

# HOUSE BILL No. 4679

April 26, 2007, Introduced by Reps. Sak and Dean and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7105, 7106, 7303a, 7311, 7401, 7405, 16105, 16106, 16221, 16226, 16245, 17751, 17759, 17763, and 17766 (MCL 333.7105, 333.7106, 333.7303a, 333.7311, 333.7401, 333.7405, 333.16105, 333.16106, 333.16221, 333.16226, 333.16245, 333.17751, 333.17759, 333.17763, and 333.17766), sections 7105 and 7311 as amended by 1993 PA 80, section 7303a as added by 1993 PA 305, section 7401 as amended by 2002 PA 710, sections 7405, 17751, and 17763 as amended by 2006 PA 672, sections 16105 and 16106 as amended by 2002 PA 643, sections 16221 and 16226 as amended by 2004 PA 214, section 16245 as amended by 2006 PA 26, and section

17766 as amended by 2006 PA 416.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 7105. (1) "Deliver" or "delivery" means the actual,  
2 constructive, or attempted transfer from 1 person to another of a  
3 controlled substance, whether or not there is an agency  
4 relationship.

5           (2) "Disciplinary subcommittee" means the disciplinary  
6 subcommittee for the board of pharmacy appointed under section  
7 16216.

8           (3) "Dispense" means to deliver or issue a controlled  
9 substance to an ultimate user or research subject by or pursuant  
10 to the lawful order of a practitioner, including the prescribing,  
11 administering, or compounding necessary to prepare the substance  
12 for the delivery or issuance.

13           (4) "Dispenser" means a practitioner who dispenses.

14           (5) "Distribute" means to deliver other than by  
15 administering or dispensing a controlled substance.

16           (6) "Distributor" means a person who distributes.

17           (7) "Drug" means a substance recognized as a drug in the  
18 official United States pharmacopoeia, official homeopathic  
19 pharmacopoeia of the United States, or official national  
20 formulary, or any supplement to any of them; a substance intended  
21 for use in the diagnosis, cure, mitigation, treatment, or  
22 prevention of disease in human beings or animals; a substance  
23 other than food intended to affect the structure or any function  
24 of the body of human beings or animals; or, a substance intended  
25 for use as a component of any article specified in this

1 subsection. It does not include a device or its components,  
2 parts, or accessories.

3           (8) **"HARMFUL CONTROLLED SUBSTANCE" MEANS A CONTROLLED**  
4 **SUBSTANCE INTENDED FOR USE BY HUMAN BEINGS THAT IS HARMFUL**  
5 **BECAUSE OF ITS TOXICITY, HABIT-FORMING NATURE, OR OTHER POTENTIAL**  
6 **ADVERSE EFFECT, THE METHOD OF ITS USE, OR THE COLLATERAL MEASURES**  
7 **NECESSARY TO ITS SAFE AND EFFECTIVE USE, AND THAT IS DESIGNATED**  
8 **AS HARMFUL BY THE BOARD ACCORDING TO RULE.**

9           (9) ~~(8)~~—"Human consumption" means application, injection,  
10 inhalation, or ingestion by a human being.

11           Sec. 7106. (1) "Immediate precursor" means a substance ~~which~~  
12 **THAT** the administrator has found to be and by rule designates as  
13 being the principal compound commonly used or produced primarily  
14 for use, and ~~which~~**THAT** is an immediate chemical intermediary  
15 used or likely to be used in the manufacture of a controlled  
16 substance, the control of which is necessary to prevent, curtail,  
17 or limit manufacture.

