

SENATE BILL No. 1310

June 8, 2000, Introduced by Senators BYRUM and YOUNG and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7106, 7311, 7401, 16106, 16221, 16226,
17435, 17708, 17750a, 17751, 17763, and 17766 (MCL 333.7106,
333.7311, 333.7401, 333.16106, 333.16221, 333.16226, 333.17435,
333.17708, 333.17750a, 333.17751, 333.17763, and 333.17766),
section 7311 as amended by 1993 PA 80, section 7401 as amended by
1998 PA 319, sections 16106, 17708, 17751, and 17763 as amended
by 1997 PA 153, section 16221 as amended by 1998 PA 227, section
16226 as amended by 1998 PA 109, sections 17435 and 17750a as
added by 1994 PA 384, and section 17766 as amended by 1990
PA 30.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7106. (1) "Immediate precursor" means a substance
2 ~~which~~ THAT the administrator has found to be and by rule

1 designates as being the principal compound commonly used or
2 produced primarily for use, and ~~which~~ THAT is an immediate
3 chemical intermediary used or likely to be used in the manufac-
4 ture of a controlled substance, the control of which is necessary
5 to prevent, curtail, or limit manufacture.

6 (2) "INTERNET" MEANS THAT TERM AS DEFINED IN SECTION 230 OF
7 TITLE II OF THE COMMUNICATIONS ACT OF 1934, CHAPTER 652, 110
8 STAT. 137, 47 U.S.C. 230.

9 (3) ~~(2)~~ "Manufacture" means the production, preparation,
10 propagation, compounding, conversion, or processing of a con-
11 trolled substance, directly or indirectly by extraction from sub-
12 stances of natural origin, or independently by means of chemical
13 synthesis, or by a combination of extraction and chemical
14 synthesis. ~~It~~ MANUFACTURE includes the packaging or repackag-
15 ing of the substance or labeling or relabeling of its container,
16 except that ~~it~~ THE TERM does not include THE FOLLOWING:

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

19 (b) The preparation, compounding packaging, or labeling of a
20 controlled substance:

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

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

1 (4) ~~(3)~~ "Marihuana" means all parts of the plant *Canabis*
2 *sativa* L., growing or not; the seeds thereof; the resin extracted
3 from any part of the plant; and every compound, manufacture,
4 salt, derivative, mixture, or preparation of the plant or its
5 seeds or resin. It does not include the mature stalks of the
6 plant, fiber produced from the stalks, oil or cake made from the
7 seeds of the plant, any other compound, manufacture, salt, deriv-
8 ative, mixture, or preparation of the mature stalks, except the
9 resin extracted therefrom, fiber, oil or cake, or the sterilized
10 seed of the plant ~~which~~ THAT is incapable of germination.

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

18 (a) The applicant or licensee has furnished false or fraudulent
19 material information in an application filed under this
20 article.

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

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

26 (d) The applicant or licensee is not a practitioner,
27 manufacturer, or distributor.

1 (e) The applicant or licensee has not maintained effective
2 controls against diversion of controlled substances to other than
3 legitimate and professionally recognized therapeutic, scientific,
4 or industrial uses.

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

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

12 (H) THE APPLICANT OR LICENSEE HAS PRESCRIBED OR DISPENSED A
13 CONTROLLED SUBSTANCE BASED SOLELY ON A CONSULTATION VIA THE
14 INTERNET WITH THE PATIENT FOR WHOM THE CONTROLLED SUBSTANCE WAS
15 PRESCRIBED OR DISPENSED.

16 (I) ~~-(h)-~~ The applicant or licensee has violated or
17 attempted to violate, directly or indirectly, assisted in or
18 abetted the violation of, or conspired to violate this article or
19 ~~rules~~ A RULE of the administrator promulgated under this
20 article.

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

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

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

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

20 (6) A license under section 7306 to manufacture, distribute,
21 prescribe, or dispense a controlled substance is automatically
22 void if the licensee's license to practice is suspended or
23 revoked under article 15.

