

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 4149

(As passed the House, May 27, 1997)

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7405, 16106, 17708, 17751, and 17763 (MCL
333.7405, 333.16106, 333.17708, 333.17751, and 333.17763), sec-
tion 7405 as amended by 1988 PA 30, section 17708 as amended by
1994 PA 384, and section 17763 as amended by 1993 PA 79.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 7405. (1) A person:
2 (a) Who is licensed by the administrator under this article
3 shall not distribute, prescribe, or dispense a controlled sub-
4 stance in violation of section 7333.
5 (b) Who is a licensee shall not manufacture a controlled
6 substance not authorized by his or her license or distribute,
7 prescribe, or dispense a controlled substance not authorized by
8 his or her license to another licensee or other authorized

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1 person, except as authorized by rules promulgated by the
2 administrator.

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

5 (d) Shall not knowingly keep or maintain a store, shop,
6 warehouse, dwelling, building, vehicle, boat, aircraft, or other
7 structure or place, ~~which~~ THAT is ~~resorted to~~ FREQUENTED by
8 persons using controlled substances in violation of this article
9 for the purpose of using ~~these~~ CONTROLLED substances, or
10 ~~which~~ THAT is used for keeping or selling ~~them~~ CONTROLLED
11 SUBSTANCES in violation of this article.

12 (E) WHO IS A PRACTITIONER SHALL NOT DISPENSE A PRESCRIPTION
13 FOR A CONTROLLED SUBSTANCE WRITTEN AND SIGNED OR TRANSMITTED BY A
14 PHYSICIAN PRESCRIBER LICENSED TO PRACTICE IN A STATE OTHER THAN
15 MICHIGAN, UNLESS THE PRESCRIPTION IS ISSUED BY A PHYSICIAN PRE-
16 SCRIBER RESIDING ADJACENT TO THE LAND BORDER BETWEEN THIS STATE
17 AND AN ADJOINING STATE WHO IS AUTHORIZED UNDER THE LAWS OF THAT
18 STATE TO PRACTICE MEDICINE OR OSTEOPATHIC MEDICINE AND SURGERY
19 AND TO PRESCRIBE CONTROLLED SUBSTANCES AND WHOSE PRACTICE MAY
20 EXTEND INTO THIS STATE, BUT WHO DOES NOT MAINTAIN AN OFFICE OR
21 DESIGNATE A PLACE TO MEET PATIENTS OR RECEIVE CALLS IN THIS
22 STATE.

23 (2) A PERSON WHO VIOLATES SUBSECTION (1) IS SUBJECT TO THE
24 PENALTIES PRESCRIBED IN SECTION 7406.

25 Sec. 16106. (1) "Incompetence" means a departure from, or
26 failure to conform to, minimal standards of acceptable and

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1 prevailing practice for the health profession, whether or not
2 actual injury to an individual occurs.

3 (2) "License", EXCEPT AS OTHERWISE PROVIDED IN THIS
4 SUBSECTION, means an authorization issued under this article to
5 practice where practice would otherwise be unlawful. ~~It~~
6 LICENSE includes an authorization to use a designated title which
7 use would otherwise be prohibited under this article and may be
8 used to refer to a health profession subfield license, limited
9 license, or a temporary license. FOR PURPOSES OF THE DEFINITION
10 OF "PRESCRIBER" CONTAINED IN SECTION 17708(2) ONLY, LICENSE
11 INCLUDES AN AUTHORIZATION ISSUED UNDER THE LAWS OF ANOTHER STATE, OR
12 THE COUNTRY OF CANADA,
13 TO PRACTICE IN THAT STATE, OR THE COUNTRY OF CANADA, WHERE PRACTICE
14 WOULD OTHERWISE BE
15 UNLAWFUL, AND IS LIMITED TO A LICENSED DOCTOR OF MEDICINE, A
16 LICENSED DOCTOR OF OSTEOPATHIC MEDICINE AND SURGERY, OR ANOTHER
17 LICENSED HEALTH PROFESSIONAL ACTING UNDER THE DELEGATION AND
18 USING, RECORDING, OR OTHERWISE INDICATING THE NAME OF THE DELE-
19 GATING LICENSED DOCTOR OF MEDICINE OR LICENSED DOCTOR OF OSTEO-
20 PATHIC MEDICINE AND SURGERY.

19 (3) "Licensee", as used in a part that regulates a specific
20 health profession, means a person to whom a license is issued
21 under that part, and as used in this part means each licensee
22 regulated by this article.

23 (4) "Limitation" means an action by which a board imposes
24 restrictions or conditions, or both, on a license.

25 (5) "Limited license" means a license to which restrictions
26 or conditions, or both, as to scope of practice, place of
27 practice, supervision of practice, duration of licensed status,

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1 or type or condition of patient or client served are imposed by a
2 board.

3 Sec. 17708. (1) "Preceptor" means a pharmacist approved by
4 the board to direct the training of an intern in an approved
5 pharmacy.

6 (2) "Prescriber" means a licensed dentist, A LICENSED doctor
7 of medicine, A LICENSED doctor of osteopathic medicine and sur-
8 gery, A LICENSED doctor of podiatric medicine and surgery, A
9 LICENSED optometrist certified under part 174 to administer and
10 prescribe therapeutic pharmaceutical agents, A LICENSED veteri-
11 narian, or ~~other~~ ANOTHER licensed health professional acting
12 under the delegation and using, recording, or otherwise indicat-
13 ing the name of the delegating licensed doctor of medicine or
14 LICENSED doctor of osteopathic medicine and surgery.