18           (2) **"INTERNET" MEANS THAT TERM AS DEFINED IN SECTION 230 OF**  
19 **TITLE II OF THE COMMUNICATIONS ACT OF 1934, 47 USC 230.**

20           (3) ~~(2)~~—"Manufacture" means the production, preparation,  
21 propagation, compounding, conversion, or processing of a  
22 controlled substance, directly or indirectly by extraction from  
23 substances of natural origin, or independently by means of  
24 chemical synthesis, or by a combination of extraction and  
25 chemical synthesis. ~~It~~**MANUFACTURE** includes the packaging or  
26 repackaging of the substance or labeling or relabeling of its  
27 container, except that ~~it~~**THE TERM** does not include **THE**

1 **FOLLOWING:**

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

4 (b) The preparation, compounding packaging, or labeling of a  
5 controlled substance:

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

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

13 (4) ~~(3)~~—"Marihuana" means all parts of the plant *Canabis*  
14 *sativa* L., growing or not; the seeds thereof; the resin extracted  
15 from any part of the plant; and every compound, manufacture,  
16 salt, derivative, mixture, or preparation of the plant or its  
17 seeds or resin. It does not include the mature stalks of the  
18 plant, fiber produced from the stalks, oil or cake made from the  
19 seeds of the plant, any other compound, manufacture, salt,  
20 derivative, mixture, or preparation of the mature stalks, except  
21 the resin extracted therefrom, fiber, oil or cake, or the  
22 sterilized seed of the plant ~~which~~**THAT** is incapable of  
23 germination.

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

1           (2) Before prescribing or dispensing a controlled substance  
2 to a patient, a licensed prescriber shall ask the patient about  
3 other controlled substances the patient may be using. The  
4 prescriber shall record the patient's response in the patient's  
5 medical or clinical record.

6           **(3) BEFORE PRESCRIBING OR DISPENSING A HARMFUL CONTROLLED**  
7 **SUBSTANCE, A LICENSED PRESCRIBER SHALL CONDUCT A GOOD FAITH PRIOR**  
8 **EXAMINATION OF THE PATIENT FOR WHOM THAT CONTROLLED SUBSTANCE IS**  
9 **BEING PRESCRIBED OR DISPENSED AND EXPRESSLY INDICATE ON THE**  
10 **ORIGINAL PRESCRIPTION THAT AN EXAMINATION WAS CONDUCTED. A**  
11 **PRESCRIBER SHALL NOT DISPENSE A HARMFUL CONTROLLED SUBSTANCE VIA**  
12 **THE INTERNET WITHOUT A PRESCRIPTION THAT EXPRESSLY INDICATES THAT**  
13 **THE PRESCRIPTION IS ISSUED PURSUANT TO A GOOD FAITH PRIOR**  
14 **EXAMINATION CONDUCTED BY THE ORIGINAL PRESCRIBER.**

15           (4) ~~(3)~~—A licensed prescriber who dispenses controlled  
16 substances shall maintain all of the following records separately  
17 from other prescription records:

18           (a) All invoices and other acquisition records for each  
19 controlled substance acquired by the prescriber for not less than  
20 5 years after the date the prescriber acquires the controlled  
21 substance.

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

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

1           (5) ~~(4)~~—The requirement under section 7303 for a license is  
2 waived in the following circumstances:

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

7           (b) When methadone or a methadone congener is dispensed on  
8 the order of a licensed prescriber in a methadone treatment  
9 program licensed under article 6 or when a controlled substance  
10 listed in schedules 2 to 5 is dispensed on the order of a  
11 licensed prescriber in a hospice rendering emergency care  
12 services in a patient's home as described in section 17746 by a  
13 registered professional nurse or a physician's assistant licensed  
14 under article 15.

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

22           (a) The applicant or licensee has furnished false or  
23 fraudulent material information in an application filed under  
24 this article.

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

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

3 (d) The applicant or licensee is not a practitioner,  
4 manufacturer, or distributor.

5 (e) The applicant or licensee has not maintained effective  
6 controls against diversion of controlled substances to other than  
7 legitimate and professionally recognized therapeutic, scientific,  
8 or industrial uses.