24 (7) Subject to subsection (8), if the administrator or the
25 disciplinary subcommittee finds that an applicant or licensee has
26 been convicted of a misdemeanor or a felony under a state or
27 federal law relating to a controlled substance, the applicant or

1 licensee shall not have a direct financial interest in or be
2 employed by a person who is licensed under this article to manu-
3 facture, distribute, prescribe, or dispense a controlled sub-
4 stance in a capacity in which the individual has direct access to
5 controlled substances for a period of not less than 3 years after
6 the date of conviction. An individual who violates this subsec-
7 tion is subject to a civil fine of not more than \$25,000.00 in a
8 proceeding in the circuit court.

9 (8) Subsection (7) applies only to a conviction for a misde-
10 meanor that is directly related to the manufacture, delivery,
11 possession, possession with intent to manufacture or deliver,
12 use, distribution, prescription, or dispensing of a controlled
13 substance. Subsection (7) does not apply to a conviction for a
14 misdemeanor based upon an unintentional error or omission involv-
15 ing a clerical or record-keeping function.

16 Sec. 7401. (1) Except as authorized by this article, a
17 person shall not manufacture, create, deliver, or possess with
18 intent to manufacture, create, or deliver a controlled substance,
19 a prescription form, an official prescription form, or a counter-
20 feit prescription form. A practitioner licensed by the adminis-
21 trator under this article shall not dispense, prescribe, or
22 administer a controlled substance for other than legitimate and
23 professionally recognized therapeutic or scientific purposes or
24 outside the scope of practice of the practitioner, licensee, or
25 applicant. A PRACTITIONER LICENSED BY THE ADMINISTRATOR UNDER
26 THIS ARTICLE SHALL NOT PRESCRIBE OR DISPENSE A CONTROLLED

1 SUBSTANCE FOR A PATIENT BASED SOLELY ON A CONSULTATION VIA THE
2 INTERNET WITH THE PATIENT.

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

4 (a) A controlled substance classified in schedule 1 or 2
5 that is a narcotic drug or a drug described in section
6 7214(a)(iv) and:

7 (i) ~~which~~ THAT is in an amount of 650 grams or more of any
8 mixture containing that substance is guilty of a felony punish-
9 able by imprisonment for life or any term of years but not less
10 than 20 years.

11 (ii) ~~which~~ THAT is in an amount of 225 grams or more, but
12 less than 650 grams, of any mixture containing that substance is
13 guilty of a felony and shall be imprisoned for not less than 20
14 years nor more than 30 years.

15 (iii) ~~which~~ THAT is in an amount of 50 grams or more, but
16 less than 225 grams, of any mixture containing that substance is
17 guilty of a felony and shall be imprisoned for not less than 10
18 years nor more than 20 years.

19 (iv) ~~which~~ THAT is in an amount less than 50 grams, of any
20 mixture containing that substance is guilty of a felony and shall
21 be imprisoned for not less than 1 year nor more than 20 years,
22 and may be fined not more than \$25,000.00, or placed on probation
23 for life.

24 (b) Any other controlled substance classified in schedule 1,
25 2, or 3, except marihuana is guilty of a felony punishable by
26 imprisonment for not more than 7 years or a fine of not more than
27 \$10,000.00, or both.

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

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

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

9 (ii) If the amount is 5 kilograms or more but less than 45
10 kilograms, or 20 plants or more but fewer than 200 plants, by
11 imprisonment for not more than 7 years or a fine of not more than
12 \$500,000.00, or both.

13 (iii) If the amount is less than 5 kilograms or fewer than
14 20 plants, by imprisonment for not more than 4 years or a fine of
15 not more than \$20,000.00, or both.

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

19 (f) An official prescription form or a counterfeit official
20 prescription form is guilty of a felony punishable by imprison-
21 ment for not more than 20 years or a fine of not more than
22 \$25,000.00, or both.

