

**SUBSTITUTE FOR
SENATE BILL NO. 248**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16226 and 17754 (MCL 333.16226 and 333.17754),
section 16226 as amended by 2018 PA 463 and section 17754 as
amended by 2014 PA 525.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16226. (1) After finding the existence of 1 or more of
2 the grounds for disciplinary subcommittee action listed in section
3 16221, a disciplinary subcommittee shall impose 1 or more of the
4 following sanctions for each violation:

5 <u>Violations of Section 16221</u>	<u>Sanctions</u>
6 Subdivision (a), (b) (i),	Probation, limitation, denial,



1 (b) (ii), (b) (iii), (b) (iv), suspension, revocation,
 2 (b) (v), (b) (vi), (b) (vii), permanent revocation,
 3 (b) (ix), (b) (x), (b) (xi), restitution, or fine.
 4 or (b) (xii)
 5
 6 Subdivision (b) (viii) Revocation, permanent revocation,
 7 or denial.
 8
 9 Subdivision (b) (xiii) Permanent revocation
 10 for a violation described in
 11 subsection (5); otherwise,
 12 probation, limitation, denial,
 13 suspension, revocation,
 14 restitution, or fine.
 15
 16 Subdivision (b) (xiv) Permanent revocation.
 17
 18 Subdivision (c) (i) Denial, revocation, suspension,
 19 probation, limitation, or fine.
 20
 21 Subdivision (c) (ii) Denial, suspension, revocation,
 22 restitution, or fine.
 23
 24 Subdivision (c) (iii) Probation, denial, suspension,
 25 revocation, restitution, or fine.
 26
 27 Subdivision (c) (iv) Fine, probation, denial,
 28 or (d) (iii) suspension, revocation, permanent



1 revocation, or restitution.
2
3 Subdivision (d) (i) Reprimand, fine, probation,
4 or (d) (ii) denial, or restitution.
5
6 Subdivision (e) (i), Reprimand, fine, probation,
7 (e) (iii), (e) (iv), (e) (v), limitation, suspension,
8 (h), or (s) revocation, permanent revocation,
9 denial, or restitution.
10
11 Subdivision (e) (ii) Reprimand, probation, suspension,
12 or ~~(i)~~ (i) revocation, permanent
13 revocation, restitution,
14 denial, or fine.
15
16 Subdivision (e) (vi), Probation, suspension, revocation
17 (e) (vii), or (e) (viii) limitation, denial,
18 restitution, or fine.
19
20 Subdivision (f) Reprimand, denial, limitation,
21 probation, or fine.
22
23 Subdivision (g) Reprimand or fine.
24
25 Subdivision (j) Suspension or fine.
26
27 Subdivision (k), (p), Reprimand, probation, suspension,
28 or (r) revocation, permanent revocation,

1 or fine.
2
3 Subdivision (l) Reprimand, denial, or
4 limitation.
5
6 Subdivision (m) or (o) Denial, revocation, restitution,
7 probation, suspension,
8 limitation, reprimand, or fine.
9
10 Subdivision (n) Revocation or denial.
11
12 Subdivision (q) Revocation.
13
14 Subdivision (t) Revocation, permanent revocation,
15 fine, or restitution.
16
17 Subdivision (u) Denial, revocation, probation,
18 suspension, limitation, reprimand,
19 or fine.
20
21 Subdivision (v) or (x) Probation, limitation, denial,
22 fine, suspension, revocation, or
23 permanent revocation.
24
25 Subdivision (w) Denial, fine, reprimand,
26 probation, limitation,
27 suspension, revocation, or
28 permanent revocation.
29



1 **Subdivision (y)** **Subject to subsection (7), fine.**

2 (2) Determination of sanctions for violations under this
3 section shall be made by a disciplinary subcommittee. If, during
4 judicial review, the court of appeals determines that a final
5 decision or order of a disciplinary subcommittee prejudices
6 substantial rights of the petitioner for 1 or more of the grounds
7 listed in section 106 of the administrative procedures act of 1969,
8 ~~1969 PA 306~~, MCL 24.306, and holds that the final decision or order
9 is unlawful and is to be set aside, the court shall state on the
10 record the reasons for the holding and may remand the case to the
11 disciplinary subcommittee for further consideration.

