DISPENSE A PRESCRIPTION**
26 **FOR A HARMFUL CONTROLLED SUBSTANCE VIA THE INTERNET WITHOUT A**
27 **PRESCRIPTION THAT EXPRESSLY INDICATES THAT THE PRESCRIPTION IS**

1 ISSUED PURSUANT TO A GOOD FAITH PRIOR EXAMINATION CONDUCTED BY
2 THE PRESCRIBER.

3 (2) A person who violates subsection (1) is subject to the
4 penalties prescribed in section 7406.

5 Sec. 16106. (1) "Incompetence" means a departure from, or
6 failure to conform to, minimal standards of acceptable and
7 prevailing practice for a health profession, whether or not
8 actual injury to an individual occurs.

9 (2) "INTERNET" MEANS THAT TERM AS DEFINED IN SECTION 230 OF
10 TITLE II OF THE COMMUNICATIONS ACT OF 1934, 47 USC 230.

11 (3) ~~-(2)-~~ "License", except as otherwise provided in this
12 subsection, means an authorization issued under this article to
13 practice where practice would otherwise be unlawful. License
14 includes an authorization to use a designated title which use
15 would otherwise be prohibited under this article and may be used
16 to refer to a health profession subfield license, limited
17 license, or a temporary license. For purposes of the definition
18 of "prescriber" contained in section 17708(2) only, license
19 includes an authorization issued under the laws of another state,
20 or the country of Canada to practice in that state or in the
21 country of Canada, where practice would otherwise be unlawful,
22 and is limited to a licensed doctor of medicine, a licensed
23 doctor of osteopathic medicine and surgery, or another licensed
24 health professional acting under the delegation and using,
25 recording, or otherwise indicating the name of the delegating
26 licensed doctor of medicine or licensed doctor of osteopathic
27 medicine and surgery. License does not include a health

1 profession specialty field license.

2 (4) ~~-(3)-~~ "Licensee", as used in a part that regulates a
3 specific health profession, means an individual to whom a license
4 is issued under that part, and as used in this part means each
5 licensee regulated by this article.

6 (5) ~~-(4)-~~ "Limitation" means an action by which a board
7 imposes restrictions or conditions, or both, on a license.

8 (6) ~~-(5)-~~ "Limited license" means a license to which
9 restrictions or conditions, or both, as to scope of practice,
10 place of practice, supervision of practice, duration of licensed
11 status, or type or condition of patient or client served are
12 imposed by a board.

13 Sec. 16221. The department may investigate activities
14 related to the practice of a health profession by a licensee, a
15 registrant, or an applicant for licensure or registration. The
16 department may hold hearings, administer oaths, and order
17 relevant testimony to be taken and shall report its findings to
18 the appropriate disciplinary subcommittee. The disciplinary
19 subcommittee shall proceed under section 16226 if it finds that 1
20 or more of the following grounds exist:

21 (a) A violation of general duty, consisting of negligence or
22 failure to exercise due care, including negligent delegation to
23 or supervision of employees or other individuals, whether or not
24 injury results, or any conduct, practice, or condition that
25 impairs, or may impair, the ability to safely and skillfully
26 practice the health profession.

27 (b) Personal disqualifications, consisting of 1 or more of

1 the following:

2 (i) Incompetence.

3 (ii) Subject to sections 16165 to 16170a, substance abuse as
4 defined in section 6107.

5 (iii) Mental or physical inability reasonably related to and
6 adversely affecting the licensee's ability to practice in a safe
7 and competent manner.

8 (iv) Declaration of mental incompetence by a court of
9 competent jurisdiction.

10 (v) Conviction of a misdemeanor punishable by imprisonment
11 for a maximum term of 2 years; a misdemeanor involving the
12 illegal delivery, possession, or use of a controlled substance;
13 or a felony. A certified copy of the court record is conclusive
14 evidence of the conviction.

15 (vi) Lack of good moral character.

16 (vii) Conviction of a criminal offense under sections 520b to
17 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to
18 750.520g. A certified copy of the court record is conclusive
19 evidence of the conviction.

20 (viii) Conviction of a violation of section 492a of the
21 Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy
22 of the court record is conclusive evidence of the conviction.

23 (ix) Conviction of a misdemeanor or felony involving fraud in
24 obtaining or attempting to obtain fees related to the practice of
25 a health profession. A certified copy of the court record is
26 conclusive evidence of the conviction.