23 (g) A prescription form or a counterfeit prescription form
24 other than an official prescription form or a counterfeit offi-
25 cial prescription form is guilty of a felony punishable by
26 imprisonment for not more than 7 years or a fine of not more than
27 \$5,000.00, or both.

1 (3) A term of imprisonment imposed pursuant to subsection
2 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be
3 imposed to run consecutively with any term of imprisonment
4 imposed for the commission of another felony. An individual
5 subject to a mandatory term of imprisonment under subsection
6 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) ~~shall~~ IS
7 not ~~be~~ eligible for probation, suspension of that sentence, or
8 parole during that mandatory term, except and only to the extent
9 that those provisions permit probation for life, and shall not
10 receive a reduction in that mandatory term of imprisonment by
11 disciplinary credits or any other type of sentence credit
12 reduction.

13 (4) The court may depart from the minimum term of imprison-
14 ment authorized under subsection (2)(a)(ii), (iii), or (iv) if
15 the court finds on the record that there are substantial and com-
16 pelling reasons to do so. In addition, if any of the following
17 apply, the court may depart from the minimum term of imprisonment
18 authorized under subsection (2)(a)(ii), (iii), or (iv) if the
19 individual has not previously been convicted of a felony or an
20 assaultive crime and has not been convicted of another felony or
21 assaultive crime arising from the same transaction as the viola-
22 tion of this section:

23 (a) The person is within the jurisdiction of the circuit
24 court under section 606 of the revised judicature act of 1961,
25 1961 PA 236, MCL 600.606, or section 4 of chapter XIIA of 1939
26 PA 288, MCL 712A.4.

1 (b) The person is being sentenced under section 18(1)(n) of
2 chapter XIIIA of 1939 PA 288, MCL 712A.18.

3 (5) As used in this section:

4 (a) "Assaultive crime" means a violation of chapter XI of
5 the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90.

6 (b) "Plant" means a marihuana plant that has produced coty-
7 ledons or a cutting of a marihuana plant that has produced
8 cotyledons.

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

13 (2) "INTERNET" MEANS THAT TERM AS DEFINED IN SECTION 230 OF
14 TITLE II OF THE COMMUNICATIONS ACT OF 1934, CHAPTER 652,
15 100 STAT. 137, 47 U.S.C. 230.

16 (3) ~~—(2)—~~ "License", except as otherwise provided in this
17 subsection, means an authorization issued under this article to
18 practice where practice would otherwise be unlawful. License
19 includes an authorization to use a designated title which use
20 would otherwise be prohibited under this article and may be used
21 to refer to a health profession subfield license, limited
22 license, or a temporary license. For purposes of the definition
23 of "prescriber" contained in section 17708(2) only, license
24 includes an authorization issued under the laws of another state
25 ~~—~~ or the country of Canada ~~—~~ to practice in that state ~~—~~ or
26 the country of Canada, where practice would otherwise be
27 unlawful, and is limited to a licensed doctor of medicine, a

1 licensed doctor of osteopathic medicine and surgery, or another
2 licensed health professional acting under the delegation and
3 using, recording, or otherwise indicating the name of the dele-
4 gating licensed doctor of medicine or licensed doctor of osteo-
5 pathic medicine and surgery.

6 (4) ~~-(3)-~~ "Licensee", as used in a part that regulates a
7 specific health profession, means a person to whom a license is
8 issued under that part, and as used in this part means each
9 licensee regulated by this article.

10 (5) ~~-(4)-~~ "Limitation" means an action by which a board
11 imposes restrictions or conditions, or both, on a license.

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

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

25 (a) A violation of general duty, consisting of negligence or
26 failure to exercise due care, including negligent delegation to
27 or supervision of employees or other individuals, whether or not

1 injury results, or any conduct, practice, or condition which
2 impairs, or may impair, the ability to safely and skillfully
3 practice the health profession.