12 (3) A disciplinary subcommittee may impose a fine in an amount
13 that does not exceed \$250,000.00 for a violation of section
14 16221(a) or (b). A disciplinary subcommittee shall impose a fine of
15 at least \$25,000.00 if the violation of section 16221(a) or (b)
16 results in the death of 1 or more patients.

17 (4) A disciplinary subcommittee may require a licensee or
18 registrant or an applicant for licensure or registration who has
19 violated this article, article 7, or article 8 or a rule
20 promulgated under this article, article 7, or article 8 to
21 satisfactorily complete an educational program, a training program,
22 or a treatment program, a mental, physical, or professional
23 competence examination, or a combination of those programs and
24 examinations.

25 (5) A disciplinary subcommittee shall impose the sanction of
26 permanent revocation for a violation of section 16221(b) *(xiii)* if the
27 violation occurred while the licensee or registrant was acting
28 within the health profession for which he or she was licensed or
29 registered.



1 (6) Except as otherwise provided in subsection (5) and this
 2 subsection, a disciplinary subcommittee shall not impose the
 3 sanction of permanent revocation under this section without a
 4 finding that the licensee or registrant engaged in a pattern of
 5 intentional acts of fraud or deceit resulting in personal financial
 6 gain to the licensee or registrant and harm to the health of
 7 patients under the licensee's or registrant's care. This subsection
 8 does not apply if a disciplinary subcommittee finds that a licensee
 9 or registrant has violated section 16221(b) (xiv).

10 **(7) A disciplinary subcommittee shall impose a fine of \$250.00**
 11 **for each violation of section 16221(y). However, the aggregate fine**
 12 **that a disciplinary subcommittee imposes on a licensee or**
 13 **registrant for multiple violations of section 16221(y) must not**
 14 **exceed \$5,000.00 in 1 calendar year.**

15 Sec. 17754. (1) Except as otherwise provided under ~~article 7,~~
 16 ~~article 8, and the federal act, or subsection (5), and subject to~~
 17 **subsection (8), beginning January 1, 2021, a prescriber or his or**
 18 **her agent shall electronically transmit** a prescription, ~~may be~~
 19 ~~transmitted electronically if the prescription is transmitted~~
 20 **including a prescription for a controlled substance, directly to a**
 21 **pharmacy of the patient's choice. A prescription that is**
 22 **transmitted electronically under this section must be** in compliance
 23 with the health insurance portability and accountability act of
 24 1996, Public Law 104-191, or regulations promulgated under that
 25 act, 45 CFR parts 160 and 164, ~~by a prescriber or his or her agent~~
 26 and the data ~~are~~**must not be** altered or modified in the
 27 transmission process. The electronically transmitted prescription
 28 ~~shall~~**must** include all of the following information:

29 (a) The name, address, and telephone number of the prescriber.



1 (b) Except as otherwise authorized under section 5110, 17744a,
2 or 17744b, the full name of the patient for whom the prescription
3 is issued.

4 (c) An electronic signature or other identifier that
5 specifically identifies and authenticates the prescriber or his or
6 her agent.

7 (d) The time and date of the transmission.

8 (e) The identity of the pharmacy intended to receive the
9 transmission.

10 (f) Any other information required by the federal act or state
11 law.

12 (2) The electronic equipment or system utilized in the
13 transmission and communication of prescriptions ~~shall~~**must** provide
14 adequate confidentiality safeguards and be maintained to protect
15 patient confidentiality as required under any applicable federal
16 and state law and to ensure against unauthorized access. The
17 electronic transmission of a prescription ~~shall~~**must** be
18 communicated in a retrievable, recognizable form acceptable to the
19 intended recipient. The electronic form utilized in the
20 transmission of a prescription ~~shall~~**must** not include "dispense as
21 written" or "d.a.w." as the default setting.

22 (3) Before dispensing a prescription that is electronically
23 transmitted, the pharmacist shall exercise professional judgment
24 regarding the accuracy, validity, and authenticity of the
25 transmitted prescription.

26 (4) An electronically transmitted prescription that meets the
27 requirements of this section is the original prescription.