27 (x) Final adverse administrative action by a licensure,

1 registration, disciplinary, or certification board involving the
2 holder of, or an applicant for, a license or registration
3 regulated by another state or a territory of the United States,
4 by the United States military, by the federal government, or by
5 another country. A certified copy of the record of the board is
6 conclusive evidence of the final action.

7 (xi) Conviction of a misdemeanor that is reasonably related
8 to or that adversely affects the licensee's ability to practice
9 in a safe and competent manner. A certified copy of the court
10 record is conclusive evidence of the conviction.

11 (xii) Conviction of a violation of section 430 of the
12 Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy
13 of the court record is conclusive evidence of the conviction.

14 (c) Prohibited acts, consisting of 1 or more of the
15 following:

16 (i) Fraud or deceit in obtaining or renewing a license or
17 registration.

18 (ii) Permitting the license or registration to be used by an
19 unauthorized person.

20 (iii) Practice outside the scope of a license.

21 (iv) Obtaining, possessing, or attempting to obtain or
22 possess a controlled substance as defined in section 7104 or a
23 drug as defined in section 7105 without lawful authority; or
24 selling, prescribing, giving away, or administering drugs for
25 other than lawful diagnostic or therapeutic purposes.

26 (d) Unethical business practices, consisting of 1 or more of
27 the following:

1 (i) False or misleading advertising.

2 (ii) Dividing fees for referral of patients or accepting
3 kickbacks on medical or surgical services, appliances, or
4 medications purchased by or in behalf of patients.

5 (iii) Fraud or deceit in obtaining or attempting to obtain
6 third party reimbursement.

7 (e) Unprofessional conduct, consisting of 1 or more of the
8 following:

9 (i) Misrepresentation to a consumer or patient or in
10 obtaining or attempting to obtain third party reimbursement in
11 the course of professional practice.

12 (ii) Betrayal of a professional confidence.

13 (iii) Promotion for personal gain of an unnecessary drug,
14 device, treatment, procedure, or service.

15 (iv) Either of the following:

16 (A) A requirement by a licensee other than a physician that
17 an individual purchase or secure a drug, device, treatment,
18 procedure, or service from another person, place, facility, or
19 business in which the licensee has a financial interest.

20 (B) A referral by a physician for a designated health
21 service that violates section 1877 of part D of title XVIII of
22 the social security act, 42 USC 1395nn, or a regulation
23 promulgated under that section. Section 1877 of part D of title
24 XVIII of the social security act, 42 USC 1395nn, and the
25 regulations promulgated under that section, as they exist on June
26 3, 2002, are incorporated by reference for purposes of this
27 subparagraph. A disciplinary subcommittee shall apply section

1 1877 of part D of title XVIII of the social security act, 42 USC
2 1395nn, and the regulations promulgated under that section
3 regardless of the source of payment for the designated health
4 service referred and rendered. If section 1877 of part D of title
5 XVIII of the social security act, 42 USC 1395nn, or a regulation
6 promulgated under that section is revised after June 3, 2002, the
7 department shall officially take notice of the revision. Within
8 30 days after taking notice of the revision, the department shall
9 decide whether or not the revision pertains to referral by
10 physicians for designated health services and continues to
11 protect the public from inappropriate referrals by physicians. If
12 the department decides that the revision does both of those
13 things, the department may promulgate rules to incorporate the
14 revision by reference. If the department does promulgate rules to
15 incorporate the revision by reference, the department shall not
16 make any changes to the revision. As used in this subparagraph,
17 "designated health service" means that term as defined in section
18 1877 of part D of title XVIII of the social security act, 42 USC
19 1395nn, and the regulations promulgated under that section and
20 "physician" means that term as defined in sections 17001 and
21 17501.

22 (v) For a physician who makes referrals pursuant to section
23 1877 of part D of title XVIII of the social security act, 42 USC
24 1395nn, or a regulation promulgated under that section, refusing
25 to accept a reasonable proportion of patients eligible for
26 medicaid and refusing to accept payment from medicaid or medicare
27 as payment in full for a treatment, procedure, or service for

1 which the physician refers the individual and in which the
2 physician has a financial interest. A physician who owns all or
3 part of a facility in which he or she provides surgical services
4 is not subject to this subparagraph if a referred surgical
5 procedure he or she performs in the facility is not reimbursed at
6 a minimum of the appropriate medicaid or medicare outpatient fee
7 schedule, including the combined technical and professional
8 components.

