

HOUSE BILL No. 4149

January 30, 1997, Introduced by Reps. Nye, Owen and Rocca and referred to the Committee on Health Policy.

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), section 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

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 PRESCRIBER LICENSED TO PRACTICE IN A STATE OTHER THAN MICHIGAN,
15 UNLESS THE PRESCRIPTION IS ISSUED BY A PRESCRIBER RESIDING ADJA-
16 CENT TO THE LAND BORDER BETWEEN THIS STATE AND AN ADJOINING STATE
17 WHO IS AUTHORIZED UNDER THE LAWS OF THAT STATE TO PRACTICE A
18 HEALTH PROFESSION AND TO PRESCRIBE CONTROLLED SUBSTANCES AND
19 WHOSE PRACTICE MAY EXTEND INTO THIS STATE, BUT WHO DOES NOT MAIN-
20 TAIN AN OFFICE OR DESIGNATE A PLACE TO MEET PATIENTS OR RECEIVE
21 CALLS IN THIS STATE.

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

24 Sec. 16106. (1) "Incompetence" means a departure from, or
25 failure to conform to, minimal standards of acceptable and pre-
26 vailing practice for the health profession, whether or not actual
27 injury to an individual occurs.

1 (2) "License", EXCEPT AS OTHERWISE PROVIDED IN THIS
2 SUBSECTION, means an authorization issued under this article to
3 practice where practice would otherwise be unlawful. ~~It~~
4 LICENSE includes an authorization to use a designated title which
5 use would otherwise be prohibited under this article and may be
6 used to refer to a health profession subfield license, limited
7 license, or a temporary license. FOR PURPOSES OF THE DEFINITION
8 OF "PRESCRIBER" CONTAINED IN SECTION 17708(2) ONLY, LICENSE
9 INCLUDES AN AUTHORIZATION ISSUED UNDER THE LAWS OF ANOTHER STATE
10 TO PRACTICE IN THAT STATE WHERE PRACTICE WOULD OTHERWISE BE
11 UNLAWFUL.

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

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

18 (5) "Limited license" means a license to which restrictions
19 or conditions, or both, as to scope of practice, place of prac-
20 tice, supervision of practice, duration of licensed status, or
21 type or condition of patient or client served are imposed by a
22 board.

23 Sec. 17708. (1) "Preceptor" means a pharmacist approved by
24 the board to direct the training of an intern in an approved
25 pharmacy.

26 (2) "Prescriber" means a licensed dentist, A LICENSED doctor
27 of medicine, A LICENSED doctor of osteopathic medicine and

1 surgery, A LICENSED doctor of podiatric medicine and surgery, A
2 LICENSED optometrist certified under part 174 to administer and
3 prescribe therapeutic pharmaceutical agents, A LICENSED veteri-
4 narian, or ~~other~~ ANOTHER licensed health professional acting
5 under the delegation and using, recording, or otherwise indicat-
6 ing the name of the delegating licensed doctor of medicine or
7 LICENSED doctor of osteopathic medicine and surgery.

8 (3) "Prescription" means an order for ~~drugs or devices~~ A
9 DRUG OR DEVICE written and signed or transmitted by other means
10 of communication by a prescriber to be filled, compounded, or
11 dispensed. Prescribing ~~shall be~~ IS limited to a prescriber.
12 An order transmitted in other than written form shall be recorded
13 or written and immediately dated by the pharmacist, and that
14 record constitutes the original prescription. In a health facil-
15 ity or AGENCY LICENSED UNDER ARTICLE 17 OR other medical
16 institution, an order for ~~drugs or devices~~ A DRUG OR DEVICE in
17 the patient's chart constitutes for the purposes of this defini-
18 tion the original prescription. SUBJECT TO SECTION 17751(2),
19 PRESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, AN ORDER FOR A
20 DRUG, NOT INCLUDING A CONTROLLED SUBSTANCE AS DEFINED IN SECTION
21 7104 EXCEPT UNDER CIRCUMSTANCES DESCRIBED IN SECTION 17763(G),
22 WRITTEN AND SIGNED OR TRANSMITTED BY OTHER MEANS OF COMMUNICATION
23 BY A PRESCRIBER LICENSED TO PRACTICE IN A STATE OTHER THAN
24 MICHIGAN.