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

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

16 **(H) THE APPLICANT OR LICENSEE HAS PRESCRIBED OR DISPENSED A**  
17 **HARMFUL CONTROLLED SUBSTANCE VIA THE INTERNET WITHOUT A**  
18 **PRESCRIPTION THAT EXPRESSLY INDICATES THAT THE PRESCRIPTION IS**  
19 **ISSUED PURSUANT TO A GOOD FAITH PRIOR EXAMINATION OF THE PATIENT**  
20 **FOR WHOM THAT CONTROLLED SUBSTANCE WAS PRESCRIBED OR DISPENSED.**

21 **(I) ~~(h)~~—**The applicant or licensee has violated or attempted  
22 to violate, directly or indirectly, assisted in or abetted the  
23 violation of, or conspired to violate this article or ~~rules~~  
24 **RULE** of the administrator promulgated under this article.

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

27 (3) A license under section 7306 to manufacture, distribute,

1 prescribe, or dispense a controlled substance shall be denied or  
2 revoked by the disciplinary subcommittee if the applicant or  
3 licensee has been convicted of a felony under a state or federal  
4 law relating to a controlled substance.

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

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

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



1           (7) Subject to subsection (8), if the administrator or the  
2 disciplinary subcommittee finds that an applicant or licensee has  
3 been convicted of a misdemeanor or a felony under a state or  
4 federal law relating to a controlled substance, the applicant or  
5 licensee shall not have a direct financial interest in or be  
6 employed by a person who is licensed under this article to  
7 manufacture, distribute, prescribe, or dispense a controlled  
8 substance in a capacity in which the individual has direct access  
9 to controlled substances for a period of not less than 3 years  
10 after the date of conviction. An individual who violates this  
11 subsection is subject to a civil fine of not more than \$25,000.00  
12 in a proceeding in the circuit court.

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

20           Sec. 7401. (1) Except as authorized by this article, a  
21 person shall not manufacture, create, deliver, or possess with  
22 intent to manufacture, create, or deliver a controlled substance,  
23 a prescription form, or a counterfeit prescription form. A  
24 practitioner licensed by the administrator under this article  
25 shall not dispense, prescribe, or administer a controlled  
26 substance for other than legitimate and professionally recognized  
27 therapeutic or scientific purposes or outside the scope of

1 practice of the practitioner, licensee, or applicant. **A**  
2 **PRACTITIONER LICENSED BY THE ADMINISTRATOR UNDER THIS ARTICLE**  
3 **SHALL NOT DISPENSE OR ADMINISTER A HARMFUL CONTROLLED SUBSTANCE**  
4 **FOR A PATIENT VIA THE INTERNET WITHOUT A PRESCRIPTION THAT**  
5 **EXPRESSLY INDICATES THAT THE PRESCRIPTION IS ISSUED PURSUANT TO A**  
6 **GOOD FAITH EXAMINATION CONDUCTED BY THE PRESCRIBER.**

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

8 (a) A controlled substance classified in schedule 1 or 2  
9 that is a narcotic drug or a drug described in section 7214(a) (iv)  
10 and:

11 (i) ~~which~~ **THAT** is in an amount of 1,000 grams or more of any  
12 mixture containing that substance is guilty of a felony  
13 punishable by imprisonment for life or any term of years or a  
14 fine of not more than \$1,000,000.00, or both.

15 (ii) ~~which~~ **THAT** is in an amount of 450 grams or more, but  
16 less than 1,000 grams, of any mixture containing that substance  
17 is guilty of a felony and punishable by imprisonment for not more  
18 than 30 years or a fine of not more than \$500,000.00, or both.

19 (iii) ~~which~~ **THAT** is in an amount of 50 grams or more, but less  
20 than 450 grams, of any mixture containing that substance is  
21 guilty of a felony punishable by imprisonment for not more than  
22 20 years or a fine of not more than \$250,000.00, or both.

23 (iv) ~~which~~ **THAT** is in an amount less than 50 grams, of any  
24 mixture containing that substance is guilty of a felony  
25 punishable by imprisonment for not more than 20 years or a fine  
26 of not more than \$25,000.00, or both.

27 (b) Either of the following:

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

4           (ii) Any other controlled substance classified in schedule 1,  
5 2, or 3, except marihuana is guilty of a felony punishable by  
6 imprisonment for not more than 7 years or a fine of not more than  
7 \$10,000.00, or both.