9 (f) Beginning June 3, 2003, the department ~~of consumer and~~
10 ~~industry services~~ shall prepare the first of 3 annual reports on
11 the effect of this amendatory act on access to care for the
12 uninsured and medicaid patients. The department shall report on
13 the number of referrals by licensees of uninsured and medicaid
14 patients to purchase or secure a drug, device, treatment,
15 procedure, or service from another person, place, facility, or
16 business in which the licensee has a financial interest.

17 (g) Failure to report a change of name or mailing address
18 within 30 days after the change occurs.

19 (h) A violation, or aiding or abetting in a violation, of
20 this article or of a rule promulgated under this article.

21 (i) Failure to comply with a subpoena issued pursuant to
22 this part, failure to respond to a complaint issued under this
23 article or article 7, failure to appear at a compliance
24 conference or an administrative hearing, or failure to report
25 under section 16222 or 16223.

26 (j) Failure to pay an installment of an assessment levied
27 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100

1 to 500.8302, within 60 days after notice by the appropriate
 2 board.

3 (k) A violation of section 17013 or 17513.

4 (l) Failure to meet 1 or more of the requirements for
 5 licensure or registration under section 16174.

6 (m) A violation of section 17015 or 17515.

7 (n) A violation of section 17016 or 17516.

8 (o) Failure to comply with section 9206(3).

9 (p) A violation of section 5654 or 5655.

10 (q) A violation of section 16274.

11 (r) A violation of section 17020 or 17520.

12 (s) A violation of the medical records access act.

13 (t) A violation of section 17764(2).

14 **(U) A VIOLATION OF SECTION 17751 OR 17759.**

15 Sec. 16226. (1) After finding the existence of 1 or more of
 16 the grounds for disciplinary subcommittee action listed in
 17 section 16221, a disciplinary subcommittee shall impose 1 or more
 18 of the following sanctions for each violation:

<u>19 Violations of Section 16221</u>	<u>Sanctions</u>
20 Subdivision (a), (b)(ii),	Probation, limitation, denial,
21 (b)(iv), (b)(vi), or	suspension, revocation,
22 (b)(vii)	restitution, community service,
23	or fine.
24 Subdivision (b)(viii)	Revocation or denial.
25 Subdivision (b)(i),	Limitation, suspension,
26 (b)(iii), (b)(v),	revocation, denial,
27 (b)(ix), (b)(x),	probation, restitution,

1 (b)(xi), or (b)(xii) community service, or fine.
2 Subdivision (c)(i) Denial, revocation, suspension,
3 probation, limitation, community
4 service, or fine.
5 Subdivision (c)(ii) Denial, suspension, revocation,
6 restitution, community service,
7 or fine.
8 Subdivision (c)(iii) Probation, denial, suspension,
9 revocation, restitution,
10 community service, or fine.
11 Subdivision (c)(iv) Fine, probation, denial,
12 or (d)(iii) suspension, revocation, community
13 service, or restitution.
14 Subdivision (d)(i) Reprimand, fine, probation,
15 or (d)(ii) community service, denial,
16 or restitution.
17 Subdivision (e)(i) Reprimand, fine, probation,
18 limitation, suspension, community
19 service, denial, or restitution.
20 Subdivision (e)(ii) Reprimand, probation,
21 or (i) suspension, restitution,
22 community service, denial, or
23 fine.
24 Subdivision (e)(iii), Reprimand, fine, probation,
25 (e)(iv), or (e)(v) suspension, revocation,
26 limitation, community service,
27 denial, or restitution.
28 Subdivision (g) Reprimand or fine.
29 Subdivision (h) or (s) Reprimand, probation, denial,
30 suspension, revocation,
31 limitation, restitution,

1 community service, or fine.
 2 Subdivision (j) Suspension or fine.
 3 Subdivision (k), (p), Reprimand or fine.
 4 or (r)
 5 Subdivision (l) Reprimand, denial, or
 6 limitation.
 7 Subdivision (m), ~~or~~ Denial, revocation, restitution,
 8 (o), **OR (U)** probation, suspension,
 9 limitation, reprimand, or fine.
 10 Subdivision (n) Revocation or denial.
 11 Subdivision (q) Revocation.
 12 Subdivision (t) Revocation, fine, and
 13 restitution.

14 (2) Determination of sanctions for violations under this
 15 section shall be made by a disciplinary subcommittee. If, during
 16 judicial review, the court of appeals determines that a final
 17 decision or order of a disciplinary subcommittee prejudices
 18 substantial rights of the petitioner for 1 or more of the grounds
 19 listed in section 106 of the administrative procedures act of
 20 1969, 1969 PA 306, MCL 24.306, and holds that the final decision
 21 or order is unlawful and is to be set aside, the court shall
 22 state on the record the reasons for the holding and may remand
 23 the case to the disciplinary subcommittee for further
 24 consideration.

