

# HOUSE BILL No. 6393

September 24, 2002, Introduced by Reps. Schauer, Lemmons, McConico, Durhal, Gielegem, Woodward, Mans, O'Neil, Jacobs, Wojno, Bernero, Rich Brown, Adamini and Neumann 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 2000 PA 314, sections 16106, 17708, 17751, and 17763 as amended by 1997 PA 153, sections 16221 and 16226 as amended by 2000 PA 29, 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  
3 designates as being the principal compound commonly used or

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

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

8 (3) ~~(2)~~ "Manufacture" means the production, preparation,  
9 propagation, compounding, conversion, or processing of a con-  
10 trolled substance, directly or indirectly by extraction from sub-  
11 stances of natural origin, or independently by means of chemical  
12 synthesis, or by a combination of extraction and chemical  
13 synthesis. ~~It~~ MANUFACTURE includes the packaging or repackag-  
14 ing of the substance or labeling or relabeling of its container,  
15 except that ~~it~~ THE TERM does not include THE FOLLOWING:

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

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

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

23 (ii) By a practitioner, or by the practitioner's authorized  
24 agent under his or her supervision, for the purpose of, or as an  
25 incident to, research, teaching, or chemical analysis and not for  
26 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 sub-  
25 stance 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) Either of the following:

25 (i) A substance described in section 7214(c)(ii) is guilty  
26 of a felony punishable by imprisonment for not more than 20 years  
27 or a fine of not more than \$25,000.00, or both.

1           (ii) Any other controlled substance classified in schedule  
2 1, 2, or 3, except marihuana is guilty of a felony punishable by  
3 imprisonment for not more than 7 years or a fine of not more than  
4 \$10,000.00, or both.

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

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

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

13          (ii) If the amount is 5 kilograms or more but less than 45  
14 kilograms, or 20 plants or more but fewer than 200 plants, by  
15 imprisonment for not more than 7 years or a fine of not more than  
16 \$500,000.00, or both.

17          (iii) If the amount is less than 5 kilograms or fewer than  
18 20 plants, by imprisonment for not more than 4 years or a fine of  
19 not more than \$20,000.00, or both.

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

23          (f) An official prescription form or a counterfeit official  
24 prescription form is guilty of a felony punishable by imprison-  
25 ment for not more than 20 years or a fine of not more than  
26 \$25,000.00, or both.



1 (g) A prescription form or a counterfeit prescription form  
2 other than an official prescription form or a counterfeit  
3 official prescription form is guilty of a felony punishable by  
4 imprisonment for not more than 7 years or a fine of not more than  
5 \$5,000.00, or both.

6 (3) A term of imprisonment imposed under subsection (2)(a)  
7 or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be imposed  
8 to run consecutively with any term of imprisonment imposed for  
9 the commission of another felony. An individual subject to a  
10 mandatory term of imprisonment under subsection (2)(a) or section  
11 7403(2)(a)(i), (ii), (iii), or (iv) is not eligible for proba-  
12 tion, suspension of that sentence, or parole during that manda-  
13 tory term, except to the extent that those provisions permit pro-  
14 bation for life, and shall not receive a reduction in that manda-  
15 tory term of imprisonment by disciplinary credits or any other  
16 type of sentence credit reduction.

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

1 (a) The person is within the jurisdiction of the circuit  
2 court under section 606 of the revised judicature act of 1961,  
3 1961 PA 236, MCL 600.606, or section 4 of chapter XIIIA of the  
4 probate code of 1939, 1939 PA 288, MCL 712A.4.

5 (b) The person is being sentenced under section 18(1)(n) of  
6 chapter XIIIA of the probate code of 1939, 1939 PA 288,  
7 MCL 712A.18.

8 (5) As used in this section:

9 (a) "Assaultive crime" means a violation of sections 81 to  
10 90 of the Michigan penal code, 1931 PA 328, MCL 750.81 to  
11 750.90.

12 (b) "Plant" means a marihuana plant that has produced coty-  
13 ledons or a cutting of a marihuana plant that has produced  
14 cotyledons.

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

19 (2) "INTERNET" MEANS THAT TERM AS DEFINED IN SECTION 230 OF  
20 TITLE II OF THE COMMUNICATIONS ACT OF 1934, CHAPTER 652,  
21 100 STAT. 137, 47 U.S.C. 230.

22 (3) ~~(2)~~ "License", except as otherwise provided in this  
23 subsection, means an authorization issued under this article to  
24 practice where practice would otherwise be unlawful. License  
25 includes an authorization to use a designated title which use  
26 would otherwise be prohibited under this article and may be used  
27 to refer to a health profession subfield license, limited

1 license, or a temporary license. For purposes of the definition  
2 of "prescriber" contained in section 17708(2) only, license  
3 includes an authorization issued under the laws of another state  
4 ~~—~~ or the country of Canada ~~—~~ to practice in that state ~~—~~ or  
5 the country of Canada, where practice would otherwise be unlaw-  
6 ful, and is limited to a licensed doctor of medicine, a licensed  
7 doctor of osteopathic medicine and surgery, or another licensed  
8 health professional acting under the delegation and using,  
9 recording, or otherwise indicating the name of the delegating  
10 licensed doctor of medicine or licensed doctor of osteopathic  
11 medicine and surgery.