4 (b) Personal disqualifications, consisting of 1 or more of
5 the following:

6 (i) Incompetence.

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

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

12 (iv) Declaration of mental incompetence by a court of compe-
13 tent jurisdiction.

14 (v) Conviction of a misdemeanor punishable by imprisonment
15 for a maximum term of 2 years; a misdemeanor involving the ille-
16 gal delivery, possession, or use of a controlled substance; or a
17 felony. A certified copy of the court record is conclusive evi-
18 dence of the conviction.

19 (vi) Lack of good moral character.

20 (vii) Conviction of a criminal offense under sections 520a
21 to 520l of the Michigan penal code, 1931 PA 328, MCL 750.520a to
22 750.520l. A certified copy of the court record is conclusive
23 evidence of the conviction.

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

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

5 (x) Final adverse administrative action by a licensure, reg-
6 istration, disciplinary, or certification board involving the
7 holder of, or an applicant for, a license or registration regu-
8 lated by another state or a territory of the United States, by
9 the United States military, by the federal government, or by
10 another country. A certified copy of the record of the board is
11 conclusive evidence of the final action.

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

16 (c) Prohibited acts, consisting of 1 or more of the
17 following:

18 (i) Fraud or deceit in obtaining or renewing a license or
19 registration.

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

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

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

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

3 (i) False or misleading advertising.

4 (ii) Dividing fees for referral of patients or accepting
5 kickbacks on medical or surgical services, appliances, or medica-
6 tions purchased by or in behalf of patients.

7 (iii) Fraud or deceit in obtaining or attempting to obtain
8 third party reimbursement.

9 (e) Unprofessional conduct, consisting of 1 or more of the
10 following:

11 (i) Misrepresentation to a consumer or patient or in obtain-
12 ing or attempting to obtain third party reimbursement in the
13 course of professional practice.

14 (ii) Betrayal of a professional confidence.

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

17 (iv) Directing or requiring an individual to purchase or
18 secure a drug, device, treatment, procedure, or service from
19 another person, place, facility, or business in which the
20 licensee has a financial interest.

21 (f) Failure to report a change of name or mailing address
22 within 30 days after the change occurs.

23 (g) A violation, or aiding or abetting in a violation, of
24 this article or of a rule promulgated under this article.

25 (h) Failure to comply with a subpoena issued pursuant to
26 this part, failure to respond to a complaint issued under this
27 article or article 7, failure to appear at a compliance

1 conference or an administrative hearing, or failure to report
2 under section 16222 or 16223.

3 (i) Failure to pay an installment of an assessment levied
4 pursuant to section 2504 of the insurance code of 1956, 1956 PA
5 218, MCL 500.2504, within 60 days after notice by the appropriate
6 board.

7 (j) A violation of section 17013 or 17513.

8 (k) Failure to meet 1 or more of the requirements for licen-
9 sure or registration under section 16174.

10 (l) A violation of section 17015 or 17515.

11 (m) A violation of section 17016 or 17516.

12 (n) Failure to comply with section 9206(3).

13 (o) A violation of section 5654 or 5655.

14 (p) A violation of section 16274.

15 (Q) A VIOLATION OF SECTION 17435, 17708(2), 17750A, OR
16 17751.

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

21

22 Violations of Section 16221

Sanctions

23 Subdivision (a), (b)(ii),	Probation, limitation, denial,
24 (b)(iv), (b)(vi), or	suspension, revocation,
25 (b)(vii)	restitution, community service,
26	or fine.