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

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

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

16           (ii) If the amount is 5 kilograms or more but less than 45  
17 kilograms, or 20 plants or more but fewer than 200 plants, by  
18 imprisonment for not more than 7 years or a fine of not more than  
19 \$500,000.00, or both.

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

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

26           (f) A prescription form or a counterfeit prescription form  
27 is guilty of a felony punishable by imprisonment for not more

1 than 7 years or a fine of not more than \$5,000.00, or both.

2 (3) A term of imprisonment imposed under subsection (2) (a)  
3 may be imposed to run consecutively with any term of imprisonment  
4 imposed for the commission of another felony.

5 (4) If an individual was sentenced to lifetime probation  
6 under subsection (2) (a) (iv) before the effective date of the  
7 amendatory act that added this subsection and the individual has  
8 served 5 or more years of that probationary period, the probation  
9 officer for that individual may recommend to the court that the  
10 court discharge the individual from probation. If an individual's  
11 probation officer does not recommend discharge as provided in  
12 this subsection, with notice to the prosecutor, the individual  
13 may petition the court seeking resentencing under the court  
14 rules. The court may discharge an individual from probation as  
15 provided in this subsection. An individual may file more than 1  
16 motion seeking resentencing under this subsection.

17 (5) As used in this section, "plant" means a marihuana plant  
18 that has produced cotyledons or a cutting of a marihuana plant  
19 that has produced cotyledons.

20 Sec. 7405. (1) A person:

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

24 (b) Who is a licensee shall not manufacture a controlled  
25 substance not authorized by his or her license or distribute,  
26 prescribe, or dispense a controlled substance not authorized by  
27 his or her license to another licensee or other authorized

1 person, except as authorized by rules promulgated by the  
2 administrator.

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

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

12 (e) Who is a practitioner shall not dispense a prescription  
13 for a controlled substance written and signed or transmitted by  
14 facsimile, electronic transmission, or other means of  
15 communication by a physician prescriber licensed to practice in a  
16 state other than Michigan, unless the prescription is issued by a  
17 physician prescriber who resides adjacent to the land border  
18 between this state and an adjoining state or resides in Illinois  
19 or Minnesota and who is authorized under the laws of that state  
20 to practice medicine or osteopathic medicine and surgery and to  
21 prescribe controlled substances and whose practice may extend  
22 into this state, but who does not maintain an office or designate  
23 a place to meet patients or receive calls in this state.

24 **(F) WHO IS A PRACTITIONER SHALL NOT DISPENSE A PRESCRIPTION**  
25 **FOR A HARMFUL CONTROLLED SUBSTANCE VIA THE INTERNET WITHOUT A**  
26 **PRESCRIPTION THAT EXPRESSLY INDICATES THAT THE PRESCRIPTION IS**  
27 **ISSUED PURSUANT TO A GOOD FAITH PRIOR EXAMINATION CONDUCTED BY**

1 **THE PRESCRIBER.**

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

4 Sec. 16105. (1) "Health occupation" means a health related  
5 vocation, calling, occupation, or employment performed by an  
6 individual whether or not the individual is licensed or  
7 registered under this article.

8 (2) "Health profession" means a vocation, calling,  
9 occupation, or employment performed by an individual acting  
10 pursuant to a license or registration issued under this article.

11 (3) "Health profession specialty field" means an area of  
12 practice established under this article that is within the scope  
13 of activities, functions, and duties of a licensed health  
14 profession and that requires advanced education and training  
15 beyond that required for initial licensure.

16 (4) "Health profession specialty field license" means an  
17 authorization to use a title issued to a licensee who has met  
18 qualifications established by the Michigan board of dentistry for  
19 registration in a health profession specialty field. An  
20 individual who holds a dental specialty certification on the  
21 effective date of the amendatory act that added this subsection  
22 is considered to hold a health profession specialty field license  
23 in that speciality and may obtain renewal of the health  
24 profession specialty field license in that speciality on the  
25 expiration date of the specialty certification. The health  
26 profession specialty field license is not a license as that term  
27 is defined in section ~~16106(2)~~**16106**.

