

# SENATE BILL No. 1488

December 1, 2004, Introduced by Senator SCHAUER and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending sections 7303a, 7311, 16221, 16226, 17708, 17751, and  
17766 (MCL 333.7303a, 333.7311, 333.16221, 333.16226, 333.17708,  
333.17751, and 333.17766), section 7303a as added by 1993 PA 305,  
section 7311 as amended by 1993 PA 80, sections 16221 and 16226  
as amended by 2004 PA 214, sections 17708 and 17751 as amended by  
1997 PA 153, and section 17766 as amended by 2004 PA 329, and by  
adding section 17713.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5       (2) Before prescribing or dispensing a controlled substance

1 to a patient, a licensed prescriber shall ~~ask~~ **do each of the**  
2 **following:**

3 (a) **Have at least 1 face-to-face consultation with the**  
4 **patient.**

5 (b) **Ask** the patient about other controlled substances the  
6 patient may be using ~~—The prescriber shall—~~ **and** record the  
7 patient's response in the patient's medical or clinical record.

8 (3) A licensed prescriber who dispenses controlled substances  
9 shall maintain all of the following records separately from other  
10 prescription records:

11 (a) All invoices and other acquisition records for each  
12 controlled substance acquired by the prescriber for not less than  
13 5 years after the date the prescriber acquires the controlled  
14 substance.

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

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

21 (4) The requirement under section 7303 for a license is  
22 waived in the following circumstances:

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

27 (b) When methadone or a methadone congener is dispensed on

1 the order of a licensed prescriber in a methadone treatment  
2 program licensed under article 6 or when a controlled substance  
3 listed in schedules 2 to 5 is dispensed on the order of a  
4 licensed prescriber in a hospice rendering emergency care  
5 services in a patient's home as described in section 17746 by a  
6 registered professional nurse or a physician's assistant licensed  
7 under article 15.

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

15       (a) The applicant or licensee has furnished false or  
16 fraudulent material information in an application filed under  
17 this article.

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

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

23       (d) The applicant or licensee is not a practitioner,  
24 manufacturer, or distributor.

25       (e) The applicant or licensee has not maintained effective  
26 controls against diversion of controlled substances to other than  
27 legitimate and professionally recognized therapeutic, scientific,

1 or industrial uses.

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

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

9 (h) The applicant or licensee has prescribed or dispensed a  
10 controlled substance without having established a  
11 physician-patient relationship or other health  
12 professional-patient relationship by having at least 1  
13 face-to-face consultation with the patient for whom the  
14 controlled substance was prescribed or dispensed.

15 (i) ~~—(h)—~~ The applicant or licensee has violated or attempted  
16 to violate, directly or indirectly, assisted in or abetted the  
17 violation of, or conspired to violate this article or ~~—rules—~~ a  
18 rule of the administrator promulgated under this article.

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

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

26 (4) If the disciplinary subcommittee suspends or revokes a  
27 license or if a license is void under subsection (6), all

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

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

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

22 (7) Subject to subsection (8), if the administrator or the  
23 disciplinary subcommittee finds that an applicant or licensee has  
24 been convicted of a misdemeanor or a felony under a state or  
25 federal law relating to a controlled substance, the applicant or  
26 licensee shall not have a direct financial interest in or be  
27 employed by a person who is licensed under this article to

1 manufacture, distribute, prescribe, or dispense a controlled  
2 substance in a capacity in which the individual has direct access  
3 to controlled substances for a period of not less than 3 years  
4 after the date of conviction. An individual who violates this  
5 subsection is subject to a civil fine of not more than \$25,000.00  
6 in a proceeding in the circuit court.

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

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

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

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

3 (i) Incompetence.

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

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

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

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

16 (vi) Lack of good moral character.

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

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

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

(x) Final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States, by the United States military, by the federal government, or by another country. A certified copy of the record of the board is conclusive evidence of the final action.

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

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

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

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

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

(iii) Practice outside the scope of a license.

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

(d) Unethical business practices, consisting of 1 or more of



1 the following:

2 (i) False or misleading advertising.

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

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

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

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

13 (ii) Betrayal of a professional confidence.

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

16 (iv) Either of the following:

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

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

1 A disciplinary subcommittee shall apply section 1877 of part D of  
2 title XVIII of the social security act, 42 USC 1395nn, and the  
3 regulations promulgated under that section regardless of the  
4 source of payment for the designated health service referred and  
5 rendered. If section 1877 of part D of title XVIII of the social  
6 security act, 42 USC 1395nn, or a regulation promulgated under  
7 that section is revised after June 3, 2002, the department shall  
8 officially take notice of the revision. Within 30 days after  
9 taking notice of the revision, the department shall decide  
10 whether or not the revision pertains to referral by physicians  
11 for designated health services and continues to protect the  
12 public from inappropriate referrals by physicians. If the  
13 department decides that the revision does both of those things,  
14 the department may promulgate rules to incorporate the revision  
15 by reference. If the department does promulgate rules to  
16 incorporate the revision by reference, the department shall not  
17 make any changes to the revision. As used in this subparagraph,  
18 "designated health service" means that term as defined in section  
19 1877 of part D of title XVIII of the social security act, 42 USC  
20 1395nn, and the regulations promulgated under that section and  
21 "physician" means that term as defined in sections 17001 and  
22 17501.