<p>1 Subdivision (b)(viii)</p> <p>2 Subdivision (b)(i),</p> <p>3 (b)(iii), (b)(v),</p> <p>4 (b)(ix),</p> <p>5 (b)(x), or (b)(xi)</p> <p>6 Subdivision (c)(i)</p> <p>7</p> <p>8</p> <p>9 Subdivision (c)(ii)</p> <p>10</p> <p>11</p> <p>12 Subdivision (c)(iii)</p> <p>13</p> <p>14</p> <p>15 Subdivision (c)(iv)</p> <p>16 or (d)(iii)</p> <p>17</p> <p>18</p> <p>19 Subdivision (d)(i)</p> <p>20 or (d)(ii)</p> <p>21</p> <p>22 Subdivision (e)(i)</p> <p>23</p> <p>24</p> <p>25</p> <p>26 Subdivision (e)(ii)</p>	<p>Revocation or denial.</p> <p>Limitation, suspension,</p> <p>revocation, denial,</p> <p>probation, restitution,</p> <p>community service, or fine.</p> <p>Denial, revocation, suspension,</p> <p>probation, limitation, commu-</p> <p>nity service, or fine.</p> <p>Denial, suspension, revocation,</p> <p>restitution, community service,</p> <p>or fine.</p> <p>Probation, denial, suspension,</p> <p>revocation, restitution, commu-</p> <p>nity service, or fine.</p> <p>Fine, probation, denial,</p> <p>suspension, revocation, commu-</p> <p>nity service,</p> <p>or restitution.</p> <p>Reprimand, fine, probation,</p> <p>community service, denial,</p> <p>or restitution.</p> <p>Reprimand, fine, probation,</p> <p>limitation, suspension, commu-</p> <p>nity service, denial, or</p> <p>restitution.</p> <p>Reprimand, probation,</p>
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1 or (h) suspension, restitution,
2 community service, denial, or
3 fine.
4 Subdivision (e)(iii) Reprimand, fine, probation,
5 or (e)(iv) suspension, revocation, limita-
6 tion, community service,
7 denial, or restitution.
8 Subdivision (f) Reprimand or fine.
9 Subdivision (g) Reprimand, probation, denial,
10 suspension, revocation, limita-
11 tion, restitution, community
12 service, or fine.
13 Subdivision (i) Suspension or fine.
14 Subdivision (j) or (o) Reprimand or fine.
15 Subdivision (k) Reprimand, denial, or
16 limitation.
17 Subdivision (l), ~~or~~
18 (n), OR (Q) Denial, revocation, restitution,
19 probation, suspension, limita-
20 tion, reprimand, or fine.
21 Subdivision (m) Revocation or denial.
22 Subdivision (p) Revocation.
23 (2) Determination of sanctions for violations under this
24 section shall be made by a disciplinary subcommittee. If, during
25 judicial review, the court of appeals determines that a final
26 decision or order of a disciplinary subcommittee prejudices
27 substantial rights of the petitioner for 1 or more of the grounds

1 listed in section 106 of the administrative procedures act of
2 1969, 1969 PA 306, MCL 24.306, and holds that the final decision
3 or order is unlawful and is to be set aside, the court shall
4 state on the record the reasons for the holding and may remand
5 the case to the disciplinary subcommittee for further
6 consideration.

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

10 (4) A disciplinary subcommittee may require a licensee or
11 registrant or an applicant for licensure or registration who has
12 violated this article or article 7 or a rule promulgated under
13 this article or article 7 to satisfactorily complete an educa-
14 tional program, a training program, or a treatment program, a
15 mental, physical, or professional competence examination, or a
16 combination of those programs and examinations.

17 Sec. 17435. (1) A licensee may administer and prescribe
18 therapeutic pharmaceutical agents in the course of his or her
19 practice if the licensee is certified by the board as being qual-
20 ified to administer and prescribe therapeutic pharmaceutical
21 agents pursuant to this section. HOWEVER, A LICENSEE SHALL NOT
22 PRESCRIBE A THERAPEUTIC PHARMACEUTICAL AGENT FOR A PATIENT BASED
23 SOLELY ON A CONSULTATION VIA THE INTERNET WITH THE PATIENT.

24 (2) The board shall certify a licensee as qualified to
25 administer and prescribe therapeutic pharmaceutical agents if the
26 licensee meets all of the following requirements:

1 (a) Has met the certification requirements to administer
2 diagnostic pharmaceutical agents under section 17412.