15 (3) "Prescription" means an order for ~~drugs or devices~~ A
16 DRUG OR DEVICE written and signed or transmitted by other means
17 of communication by a prescriber to be filled, compounded, or
18 dispensed. Prescribing ~~shall be~~ IS limited to a prescriber.
19 An order transmitted in other than written form shall be recorded
20 or written and immediately dated by the pharmacist, and that
21 record constitutes the original prescription. In a health facil-
22 ity or AGENCY LICENSED UNDER ARTICLE 17 OR other medical
23 institution, an order for ~~drugs or devices~~ A DRUG OR DEVICE in
24 the patient's chart constitutes for the purposes of this defini-
25 tion the original prescription. SUBJECT TO SECTION 17751(2),
26 PRESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, AN ORDER FOR A
27 DRUG, NOT INCLUDING A CONTROLLED SUBSTANCE AS DEFINED IN SECTION

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1 7104 EXCEPT UNDER CIRCUMSTANCES DESCRIBED IN SECTION 17763(G),
2 WRITTEN AND SIGNED OR TRANSMITTED BY OTHER MEANS OF COMMUNICATION
3 BY A PHYSICIAN PRESCRIBER LICENSED TO PRACTICE IN A STATE OTHER
4 THAN MICHIGAN.

5 (4) "Prescription drug" means ~~any~~ 1 OR MORE of the
6 following:

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

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

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

12 Sec. 17751. (1) A PHARMACIST SHALL NOT DISPENSE A drug
13 requiring a prescription under the federal act or a law of this
14 state ~~shall not be dispensed~~ except under authority of an origi-
15 inal prescription or AN equivalent record ~~thereof~~ OF AN ORIGI-
16 NAL PRESCRIPTION approved by the board.

17 (2) A PHARMACIST MAY DISPENSE A PRESCRIPTION WRITTEN AND
18 SIGNED OR TRANSMITTED BY OTHER MEANS OF COMMUNICATION BY A PHYSI-
19 CIAN PRESCRIBER IN A STATE OTHER THAN MICHIGAN, BUT NOT INCLUDING
20 A PRESCRIPTION FOR A CONTROLLED SUBSTANCE AS DEFINED IN
21 SECTION 7104 EXCEPT UNDER CIRCUMSTANCES DESCRIBED IN
22 SECTION 17763(G), ONLY IF THE PHARMACIST IN THE EXERCISE OF HIS
23 OR HER PROFESSIONAL JUDGMENT DETERMINES ALL OF THE FOLLOWING:

24 (A) THAT THE PRESCRIPTION WAS ISSUED PURSUANT TO AN EXISTING
25 PHYSICIAN-PATIENT RELATIONSHIP.

26 (B) THAT THE PRESCRIPTION IS AUTHENTIC.

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1 (C) THAT THE PRESCRIBED DRUG IS APPROPRIATE AND NECESSARY
2 FOR THE TREATMENT OF AN ACUTE, CHRONIC, OR RECURRENT CONDITION.

3 (3) ~~(2)~~ A PHARMACIST OR A PRESCRIBER SHALL DISPENSE A pre-
4 scription ~~shall be dispensed~~ only ~~by a pharmacist or by a~~
5 ~~prescriber~~ if the prescription falls within the scope of prac-
6 tice of the prescriber.

7 (4) ~~(3)~~ A PHARMACIST SHALL NOT KNOWINGLY DISPENSE A pre-
8 scription ~~shall not be knowingly dispensed~~ after the death of
9 the prescriber or patient.

10 Sec. 17763. In addition to the grounds set forth in part
11 161, the disciplinary subcommittee may fine, reprimand, or place
12 a pharmacist licensee on probation, or deny, limit, suspend, or
13 revoke the license of a pharmacist or order restitution or commu-
14 nity service for a violation or abetting in a violation of this
15 part or rules promulgated under this part, or for ~~any~~ 1 OR MORE
16 of the following grounds:

17 (a) Employing the mail to sell, distribute, or deliver a
18 drug ~~which~~ THAT requires a prescription when the prescription
19 for the drug is received by mail.

20 (b) Adulterating, misbranding, or substituting a drug or
21 device knowing or intending that ~~it~~ THE DRUG OR DEVICE shall be
22 used.

23 (c) Permitting the dispensing of prescriptions by an indi-
24 vidual who is not a pharmacist, pharmacist intern, or dispensing
25 prescriber.

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1 (d) Permitting the dispensing of prescriptions by a
2 pharmacist intern, except in the presence and under the personal
3 charge of a pharmacist.

4 (e) Selling at auction drugs in bulk or in open packages
5 unless the sale has been approved in accordance with rules of the
6 board.

7 (f) Promoting A PRESCRIPTION DRUG to the public in any
8 manner. ~~a prescription drug.~~

9 (G) IN ADDITION TO THE PROHIBITION CONTAINED IN
10 SECTION 7405(1)(E), DISPENSING A PRESCRIPTION FOR A CONTROLLED
11 SUBSTANCE AS DEFINED IN SECTION 7104 THAT IS WRITTEN AND SIGNED
12 OR TRANSMITTED BY A PHYSICIAN PRESCRIBER IN A STATE OTHER THAN
13 MICHIGAN, UNLESS THE PRESCRIPTION IS ISSUED BY A PHYSICIAN PRE-
14 SCRIBER RESIDING ADJACENT TO THE LAND BORDER BETWEEN THIS STATE
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