12 (4) ~~—(3)—~~ "Licensee", as used in a part that regulates a  
13 specific health profession, means a person to whom a license is  
14 issued under that part, and as used in this part means each  
15 licensee regulated by this article.

16 (5) ~~—(4)—~~ "Limitation" means an action by which a board  
17 imposes restrictions or conditions, or both, on a license.

18 (6) ~~—(5)—~~ "Limited license" means a license to which  
19 restrictions or conditions, or both, as to scope of practice,  
20 place of practice, supervision of practice, duration of licensed  
21 status, or type or condition of patient or client served are  
22 imposed by a board.

23 Sec. 16221. The department may investigate activities  
24 related to the practice of a health profession by a licensee, a  
25 registrant, or an applicant for licensure or registration. The  
26 department may hold hearings, administer oaths, and order  
27 relevant testimony to be taken and shall report its findings to

1 the appropriate disciplinary subcommittee. The disciplinary  
2 subcommittee shall proceed under section 16226 if it finds that 1  
3 or more of the following grounds exist:

4 (a) A violation of general duty, consisting of negligence or  
5 failure to exercise due care, including negligent delegation to  
6 or supervision of employees or other individuals, whether or not  
7 injury results, or any conduct, practice, or condition which  
8 impairs, or may impair, the ability to safely and skillfully  
9 practice the health profession.

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

12 (i) Incompetence.

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

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

18 (iv) Declaration of mental incompetence by a court of compe-  
19 tent jurisdiction.

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

25 (vi) Lack of good moral character.

26 (vii) Conviction of a criminal offense under sections 520a  
27 to 520l of the Michigan penal code, 1931 PA 328, MCL 750.520a to

1 750.520l. A certified copy of the court record is conclusive  
2 evidence of the conviction.

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

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

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

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

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

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

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

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

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

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

9           (i) False or misleading advertising.

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

13          (iii) Fraud or deceit in obtaining or attempting to obtain  
14 third party reimbursement.

15          (e) Unprofessional conduct, consisting of 1 or more of the  
16 following:

17          (i) Misrepresentation to a consumer or patient or in obtain-  
18 ing or attempting to obtain third party reimbursement in the  
19 course of professional practice.

20          (ii) Betrayal of a professional confidence.

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

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

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

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

5 (h) Failure to comply with a subpoena issued pursuant to  
6 this part, failure to respond to a complaint issued under this  
7 article or article 7, failure to appear at a compliance confer-  
8 ence or an administrative hearing, or failure to report under  
9 section 16222 or 16223.

10 (i) Failure to pay an installment of an assessment levied  
11 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100  
12 to 500.8302, within 60 days after notice by the appropriate  
13 board.

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

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

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

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

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

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

21 (p) A violation of section 16274.

22 (q) A violation of section 17020 or 17520.

23 (R) A VIOLATION OF SECTION 17435, 17708(2), 17750A, OR  
24 17751.

25 Sec. 16226. (1) After finding the existence of 1 or more of  
26 the grounds for disciplinary subcommittee action listed in

1 section 16221, a disciplinary subcommittee shall impose 1 or more  
2 of the following sanctions for each violation:

3

4 Violations of Section 16221

Sanctions

5 Subdivision (a), (b)(ii),                      Probation, limitation, denial,  
6 (b)(iv), (b)(vi), or                              suspension, revocation,  
7 (b)(vii)    restitution, community service,  
8    or fine.

9 Subdivision (b)(viii)                              Revocation or denial.

10 Subdivision (b)(i),                              Limitation, suspension,  
11 (b)(iii), (b)(v),                                  revocation, denial,  
12 (b)(ix),    probation, restitution,  
13 (b)(x), or (b)(xi)                                  community service, or fine.

14 Subdivision (c)(i)                                  Denial, revocation, suspension,  
15    probation, limitation, community  
16    service, or fine.

17 Subdivision (c)(ii)                                  Denial, suspension, revocation,  
18    restitution, community service,  
19    or fine.



- 1 Subdivision (c)(iii) Probation, denial, suspension,  
2 revocation, restitution,  
3 community service, or fine.
- 4 Subdivision (c)(iv) Fine, probation, denial,  
5 or restitution.
- 6 Subdivision (d)(i) Reprimand, fine, probation,  
7 or (d)(ii) community service, denial,  
8 or restitution.
- 9 Subdivision (e)(i) Reprimand, fine, probation,  
10 limitation, suspension, community  
11 service, denial, or restitution.
- 12 Subdivision (e)(ii) Reprimand, probation,  
13 or (h) suspension, restitution, commu-  
14 nity service, denial, or fine.
- 15 Subdivision (e)(iii) Reprimand, fine, probation,  
16 or (e)(iv) suspension, revocation, limita-  
17 tion, community service, denial,  
18 or restitution.
- 19 Subdivision (f) Reprimand or fine.