3 (b) Has successfully earned at least 10 quarter hours or 7
4 semester hours of credit or successfully completed 100 classroom
5 hours of study in courses relating to the didactic and clinical
6 use of therapeutic pharmaceutical agents from a school or college
7 of optometry that is recognized by the board as fully
8 accredited.

9 (c) Has established a management plan in the event a patient
10 has an ocular condition or disease that may be related to a non-
11 localized or systemic condition or disease or to an adverse drug
12 reaction, or that does not demonstrate adequate clinical progress
13 as a result of treatment. The plan shall meet the requirements
14 of section 17412(2)(d). A licensee who has an emergency plan
15 approved by the board under section 17412(2)(d) at the time he or
16 she applies for certification to administer and prescribe thera-
17 peutic pharmaceutical agents is in compliance with this
18 subdivision.

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

22 (2) "Prescriber" means a licensed dentist, a licensed doctor
23 of medicine, a licensed doctor of osteopathic medicine and sur-
24 gery, a licensed doctor of podiatric medicine and surgery, a
25 licensed optometrist certified under part 174 to administer and
26 prescribe therapeutic pharmaceutical agents, a licensed
27 veterinarian, or another licensed health professional acting

1 under the delegation and using, recording, or otherwise
2 indicating the name of the delegating licensed doctor of medicine
3 or licensed doctor of osteopathic medicine and surgery. A PRE-
4 SCRIBER SHALL NOT ISSUE A PRESCRIPTION TO A PATIENT BASED SOLELY
5 ON A CONSULTATION VIA THE INTERNET WITH THE PATIENT.

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

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

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

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

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

1 Sec. 17750a. (1) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN THIS
2 SUBSECTION, A pharmacist may dispense a prescription for a thera-
3 peutic pharmaceutical agent issued by an optometrist certified by
4 the Michigan board of optometry under part 174 as qualified to
5 administer and prescribe therapeutic pharmaceutical agents. A
6 PHARMACIST SHALL NOT DISPENSE A PRESCRIPTION FOR A THERAPEUTIC
7 PHARMACEUTICAL AGENT ISSUED BY AN OPTOMETRIST DESCRIBED IN THIS
8 SUBSECTION IF THE PHARMACIST KNOWS THAT THE OPTOMETRIST ISSUED
9 THE PRESCRIPTION TO A PATIENT BASED SOLELY ON A CONSULTATION VIA
10 THE INTERNET WITH THE PATIENT.

11 (2) As used in this section, "therapeutic pharmaceutical
12 agent" means that term as defined in section 17401.

13 Sec. 17751. (1) A pharmacist shall not dispense a drug
14 requiring a prescription under the federal act or a law of this
15 state except under authority of an original prescription or an
16 equivalent record of an original prescription approved by the
17 board, OR IF THE PHARMACIST KNOWS THAT THE PRESCRIPTION WAS
18 ISSUED TO A PATIENT BY A PRESCRIBER BASED SOLELY ON A CONSULTA-
19 TION VIA THE INTERNET WITH THE PATIENT.

20 (2) A pharmacist may dispense a prescription written and
21 signed or transmitted by other means of communication by a physi-
22 cian prescriber in a state other than Michigan, but not including
23 a prescription for a controlled substance as defined in
24 section 7104 except under circumstances described in
25 section 17763(g), only if the pharmacist in the exercise of his
26 or her professional judgment determines all of the following:

1 (a) That the prescription was issued pursuant to an existing
2 physician-patient relationship, AND WAS NOT ISSUED BY THE
3 PHYSICIAN PRESCRIBER BASED SOLELY ON A CONSULTATION VIA THE
4 INTERNET WITH THE PATIENT.

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 (3) A pharmacist or a prescriber shall dispense a prescrip-
9 tion only if the prescription falls within the scope of practice
10 of the prescriber.