1           (5) "Health profession subfield" means an area of practice  
2 established under this article which is within the scope of the  
3 activities, functions, and duties of a licensed health  
4 profession, and requires less comprehensive knowledge and skill  
5 than is required to practice the full scope of the health  
6 profession.

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

11           (2) **"INTERNET" MEANS THAT TERM AS DEFINED IN SECTION 230 OF**  
12 **TITLE II OF THE COMMUNICATIONS ACT OF 1934, 47 USC 230.**

13           (3) ~~(2)~~"License", except as otherwise provided in this  
14 subsection, means an authorization issued under this article to  
15 practice where practice would otherwise be unlawful. License  
16 includes an authorization to use a designated title which use  
17 would otherwise be prohibited under this article and may be used  
18 to refer to a health profession subfield license, limited  
19 license, or a temporary license. For purposes of the definition  
20 of "prescriber" contained in section ~~17708(2)~~**17708** only, license  
21 includes an authorization issued under the laws of another state,  
22 or the country of Canada to practice in that state or in the  
23 country of Canada, where practice would otherwise be unlawful,  
24 and is limited to a licensed doctor of medicine, a licensed  
25 doctor of osteopathic medicine and surgery, or another licensed  
26 health professional acting under the delegation and using,  
27 recording, or otherwise indicating the name of the delegating

1 licensed doctor of medicine or licensed doctor of osteopathic  
2 medicine and surgery. License does not include a health  
3 profession specialty field license.

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

8 (5) ~~(4)~~—"Limitation" means an action by which a board  
9 imposes restrictions or conditions, or both, on a license.

10 (6) ~~(5)~~—"Limited license" means a license to which  
11 restrictions or conditions, or both, as to scope of practice,  
12 place of practice, supervision of practice, duration of licensed  
13 status, or type or condition of patient or client served are  
14 imposed by a board.

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

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



1 practice the health profession.

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

4 (i) Incompetence.

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

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

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

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

17 (vi) Lack of good moral character.

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

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

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

1 conclusive evidence of the conviction.

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

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

13       (xii) Conviction of a violation of section 430 of the  
14 Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy  
15 of the court 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  
24 possess a controlled substance as defined in section 7104 or a  
25 drug as defined in section 7105 without lawful authority; or  
26 selling, prescribing, giving away, or administering drugs for  
27 other than 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  
6 medications 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  
12 obtaining or attempting to obtain third party reimbursement in  
13 the 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) Either of the following:

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

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

1 3, 2002, are incorporated by reference for purposes of this  
2 subparagraph. A disciplinary subcommittee shall apply section  
3 1877 of part D of title XVIII of the social security act, 42 USC  
4 1395nn, and the regulations promulgated under that section  
5 regardless of the source of payment for the designated health  
6 service referred and rendered. If section 1877 of part D of title  
7 XVIII of the social security act, 42 USC 1395nn, or a regulation  
8 promulgated under that section is revised after June 3, 2002, the  
9 department shall officially take notice of the revision. Within  
10 30 days after taking notice of the revision, the department shall  
11 decide whether or not the revision pertains to referral by  
12 physicians for designated health services and continues to  
13 protect the public from inappropriate referrals by physicians. If  
14 the department decides that the revision does both of those  
15 things, the department may promulgate rules to incorporate the  
16 revision by reference. If the department does promulgate rules to  
17 incorporate the revision by reference, the department shall not  
18 make any changes to the revision. As used in this subparagraph,  
19 "designated health service" means that term as defined in section  
20 1877 of part D of title XVIII of the social security act, 42 USC  
21 1395nn, and the regulations promulgated under that section and  
22 "physician" means that term as defined in sections 17001 and  
23 17501.

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

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

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

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

21       **(G)** ~~(h)~~ A violation, or aiding or abetting in a violation,  
22 of this article or of a rule promulgated under this article.

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

1 (I) ~~(j)~~—Failure to pay an installment of an assessment  
2 levied pursuant to the insurance code of 1956, 1956 PA 218, MCL  
3 500.100 to 500.8302, within 60 days after notice by the  
4 appropriate board.