28 **(5) The requirement to transmit a prescription electronically**
29 **under subsection (1) does not apply under any of the following**



1 circumstances:

2 (a) If the prescription is issued by a prescriber who is a
3 veterinarian licensed under this article.

4 (b) If the prescription is issued under a circumstance in
5 which electronic transmission is not available due to a temporary
6 technological or electrical failure.

7 (c) If the prescription is issued by a prescriber who has
8 received a waiver from the department under subsection (6).

9 (d) If the prescription, including, but not limited to, a
10 prescription issued under section 5110, is issued by a prescriber
11 who reasonably believes that electronically transmitting the
12 prescription would make it impractical for the patient who is the
13 subject of the prescription to obtain the prescription drug in a
14 timely manner and that the delay would adversely affect the
15 patient's medical condition.

16 (e) If the prescription is orally prescribed under section
17 7333(3) or (4).

18 (f) If the prescription is issued by a prescriber to be
19 dispensed outside of this state.

20 (g) If the prescription is issued by a prescriber who is
21 located outside of this state to be dispensed by a pharmacy located
22 inside of this state.

23 (h) If the prescription is issued and dispensed in the same
24 health care facility and the individual for whom the prescription
25 is issued uses the drug exclusively in the health care facility. As
26 used in this subdivision, "health care facility" includes, but is
27 not limited to, the following:

28 (i) A hospital.

29 (ii) A dialysis treatment clinic.



1 (iii) A freestanding surgical outpatient facility.

2 (iv) A skilled nursing facility.

3 (v) A long-term care facility that provides rehabilitative,
4 restorative, or ongoing skilled nursing care to an individual who
5 is in need of assistance with activities of daily living.

6 (i) If the prescription is issued for an individual who is the
7 patient of a hospice licensed under article 17 and the individual
8 uses the drug exclusively while under the care of the hospice.

9 (j) If the prescription contains content that is not supported
10 by the National Council for Prescription Drug Programs
11 Prescriber/Pharmacist Interface SCRIPT Standard.

12 (k) If the prescription is for a drug for which the FDA
13 requires the prescription to contain content that cannot be
14 transmitted electronically.

15 (l) If the prescription is issued under circumstances in which
16 the prescriber is not required to include on the prescription a
17 name of a patient for whom the prescription is issued.

18 (m) If the prescription is issued by a prescriber who is
19 prescribing the drug under a research protocol.

20 (n) If the prescription is issued by a prescriber who is
21 providing care to a patient who is the subject of the prescription
22 on a voluntary, unpaid basis for which neither the patient nor a
23 third party will be charged or billed.

24 (6) If a prescriber cannot meet the requirements of subsection
25 (1) or (2), the prescriber may apply to the department for a
26 waiver. The department shall grant a waiver to a prescriber if the
27 department determines that the prescriber cannot meet the
28 requirements of subsection (1) or (2) due to a technological
29 limitation that is not reasonably within the control of the



1 prescriber, such as insufficient internet connectivity or the use
2 of a health record technology certified by the federal Centers for
3 Medicare and Medicaid Services that does not allow for the
4 electronic transmission of a prescription for a controlled
5 substance, or another exceptional circumstance. A prescriber who is
6 granted a waiver under this subsection shall notify the department
7 in writing if he or she is subsequently able to meet the
8 requirements of subsections (1) and (2). A waiver that is granted
9 under this subsection is valid for a period not to exceed 1 year
10 and is renewable.

11 (7) The department, in consultation with the board, shall
12 promulgate rules to implement this section by July 1, 2020.

13 (8) If the federal Centers for Medicare and Medicaid Services
14 delays the Medicare requirement for the electronic transmission of
15 prescriptions for controlled substances beyond January 1, 2021,
16 then the department may, by rule, delay the implementation date of
17 subsection (1) to a date that does not extend past the date
18 established by the federal Centers for Medicare and Medicaid
19 Services for the Medicare requirement.

20 Enacting section 1. This amendatory act takes effect 90 days
21 after the date it is enacted into law.

22 Enacting section 2. This amendatory act does not take effect
23 unless Senate Bill No. 254 of the 100th Legislature is enacted into
24 law.