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

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

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

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

6 Sec. 17751. (1) A PHARMACIST SHALL NOT DISPENSE A drug
7 requiring a prescription under the federal act or a law of this
8 state ~~shall not be dispensed~~ except under authority of an origi-
9 nal prescription or AN equivalent record ~~thereof~~ OF AN ORIGI-
10 NAL PRESCRIPTION approved by the board.

11 (2) A PHARMACIST MAY DISPENSE A PRESCRIPTION WRITTEN AND
12 SIGNED OR TRANSMITTED BY OTHER MEANS OF COMMUNICATION BY A PRE-
13 SCRIBER LICENSED TO PRACTICE IN A STATE OTHER THAN MICHIGAN, BUT
14 NOT INCLUDING A PRESCRIPTION FOR A CONTROLLED SUBSTANCE AS
15 DEFINED IN SECTION 7104 EXCEPT UNDER CIRCUMSTANCES DESCRIBED IN
16 SECTION 17763(G), ONLY IF THE PHARMACIST IN THE EXERCISE OF HIS
17 OR HER PROFESSIONAL JUDGMENT DETERMINES ALL OF THE FOLLOWING:

18 (A) THAT THE PRESCRIPTION WAS ISSUED PURSUANT TO AN EXISTING
19 HEALTH PROFESSIONAL-PATIENT RELATIONSHIP.

20 (B) THAT THE PRESCRIPTION IS AUTHENTIC.

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

23 (3) ~~(2)~~ A prescription shall be dispensed only by a phar-
24 macist or by a prescriber if the prescription falls within the
25 scope of practice of the prescriber.

26 (4) ~~(3)~~ A prescription shall not be knowingly dispensed
27 after the death of the prescriber or patient.

1 Sec. 17763. In addition to the grounds set forth in part
2 161, the disciplinary subcommittee may fine, reprimand, or place
3 a pharmacist licensee on probation, or deny, limit, suspend, or
4 revoke the license of a pharmacist or order restitution or commu-
5 nity service for a violation or abetting in a violation of this
6 part or rules promulgated under this part, or for ~~any~~ 1 OR MORE
7 of the following grounds:

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

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

14 (c) Permitting the dispensing of prescriptions by an indi-
15 vidual who is not a pharmacist, pharmacist intern, or dispensing
16 prescriber.

17 (d) Permitting the dispensing of prescriptions by a pharma-
18 cist intern, except in the presence and under the personal charge
19 of a pharmacist.

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

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

25 (G) IN ADDITION TO THE PROHIBITION CONTAINED IN
26 SECTION 7405(1)(E), DISPENSING A PRESCRIPTION FOR A CONTROLLED
27 SUBSTANCE AS DEFINED IN SECTION 7104 THAT IS WRITTEN AND SIGNED

1 OR TRANSMITTED BY A PRESCRIBER LICENSED TO PRACTICE IN A STATE
2 OTHER THAN MICHIGAN, UNLESS THE PRESCRIPTION IS ISSUED BY A PRE-
3 SCRIBER RESIDING ADJACENT TO THE LAND BORDER BETWEEN THIS STATE
4 AND AN ADJOINING STATE WHO IS AUTHORIZED UNDER THE LAWS OF THAT
5 STATE TO PRACTICE A HEALTH PROFESSION AND TO PRESCRIBE CONTROLLED
6 SUBSTANCES AND WHOSE PRACTICE MAY EXTEND INTO THIS STATE, BUT WHO
7 DOES NOT MAINTAIN AN OFFICE OR DESIGNATE A PLACE TO MEET PATIENTS
8 OR RECEIVE CALLS IN THIS STATE.