5 (J) ~~(k)~~—A violation of section 17013 or 17513.

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

8 (L) ~~(m)~~—A violation of section 17015 or 17515.

9 (M) ~~(n)~~—A violation of section 17016 or 17516.

10 (N) ~~(o)~~—Failure to comply with section 9206(3).

11 (O) ~~(p)~~—A violation of section 5654 or 5655.

12 (P) ~~(q)~~—A violation of section 16274.

13 (Q) ~~(r)~~—A violation of section 17020 or 17520.

14 (R) ~~(s)~~—A violation of the medical records access act, 2004  
15 PA 47, MCL 333.26261 TO 333.26271.

16 (S) ~~(t)~~—A violation of section 17764(2).

17 (T) A VIOLATION OF SECTION 17751 OR 17759.

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

<u>Violations of Section 16221</u>	<u>Sanctions</u>
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.
27 Subdivision (b) (viii)	Revocation or denial.

1	Subdivision (b) (i) ,	Limitation, suspension,
2	(b) (iii) , (b) (v) ,	revocation, denial,
3	(b) (ix) , (b) (x) ,	probation, restitution,
4	(b) (xi) , or (b) (xii)	community service, or fine.
5	Subdivision (c) (i)	Denial, revocation, suspension,
6		probation, limitation, community
7		service, or fine.
8	Subdivision (c) (ii)	Denial, suspension, revocation,
9		restitution, community service,
10		or fine.
11	Subdivision (c) (iii)	Probation, denial, suspension,
12		revocation, restitution,
13		community service, or fine.
14	Subdivision (c) (iv)	Fine, probation, denial,
15	or (d) (iii)	suspension, revocation, community
16		service, or restitution.
17	Subdivision (d) (i)	Reprimand, fine, probation,
18	or (d) (ii)	community service, denial,
19		or restitution.
20	Subdivision (e) (i)	Reprimand, fine, probation,
21		limitation, suspension, community
22		service, denial, or restitution.
23	Subdivision (e) (ii)	Reprimand, probation,
24	or <del>(i)</del> (H)	suspension, restitution,
25		community service, denial, or
26		fine.
27	Subdivision (e) (iii) ,	Reprimand, fine, probation,
28	(e) (iv) , or (e) (v)	suspension, revocation,
29		limitation, community service,
30		denial, or restitution.
31	Subdivision <del>(g)</del> (F)	Reprimand or fine.

1	Subdivision <del>(h)</del> <del>or</del> <del>(s)</del> <b>(G)</b>	Reprimand, probation, denial,
2	<b>OR (R)</b>	suspension, revocation,
3		limitation, restitution,
4		community service, or fine.
5	Subdivision <del>(j)</del> <b>(I)</b>	Suspension or fine.
6	Subdivision <del>(k)</del> , <del>(p)</del> ,	Reprimand or fine.
7	<del>or</del> <del>(r)</del> <b>(J), (O), OR (Q)</b>	
8	Subdivision <del>(l)</del> <b>(K)</b>	Reprimand, denial, or
9		limitation.
10	Subdivision <del>(m)</del> <del>or</del>	Denial, revocation, restitution,
11	<del>(e)</del> <b>(L), (N), OR (T)</b>	probation, suspension,
12		limitation, reprimand, or fine.
13	Subdivision <del>(n)</del> <b>(M)</b>	Revocation or denial.
14	Subdivision <del>(q)</del> <b>(P)</b>	Revocation.
15	Subdivision <del>(t)</del> <b>(S)</b>	Revocation, fine, and
16		restitution.

17           (2) Determination of sanctions for violations under this  
18 section shall be made by a disciplinary subcommittee. If, during  
19 judicial review, the court of appeals determines that a final  
20 decision or order of a disciplinary subcommittee prejudices  
21 substantial rights of the petitioner for 1 or more of the grounds  
22 listed in section 106 of the administrative procedures act of  
23 1969, 1969 PA 306, MCL 24.306, and holds that the final decision  
24 or order is unlawful and is to be set aside, the court shall  
25 state on the record the reasons for the holding and may remand  
26 the case to the disciplinary subcommittee for further  
27 consideration.

