

Act No. 153  
Public Acts of 1997  
Approved by the Governor  
December 22, 1997

Filed with the Secretary of State  
December 22, 1997

EFFECTIVE DATE: 91st day after final adjournment of 1997 Regular Session

STATE OF MICHIGAN  
89TH LEGISLATURE  
REGULAR SESSION OF 1997

**Introduced by Reps. Nye, Owen and Rocca**

**Reps. Agee, Anthony, Baird, Bankes, Birkholz, Bobier, Bodem, Bogardus, Brewer, Byl, Cassis, Cherry, Curtis, Dalman, DeHart, DeVuyst, Dobb, Dobronski, Fitzgerald, Gagliardi, Geiger, Gernaat, Gilmer, Goschka, Green, Gubow, Hale, Hammerstrom, Harder, Horton, Jansen, Jelinek, Jellema, Johnson, Kaza, Kukuk, LaForge, Law, Llewellyn, London, Lowe, Martinez, Mathieu, McBryde, McNutt, Middaugh, Middleton, Murphy, Olshove, Oxender, Palamara, Perricone, Profit, Prusi, Raczkowski, Richner, Scranton, Tesanovich, Varga, Vaughn, Voorhees, Wallace and Wojno named co-sponsors**

## **ENROLLED HOUSE BILL No. 4149**

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," 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:*

Sec. 7405. (1) A person:

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

(b) Who is a licensee shall not manufacture a controlled substance not authorized by his or her license or distribute, prescribe, or dispense a controlled substance not authorized by his or her license to another licensee or other authorized person, except as authorized by rules promulgated by the administrator.

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

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

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

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

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

(2) "License", except as otherwise provided in this subsection, means an authorization issued under this article to practice where practice would otherwise be unlawful. License includes an authorization to use a designated title which use would otherwise be prohibited under this article and may be used to refer to a health profession subfield license, limited license, or a temporary license. For purposes of the definition of "prescriber" contained in section 17708(2) only, license includes an authorization issued under the laws of another state, or the country of Canada, to practice in that state, or the country of Canada, where practice would otherwise be unlawful, and is limited to a licensed doctor of medicine, a licensed doctor of osteopathic medicine and surgery, or another licensed health professional acting under the delegation and using, recording, or otherwise indicating the name of the delegating licensed doctor of medicine or licensed doctor of osteopathic medicine and surgery.

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

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

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

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

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

(3) "Prescription" means an order for a drug or device written and signed or transmitted by other means of communication by a prescriber to be filled, compounded, or dispensed. Prescribing is limited to a prescriber. An order transmitted in other than written form shall be recorded or written and immediately dated by the pharmacist, and that record constitutes the original prescription. In a health facility or agency licensed under article 17 or other medical institution, an order for a drug or device in the patient's chart constitutes for the purposes of this definition the original prescription. Subject to section 17751(2), prescription includes, but is not limited to, an order for a drug, not including a controlled substance as defined in section 7104 except under circumstances described in section 17763(g), written and signed or transmitted by other means of communication by a physician prescriber licensed to practice in a state other than Michigan.

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

(a) A drug dispensed pursuant to a prescription.

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

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

Sec. 17751. (1) A pharmacist shall not dispense a drug requiring a prescription under the federal act or a law of this state except under authority of an original prescription or an equivalent record of an original prescription approved by the board.

(2) A pharmacist may dispense a prescription written and signed or transmitted by other means of communication by a physician prescriber in a state other than Michigan, but not including a prescription for a controlled substance as

defined in section 7104 except under circumstances described in section 17763(g), only if the pharmacist in the exercise of his or her professional judgment determines all of the following:

- (a) That the prescription was issued pursuant to an existing physician-patient relationship.
  - (b) That the prescription is authentic.
  - (c) That the prescribed drug is appropriate and necessary for the treatment of an acute, chronic, or recurrent condition.
- (3) A pharmacist or a prescriber shall dispense a prescription only if the prescription falls within the scope of practice of the prescriber.
- (4) A pharmacist shall not knowingly dispense a prescription after the death of the prescriber or patient.

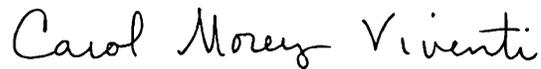
Sec. 17763. In addition to the grounds set forth in part 161, the disciplinary subcommittee may fine, reprimand, or place a pharmacist licensee on probation, or deny, limit, suspend, or revoke the license of a pharmacist or order restitution or community service for a violation or abetting in a violation of this part or rules promulgated under this part, or for 1 or more of the following grounds:

- (a) Employing the mail to sell, distribute, or deliver a drug that requires a prescription when the prescription for the drug is received by mail.
- (b) Adulterating, misbranding, or substituting a drug or device knowing or intending that the drug or device shall be used.
- (c) Permitting the dispensing of prescriptions by an individual who is not a pharmacist, pharmacist intern, or dispensing prescriber.
- (d) Permitting the dispensing of prescriptions by a pharmacist intern, except in the presence and under the personal charge of a pharmacist.
- (e) Selling at auction drugs in bulk or in open packages unless the sale has been approved in accordance with rules of the board.
- (f) Promoting a prescription drug to the public in any manner.

(g) In addition to the prohibition contained in section 7405(1)(e), dispensing a prescription for a controlled substance as defined in section 7104 that is written and signed or transmitted by a physician prescriber in a state other than Michigan, unless the prescription is issued by a physician prescriber residing adjacent to the land border between this state and an adjoining state who is authorized under the laws of that state to practice medicine or osteopathic medicine and surgery and to prescribe controlled substances and whose practice may extend into this state, but who does not maintain an office or designate a place to meet patients or receive calls in this state.



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Clerk of the House of Representatives.



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Secretary of the Senate.

Approved \_\_\_\_\_

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Governor.