25 (3) A disciplinary subcommittee may impose a fine of up to,
 26 but not exceeding, \$250,000.00 for a violation of section
 27 16221(a) or (b).

28 (4) A disciplinary subcommittee may require a licensee or

1 registrant or an applicant for licensure or registration who has
2 violated this article or article 7 or a rule promulgated under
3 this article or article 7 to satisfactorily complete an
4 educational program, a training program, or a treatment program,
5 a mental, physical, or professional competence examination, or a
6 combination of those programs and examinations.

7 Sec. 17708. (1) "Preceptor" means a pharmacist approved by
8 the board to direct the training of an intern in an approved
9 pharmacy.

10 (2) "Prescriber" means a licensed dentist, a licensed doctor
11 of medicine, a licensed doctor of osteopathic medicine and
12 surgery, a licensed doctor of podiatric medicine and surgery, a
13 licensed optometrist certified under part 174 to administer and
14 prescribe therapeutic pharmaceutical agents, a licensed
15 veterinarian, or another licensed health professional acting
16 under the delegation and using, recording, or otherwise
17 indicating the name of the delegating licensed doctor of medicine
18 or licensed doctor of osteopathic medicine and surgery.

19 (3) "Prescription" means an order for a drug or device
20 written and signed or transmitted by other means of communication
21 by a prescriber to be filled, compounded, or dispensed.
22 Prescribing is limited to a prescriber. An order transmitted in
23 other than written form shall be recorded or written and
24 immediately dated by the pharmacist, and that record constitutes
25 the original prescription. In a health facility or agency
26 licensed under article 17 or other medical institution, an order
27 for a drug or device in the patient's chart constitutes for the

1 purposes of this definition the original prescription. Subject to
2 section 17751(2), prescription includes, but is not limited to,
3 an order for a drug, not including a controlled substance as
4 defined in section 7104 except under circumstances described in
5 section ~~17763(g)~~ **17763(F)**, written and signed or transmitted by
6 other means of communication by a physician prescriber licensed
7 to practice in a state other than Michigan.

8 (4) "Prescription drug" means 1 or more of the following:

9 (a) A drug dispensed pursuant to a prescription.

10 (b) A drug bearing the federal legend "CAUTION: federal law
11 prohibits dispensing without prescription".

12 (c) A drug designated by the board as a drug that may only
13 be dispensed pursuant to a prescription.

14 Sec. 17751. (1) A pharmacist shall not dispense a drug
15 requiring a prescription under the federal act or a law of this
16 state except under authority of an original prescription or an
17 equivalent record of an original prescription approved by the
18 board. **A PHARMACIST SHALL NOT DISPENSE A HARMFUL DRUG VIA THE
19 INTERNET UNLESS THE PRESCRIBER EXPRESSLY INDICATES IN HIS OR HER
20 OWN HANDWRITING ON THE ORIGINAL PRESCRIPTION THAT THE HARMFUL
21 DRUG IS BEING PRESCRIBED PURSUANT TO A GOOD FAITH PRIOR
22 EXAMINATION.**

23 (2) A pharmacist may dispense a prescription written and
24 signed or transmitted by other means of communication by a
25 physician prescriber in a state other than Michigan, but not
26 including a prescription for a controlled substance as defined in
27 section 7104 except under circumstances described in section

1 ~~17763(g)~~ **17763(F)**, only if the pharmacist in the exercise of his
2 or her professional judgment determines all of the following:

3 (a) That the prescription was issued pursuant to an existing
4 physician-patient relationship.

5 (b) That the prescription is authentic.

6 (c) That the prescribed drug is appropriate and necessary
7 for the treatment of an acute, chronic, or recurrent condition.

8 **(D) IF THE PRESCRIPTION IS SUBMITTED VIA THE INTERNET AND IS**
9 **FOR A HARMFUL DRUG, THAT THE PRESCRIPTION WAS ISSUED PURSUANT TO**
10 **A GOOD FAITH PRIOR EXAMINATION.**

11 (3) A pharmacist or a prescriber shall dispense a
12 prescription only if the prescription falls within the scope of
13 practice of the prescriber.

14 (4) A pharmacist shall not knowingly dispense a prescription
15 after the death of the prescriber or patient.

16 Sec. 17759. **(1)** A harmful drug shall be dispensed only:

17 (a) As a prescription drug.