- 1 Subdivision (g) Reprimand, probation, denial,  
 2 suspension, revocation,  
 3 limitation, restitution, commu-  
 4 nity service, or fine.
- 5 Subdivision (i) Suspension or fine.
- 6 Subdivision (j) ~~OR~~ OR Reprimand or fine.  
 7 (o) ~~, or (q)~~
- 8 Subdivision (k) Reprimand, denial, or  
 9 limitation.
- 10 Subdivision (l), ~~or~~ Denial, revocation, restitution,  
 11 (n), OR (Q) probation, suspension, limita-  
 12 tion, reprimand, or fine.
- 13 Subdivision (m) Revocation or denial.
- 14 Subdivision (p) Revocation.
- 15 (2) Determination of sanctions for violations under this  
 16 section shall be made by a disciplinary subcommittee. If, during  
 17 judicial review, the court of appeals determines that a final  
 18 decision or order of a disciplinary subcommittee prejudices sub-  
 19 stantial rights of the petitioner for 1 or more of the grounds  
 20 listed in section 106 of the administrative procedures act of  
 21 1969, 1969 PA 306, MCL 24.306, and holds that the final decision

1 or order is unlawful and is to be set aside, the court shall  
2 state on the record the reasons for the holding and may remand  
3 the case to the disciplinary subcommittee for further  
4 consideration.

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

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

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

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

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

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

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

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

20 (2) "Prescriber" means a licensed dentist, a licensed doctor  
21 of medicine, a licensed doctor of osteopathic medicine and sur-  
22 gery, a licensed doctor of podiatric medicine and surgery, a  
23 licensed optometrist certified under part 174 to administer and  
24 prescribe therapeutic pharmaceutical agents, a licensed veteri-  
25 narian, or another licensed health professional acting under the  
26 delegation and using, recording, or otherwise indicating the name  
27 of the delegating licensed doctor of medicine or licensed doctor

1 of osteopathic medicine and surgery. A PRESCRIBER SHALL NOT  
2 ISSUE A PRESCRIPTION TO A PATIENT BASED SOLELY ON A CONSULTATION  
3 VIA THE INTERNET WITH THE PATIENT.

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

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

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

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

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

26 Sec. 17750a. (1) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN THIS  
27 SUBSECTION, A pharmacist may dispense a prescription for a

1 therapeutic pharmaceutical agent issued by an optometrist  
2 certified by the Michigan board of optometry under part 174 as  
3 qualified to administer and prescribe therapeutic pharmaceutical  
4 agents. A PHARMACIST SHALL NOT DISPENSE A PRESCRIPTION FOR A  
5 THERAPEUTIC PHARMACEUTICAL AGENT ISSUED BY AN OPTOMETRIST  
6 DESCRIBED IN THIS SUBSECTION IF THE PHARMACIST KNOWS THAT THE  
7 OPTOMETRIST ISSUED THE PRESCRIPTION TO A PATIENT BASED SOLELY ON  
8 A CONSULTATION VIA THE INTERNET WITH THE PATIENT.

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

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

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

25 (a) That the prescription was issued pursuant to an existing  
26 physician-patient relationship, AND WAS NOT ISSUED BY THE

1 PHYSICIAN PRESCRIBER BASED SOLELY ON A CONSULTATION VIA THE  
2 INTERNET WITH THE PATIENT.

3 (b) That the prescription is authentic.

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

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

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

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

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

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

24 (c) Permitting the dispensing of prescriptions by an indi-  
25 vidual who is not a pharmacist, pharmacist intern, or dispensing  
26 prescriber.

1 (d) Permitting the dispensing of prescriptions by a  
2 pharmacist intern, except in the presence and under the personal  
3 charge of a pharmacist.

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

7 (f) Promoting a prescription drug to the public in any  
8 manner.

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

21 (2) THE EXCEPTION CONTAINED IN SUBSECTION (1)(G) DOES NOT  
22 APPLY IF THE PHYSICIAN PRESCRIBER DESCRIBED IN SUBSECTION (1)(G)  
23 ISSUED THE PRESCRIPTION TO A PATIENT BASED SOLELY ON A CONSULTA-  
24 TION VIA THE INTERNET WITH THE PATIENT.

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



1 (a) Obtains or attempts to obtain a prescription drug by  
2 giving a false name to a pharmacist or other authorized seller,  
3 prescriber, or dispenser.

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

8 (C) OBTAINS OR ATTEMPTS TO OBTAIN A PRESCRIPTION DRUG FROM A  
9 PRESCRIBER BASED SOLELY ON A CONSULTATION VIA THE INTERNET WITH  
10 THE PRESCRIBER.

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

13 (E) ~~(d)~~ Knowingly possesses a false, forged, or altered  
14 prescription.

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

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

25 (H) ~~(g)~~ Prepares or permits the preparation of a prescrip-  
26 tion drug, except as delegated by a pharmacist.

1           (I) ~~(h)~~ Sells a drug in bulk or in an open package at  
2 auction, unless the sale has been approved in accordance with  
3 rules of the board.