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

13 Sec. 17763. (1) In addition to the grounds set forth in
14 part 161, the disciplinary subcommittee may fine, reprimand, or
15 place a pharmacist licensee on probation, or deny, limit, sus-
16 pend, or revoke the license of a pharmacist or order restitution
17 or community service for a violation or abetting in a violation
18 of this part or rules promulgated under this part, or for 1 or
19 more of the following grounds:

20 (a) Employing the mail to sell, distribute, or deliver a
21 drug that requires a prescription when the prescription for the
22 drug is received by mail.

23 (b) Adulterating, misbranding, or substituting a drug or
24 device knowing or intending that the drug or device shall be
25 used.

1 (c) Permitting the dispensing of prescriptions by an
2 individual who is not a pharmacist, pharmacist intern, or
3 dispensing prescriber.

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

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

10 (f) Promoting a prescription drug to the public in any
11 manner.

12 (g) In addition to the prohibition contained in
13 section 7405(1)(e), dispensing a prescription for a controlled
14 substance as defined in section 7104 that is written and signed
15 or transmitted by a physician prescriber in a state other than
16 Michigan, unless, SUBJECT TO SUBSECTION (2), the prescription is
17 issued by a physician prescriber residing adjacent to the land
18 border between this state and an adjoining state who is autho-
19 rized under the laws of that state to practice medicine or osteo-
20 pathic medicine and surgery and to prescribe controlled sub-
21 stances and whose practice may extend into this state, but who
22 does not maintain an office or designate a place to meet patients
23 or receive calls in this state.

24 (2) THE EXCEPTION CONTAINED IN SUBSECTION (1)(G) DOES NOT
25 APPLY IF THE PHYSICIAN PRESCRIBER DESCRIBED IN SUBSECTION (1)(G)
26 ISSUED THE PRESCRIPTION TO A PATIENT BASED SOLELY ON A
27 CONSULTATION VIA THE INTERNET WITH THE PATIENT.

1 Sec. 17766. Except as provided in section 17766a, a person
2 who does ~~any~~ 1 OR MORE of the following is guilty of a
3 misdemeanor:

4 (a) Obtains or attempts to obtain a prescription drug by
5 giving a false name to a pharmacist or other authorized seller,
6 prescriber, or dispenser.

7 (b) Obtains or attempts to obtain a prescription drug by
8 falsely representing that he or she is a lawful prescriber, dis-
9 penser, or licensee, or acting on behalf of a lawful prescriber,
10 dispenser, or licensee.

11 (c) OBTAINS OR ATTEMPTS TO OBTAIN A PRESCRIPTION DRUG FROM A
12 PRESCRIBER BASED SOLELY ON A CONSULTATION VIA THE INTERNET WITH
13 THE PRESCRIBER.

14 (D) ~~(c)~~ Falsely makes, utters, publishes, passes, alters,
15 or forges a prescription.

16 (E) ~~(d)~~ Knowingly possesses a false, forged, or altered
17 prescription.

18 (F) ~~(e)~~ Knowingly attempts to obtain, obtains, or pos-
19 sesses a drug by means of a prescription for other than a legiti-
20 mate therapeutic purpose, or as a result of a false, forged, or
21 altered prescription.

22 (G) ~~(f)~~ Possesses or controls for the purpose of resale,
23 or sells, offers to sell, dispenses, or gives away, a drug, phar-
24 maceutical preparation, or chemical that has been dispensed on
25 prescription and has left the control of a pharmacist, or that
26 has been damaged by heat, smoke, fire, water, or other cause and
27 is unfit for human or animal use.

1 (H) ~~-(g)-~~ Prepares or permits the preparation of a
2 prescription drug, except as delegated by a pharmacist.

3 (I) ~~-(h)-~~ Sells a drug in bulk or in an open package at auc-
4 tion, unless the sale has been approved in accordance with rules
5 of the board.