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

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

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

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

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

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

27 (j) Failure to pay an installment of an assessment levied

1 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100  
 2 to 500.8302, within 60 days after notice by the appropriate  
 3 board.

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

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

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

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

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

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

11 (q) A violation of section 16274.

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

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

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

15 **(u) A violation of section 17713 or 17751.**

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

20 Violations of Section 16221

Sanctions

21 Subdivision (a), (b) (ii), 22 (b) (iv), (b) (vi), or 23 (b) (vii) 24	Probation, limitation, denial, suspension, revocation, restitution, community service, or fine.
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1	Subdivision (b) (viii)	Revocation or denial.
2	Subdivision (b) (i) ,	Limitation, suspension,
3	(b) (iii) , (b) (v) ,	revocation, denial,
4	(b) (ix) , (b) (x) ,	probation, restitution,
5	(b) (xi) , or (b) (xii)	community service, or fine.
6	Subdivision (c) (i)	Denial, revocation, suspension,
7		probation, limitation, community
8		service, or fine.
9	Subdivision (c) (ii)	Denial, suspension, revocation,
10		restitution, community service,
11		or fine.
12	Subdivision (c) (iii)	Probation, denial, suspension,
13		revocation, restitution,
14		community service, or fine.
15	Subdivision (c) (iv)	Fine, probation, denial,
16	or (d) (iii)	suspension, revocation, community
17		service, or restitution.
18	Subdivision (d) (i)	Reprimand, fine, probation,
19	or (d) (ii)	community service, denial,
20		or restitution.

1	Subdivision (e) (i)	Reprimand, fine, probation,
2		limitation, suspension, community
3		service, denial, or restitution.
4	Subdivision (e) (ii)	Reprimand, probation,
5	or (i)	suspension, restitution,
6		community service, denial, or
7		fine.
8	Subdivision (e) (iii) ,	Reprimand, fine, probation,
9	(e) (iv) , or (e) (v)	suspension, revocation,
10		limitation, community service,
11		denial, or restitution.
12	Subdivision (g)	Reprimand or fine.
13	Subdivision (h) or (s)	Reprimand, probation, denial,
14		suspension, revocation,
15		limitation, restitution,
16		community service, or fine.
17	Subdivision (j)	Suspension or fine.
18	Subdivision (k) , (p) ,	Reprimand or fine.
19	or (r)	
20	Subdivision (l)	Reprimand, denial, or
21		limitation.

1 Subdivision (m), ~~or~~

2 (o), or (u) Denial, revocation, restitution,  
 3 probation, suspension,  
 4 limitation, reprimand, or fine.

5 Subdivision (n) Revocation or denial.

6 Subdivision (q) Revocation.

7 Subdivision (t) Revocation, fine, and  
 8 restitution.

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

20 (3) A disciplinary subcommittee may impose a fine of up to,  
 21 but not exceeding, \$250,000.00 for a violation of section  
 22 16221(a) or (b).

23 (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  
2 to section 17751(2), prescription includes, but is not limited  
3 to, 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 be  
13 dispensed pursuant to a prescription.

14 **Sec. 17713. A prescriber shall not issue a prescription to a**  
15 **patient unless the prescriber has established a health**  
16 **professional-patient relationship with the patient by having at**  
17 **least 1 face-to-face consultation with the patient.**

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

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  
2 his or her professional judgment determines all of the  
3 following:

4 (a) That the prescription was issued pursuant to an existing  
5 physician-patient relationship **that included at least 1**  
6 **face-to-face consultation between the prescriber and the**  
7 **patient.**

8 (b) That the prescription is authentic.

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

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

18 (a) Obtains or attempts to obtain a prescription drug by  
19 giving a false name to a pharmacist or other authorized seller,  
20 prescriber, or dispenser.

21 (b) Obtains or attempts to obtain a prescription drug by  
22 falsely representing that he or she is a lawful prescriber,  
23 dispenser, or licensee, or acting on behalf of a lawful  
24 prescriber, dispenser, or licensee.

25 (c) Falsely makes, utters, publishes, passes, alters, or  
26 forges a prescription.

27 (d) Knowingly possesses a false, forged, or altered

1 prescription.

2 (e) Knowingly attempts to obtain, obtains, or possesses a  
3 drug by means of a prescription for other than a legitimate  
4 therapeutic purpose, or as a result of a false, forged, or  
5 altered prescription.

6 (f) Possesses or controls for the purpose of resale, or  
7 sells, offers to sell, dispenses, or gives away, a drug,  
8 pharmaceutical preparation, or chemical that has been dispensed  
9 on prescription and has left the control of a pharmacist.

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

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

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

20 (j) Obtains or attempts to obtain a prescription or a  
21 prescription drug from a prescriber or a pharmacist without first  
22 having established a health professional-patient relationship  
23 with the prescriber by having at least 1 face-to-face  
24 consultation with the prescriber.