28           (3) A disciplinary subcommittee may impose a fine of up to,



1 but not exceeding, \$250,000.00 for a violation of section  
2 16221(a) or (b).

3 (4) A disciplinary subcommittee may require a licensee or  
4 registrant or an applicant for licensure or registration who has  
5 violated this article or article 7 or a rule promulgated under  
6 this article or article 7 to satisfactorily complete an  
7 educational program, a training program, or a treatment program,  
8 a mental, physical, or professional competence examination, or a  
9 combination of those programs and examinations.

10 Sec. 16245. (1) An individual whose license is limited,  
11 suspended, or revoked under this part may apply to his or her  
12 board or task force for a reinstatement of a revoked or suspended  
13 license or reclassification of a limited license pursuant to  
14 section 16247 or 16249.

15 (2) An individual whose registration is suspended or revoked  
16 under this part may apply to his or her board for a reinstatement  
17 of a suspended or revoked registration pursuant to section 16248.

18 (3) A board or task force shall reinstate a license or  
19 registration suspended for grounds stated in section ~~16221(j)~~  
20 **16221(I)** upon payment of the installment.

21 (4) Except as otherwise provided in this subsection, in case  
22 of a revoked license or registration, an applicant shall not  
23 apply for reinstatement before the expiration of 3 years after  
24 the effective date of the revocation. In the case of a license or  
25 registration that was revoked for a violation of section  
26 16221(b) (vii), a violation of section 16221(c) (iv) consisting of a  
27 felony conviction, any other felony conviction involving a

1 controlled substance, or a violation of section ~~16221(q)~~  
2 **16221(P)**, an applicant shall not apply for reinstatement before  
3 the expiration of 5 years after the effective date of the  
4 revocation. The department shall return an application for  
5 reinstatement received before the expiration of the applicable  
6 time period under this subsection.

7 (5) The department shall provide an opportunity for a  
8 hearing before final rejection of an application for  
9 reinstatement.

10 (6) Based upon the recommendation of the disciplinary  
11 subcommittee for each health profession, the department shall  
12 adopt guidelines to establish specific criteria to be met by an  
13 applicant for reinstatement under this article or article 7. The  
14 criteria may include corrective measures or remedial education as  
15 a condition of reinstatement. If a board or task force, in  
16 reinstating a license or registration, deviates from the  
17 guidelines adopted under this subsection, the board or task force  
18 shall state the reason for the deviation on the record.

19 (7) An individual who seeks reinstatement or  
20 reclassification of a license or registration pursuant to this  
21 section shall pay the application processing fee as a  
22 reinstatement or reclassification fee. If approved for  
23 reinstatement or reclassification, the individual shall pay the  
24 per year license or registration fee for the applicable license  
25 or registration period.

26 (8) An individual who seeks reinstatement of a revoked or  
27 suspended license or reclassification of a limited license

1 pursuant to this section shall have a criminal history check  
2 conducted in accordance with section 16174 and submit a copy of  
3 the results of the background check to the board with his or her  
4 application for reinstatement or reclassification.

5       Sec. 17751. (1) A pharmacist shall not dispense a drug  
6 requiring a prescription under the federal act or a law of this  
7 state except under authority of an original prescription or an  
8 equivalent record of an original prescription approved by the  
9 board. **A PHARMACIST SHALL NOT DISPENSE A HARMFUL DRUG VIA THE  
10 INTERNET UNLESS THE PRESCRIBER EXPRESSLY INDICATES IN HIS OR HER  
11 OWN HANDWRITING ON THE ORIGINAL PRESCRIPTION THAT THE HARMFUL  
12 DRUG IS BEING PRESCRIBED PURSUANT TO A GOOD FAITH PRIOR  
13 EXAMINATION.**

14       (2) A pharmacist may dispense a prescription written and  
15 signed or transmitted by facsimile, electronic transmission, or  
16 other means of communication by a physician prescriber in a state  
17 other than Michigan, but not including a prescription for a  
18 controlled substance as defined in section 7104 except under  
19 circumstances described in section 17763(e), only if the  
20 pharmacist in the exercise of his or her professional judgment  
21 determines all of the following:

22       (a) That the prescription was issued pursuant to an existing  
23 physician-patient relationship.