18 (b) Under the control of a licensed pharmacist or
19 prescriber, who maintains records for the dispensing of these
20 drugs which are the same as records required for the dispensing
21 of prescriptions.

22 **(2) A HARMFUL DRUG SHALL NOT BE DISPENSED VIA THE INTERNET**
23 **WITHOUT A PRESCRIPTION THAT EXPRESSLY INDICATES THAT THE**
24 **PRESCRIPTION IS BEING ISSUED PURSUANT TO A GOOD FAITH PRIOR**
25 **EXAMINATION.**

26 Sec. 17763. In addition to the grounds set forth in part
27 161, the disciplinary subcommittee may fine, reprimand, or place

1 a pharmacist licensee on probation, or deny, limit, suspend, or
2 revoke the license of a pharmacist or order restitution or
3 community service for a violation or abetting in a violation of
4 this part or rules promulgated under this part, or for 1 or more
5 of the following grounds:

6 (a) Employing the mail to sell, distribute, or deliver a
7 drug that requires a prescription when the prescription for the
8 drug is received by mail.

9 (b) Permitting the dispensing of prescriptions by an
10 individual who is not a pharmacist, pharmacist intern, or
11 dispensing prescriber.

12 (c) Permitting the dispensing of prescriptions by a
13 pharmacist intern, except in the presence and under the personal
14 charge of a pharmacist.

15 (d) Selling at auction drugs in bulk or in open packages
16 unless the sale has been approved in accordance with rules of the
17 board.

18 (e) Promoting a prescription drug to the public in any
19 manner.

20 (f) In addition to the prohibition contained in section
21 7405(1)(e), dispensing a prescription for a controlled substance
22 as defined in section 7104 that is written and signed or
23 transmitted by a physician prescriber in a state other than
24 Michigan, unless the prescription is issued by a physician
25 prescriber who resides adjacent to the land border between this
26 state and an adjoining state or resides in Illinois or Minnesota
27 and who is authorized under the laws of that state to practice

1 medicine or osteopathic medicine and surgery and to prescribe
2 controlled substances and whose practice may extend into this
3 state, but who does not maintain an office or designate a place
4 to meet patients or receive calls in this state.

5 **(G) PERMITTING THE DISPENSING OF A HARMFUL DRUG VIA THE**
6 **INTERNET WITHOUT A PRESCRIPTION THAT EXPRESSLY INDICATES THAT THE**
7 **PRESCRIPTION IS ISSUED PURSUANT TO A GOOD FAITH PRIOR**
8 **EXAMINATION.**

9 Sec. 17766. Except as provided in section 17766d, a person
10 who does any of the following is guilty of a misdemeanor:

11 (a) Obtains or attempts to obtain a prescription drug by
12 giving a false name to a pharmacist or other authorized seller,
13 prescriber, or dispenser.

14 (b) Obtains or attempts to obtain a prescription drug by
15 falsely representing that he or she is a lawful prescriber,
16 dispenser, or licensee, or acting on behalf of a lawful
17 prescriber, dispenser, or licensee.

18 (c) Falsely makes, utters, publishes, passes, alters, or
19 forges a prescription.

20 (d) Knowingly possesses a false, forged, or altered
21 prescription.

22 (e) Knowingly attempts to obtain, obtains, or possesses a
23 drug by means of a prescription for other than a legitimate
24 therapeutic purpose, or as a result of a false, forged, or
25 altered prescription.

26 (f) Possesses or controls for the purpose of resale, or
27 sells, offers to sell, dispenses, or gives away, a drug,

1 pharmaceutical preparation, or chemical that has been dispensed
2 on prescription and has left the control of a pharmacist.

3 (g) Possesses or controls for the purpose of resale, or
4 sells, offers to sell, dispenses, or gives away, a drug,
5 pharmaceutical preparation, or chemical that has been damaged by
6 heat, smoke, fire, water, or other cause and is unfit for human
7 or animal use.

8 (h) Prepares or permits the preparation of a prescription
9 drug, except as delegated by a pharmacist.

10 (i) Sells a drug in bulk or in an open package at auction,
11 unless the sale has been approved in accordance with rules of the
12 board.

13 (J) OBTAINS OR ATTEMPTS TO OBTAIN A HARMFUL DRUG FROM A
14 PRESCRIBER OR PHARMACIST VIA THE INTERNET WITHOUT A VALID
15 PRESCRIPTION AND A GOOD FAITH PRIOR EXAMINATION.