24       (b) That the prescription is authentic.

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

27       **(D) IF THE PRESCRIPTION IS SUBMITTED VIA THE INTERNET AND IS**

1 **FOR A HARMFUL DRUG, THAT THE PRESCRIPTION WAS ISSUED PURSUANT TO**  
2 **A GOOD FAITH PRIOR EXAMINATION.**

3 (3) A pharmacist or a prescriber shall dispense a  
4 prescription only if the prescription falls within the scope of  
5 practice of the prescriber.

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

8 Sec. 17759. (1) A harmful drug shall be dispensed only:

9 (a) As a prescription drug.

10 (b) Under the control of a licensed pharmacist or  
11 prescriber, who maintains records for the dispensing of these  
12 drugs which are the same as records required for the dispensing  
13 of prescriptions.

14 (2) **A HARMFUL DRUG SHALL NOT BE DISPENSED VIA THE INTERNET**  
15 **WITHOUT A PRESCRIPTION THAT EXPRESSLY INDICATES THAT THE**  
16 **PRESCRIPTION IS BEING ISSUED PURSUANT TO A GOOD FAITH PRIOR**  
17 **EXAMINATION.**

18 Sec. 17763. In addition to the grounds set forth in part  
19 161, the disciplinary subcommittee may fine, reprimand, or place  
20 a pharmacist licensee on probation, or deny, limit, suspend, or  
21 revoke the license of a pharmacist or order restitution or  
22 community service for a violation or abetting in a violation of  
23 this part or rules promulgated under this part, or for 1 or more  
24 of the following grounds:

25 (a) Permitting the dispensing of prescriptions by an  
26 individual who is not a pharmacist, pharmacist intern, or  
27 dispensing prescriber.

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

4 (c) 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 (d) Promoting a prescription drug to the public in any  
8 manner.

9 (e) In addition to the prohibition contained in section  
10 7405(1)(e), dispensing a prescription for a controlled substance  
11 as defined in section 7104 that is written and signed or  
12 transmitted by facsimile, electronic transmission, or other means  
13 of communication by a physician prescriber in a state other than  
14 Michigan, unless the prescription is issued by a physician  
15 prescriber who resides adjacent to the land border between this  
16 state and an adjoining state or resides in Illinois or Minnesota  
17 and who is authorized under the laws of that state to practice  
18 medicine or osteopathic medicine and surgery and to prescribe  
19 controlled substances and whose practice may extend into this  
20 state, but who does not maintain an office or designate a place  
21 to meet patients or receive calls in this state.

22 **(F) PERMITTING THE DISPENSING OF A HARMFUL DRUG VIA THE**  
23 **INTERNET WITHOUT A PRESCRIPTION THAT EXPRESSLY INDICATES THAT THE**  
24 **PRESCRIPTION IS ISSUED PURSUANT TO A GOOD FAITH PRIOR**  
25 **EXAMINATION.**

26 Sec. 17766. Except as provided in sections 17766d and 17780,  
27 a person who does any of the following is guilty of a

1 misdemeanor:

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

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

9 (c) Falsely makes, utters, publishes, passes, alters, or  
10 forges a prescription.

11 (d) Knowingly possesses a false, forged, or altered  
12 prescription.

13 (e) Knowingly attempts to obtain, obtains, or possesses a  
14 drug by means of a prescription for other than a legitimate  
15 therapeutic purpose, or as a result of a false, forged, or  
16 altered prescription.

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

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

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

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

4           (J) OBTAINS OR ATTEMPTS TO OBTAIN A HARMFUL DRUG FROM A  
5 PRESCRIBER OR PHARMACIST VIA THE INTERNET WITHOUT A VALID  
6 PRESCRIPTION AND A GOOD FAITH PRIOR EXAMINATION.