

**SUBSTITUTE FOR
HOUSE BILL NO. 5131**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7405, 17702, 17703, 17708, 17751, 17754, and
17763 (MCL 333.7405, 333.17702, 333.17703, 333.17708, 333.17751,
333.17754, and 333.17763), sections 7405, 17708, 17751, and 17763
as amended by 2011 PA 155 and sections 17702 and 17703 as amended
and section 17754 as added by 2006 PA 672, and by adding section
17744.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7405. (1) A person:

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

5 (b) Who is a licensee shall not manufacture a controlled
6 substance not authorized by his or her license or distribute,

1 prescribe, or dispense a controlled substance not authorized by his
2 or her license to another licensee or other authorized person,
3 except as authorized by rules promulgated by the administrator.

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

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

12 (e) Who is a practitioner shall not dispense a ~~prescription~~
13 ~~for a~~ controlled substance **UNDER A PRESCRIPTION** written and signed;
14 ~~or~~ **WRITTEN OR CREATED IN AN ELECTRONIC FORMAT, SIGNED, AND**
15 transmitted by facsimile; ~~, electronic transmission, OR TRANSMITTED~~
16 **ELECTRONICALLY** or **BY** other means of communication by a physician
17 prescriber or dentist prescriber licensed to practice in a state
18 other than Michigan, unless the prescription is issued by a
19 physician prescriber or dentist prescriber who is authorized under
20 the laws of that state to practice dentistry, medicine, or
21 osteopathic medicine and surgery and to prescribe controlled
22 substances.

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

25 Sec. 17702. (1) "Agent" means an ~~authorized person who acts~~
26 **INDIVIDUAL DESIGNATED BY A PRESCRIBER TO ACT** on behalf of or at the
27 discretion of a ~~THAT~~ prescriber **AS PROVIDED IN SECTION 17744.**

1 (2) "Brand name" means the registered trademark name given to
2 a drug product by its manufacturer.

3 (3) "Current selling price" means the retail price for a
4 prescription drug ~~which~~**THAT** is available for sale from a pharmacy.

5 Sec. 17703. (1) "Device" means an instrument, apparatus, or
6 contrivance, including its components, parts, and accessories,
7 intended for use in the diagnosis, cure, mitigation, treatment, or
8 prevention of disease in human beings or other animals, or to
9 affect the structure or function of the body of human beings or
10 other animals.

11 (2) "Dispense" means to issue 1 or more doses of a drug for
12 subsequent administration to, or use by, a patient.

13 (3) "Dispensing prescriber" means a prescriber, other than a
14 veterinarian, who dispenses prescription drugs.

15 (4) "Drug" means any of the following:

16 (a) A substance recognized or for which the standards or
17 specifications are prescribed in the official compendium.

18 (b) A substance intended for use in the diagnosis, cure,
19 mitigation, treatment, or prevention of disease in human beings or
20 other animals.

21 (c) A substance, other than food, intended to affect the
22 structure or a function of the body of human beings or other
23 animals.

24 (d) A substance intended for use as a component of a substance
25 specified in subdivision (a), (b), or (c), but not including a
26 device or its components, parts, or accessories.

27 (5) "Electronic signature" means an electronic sound, symbol,

1 or process attached to or logically associated with a record and
2 executed or adopted by a person with the intent to sign the record.

3 (6) "Electronically transmitted prescription" means the
4 communication of an original prescription or refill authorization
5 by electronic means including computer to computer, computer to
6 facsimile machine, or electronic mail transmission that contains
7 the same information it contained when the prescriber or ~~authorized~~
8 **HIS OR HER** agent transmitted the prescription. Electronically
9 transmitted prescription does not include a prescription or refill
10 authorization transmitted by telephone or facsimile machine.

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

13 (2) "Prescriber" means a licensed dentist, a licensed doctor
14 of medicine, a licensed doctor of osteopathic medicine and surgery,
15 a licensed doctor of podiatric medicine and surgery, a licensed
16 optometrist certified under part 174 to administer and prescribe
17 therapeutic pharmaceutical agents, a licensed veterinarian, or
18 another licensed health professional acting under the delegation
19 and using, recording, or otherwise indicating the name of the
20 delegating licensed doctor of medicine or licensed doctor of
21 osteopathic medicine and surgery.

22 (3) "Prescription" means an order ~~for~~ **BY A PRESCRIBER TO FILL,**
23 **COMPOUND, OR DISPENSE** a drug or device written and signed; ~~or~~
24 **WRITTEN OR CREATED IN AN ELECTRONIC FORMAT, SIGNED, AND** transmitted
25 by facsimile; ~~; electronic transmission,~~ **OR TRANSMITTED**
26 **ELECTRONICALLY** or **BY** other means of communication. ~~by a prescriber~~
27 ~~to be filled, compounded, or dispensed. Prescribing is limited to a~~

1 ~~prescriber.~~ An order transmitted in other than written **OR HARD-COPY**
 2 form shall be electronically recorded, printed, or written and
 3 immediately dated by the pharmacist, and that record constitutes
 4 the original prescription. In a health facility or agency licensed
 5 under article 17 or other medical institution, an order for a drug
 6 or device in the patient's chart constitutes for the purposes of
 7 this definition the original prescription. Subject to section
 8 17751(2) **AND (5)**, prescription includes, but is not limited to, an
 9 order for a drug, not including a controlled substance as defined
 10 in section 7104 except under circumstances described in section
 11 17763(e), written and signed; ~~or~~ **WRITTEN OR CREATED IN AN**
 12 **ELECTRONIC FORMAT, SIGNED, AND** transmitted by facsimile; ~~or~~
 13 ~~electronic transmission,~~ or **TRANSMITTED ELECTRONICALLY OR BY** other
 14 means of communication by a physician prescriber or dentist
 15 prescriber licensed to practice dentistry, medicine, or osteopathic
 16 medicine and surgery in a state other than Michigan.

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

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

19 (b) A drug bearing the federal legend "CAUTION: federal law
 20 prohibits dispensing without prescription" or "Rx only".

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

23 **SEC. 17744. (1) A PRESCRIBER MAY DESIGNATE AN AGENT TO ACT ON**
 24 **BEHALF OF OR AT THE DISCRETION OF THAT PRESCRIBER. A DESIGNATION OF**
 25 **AN AGENT BY A PRESCRIBER UNDER THIS SECTION IS NOT REQUIRED TO BE**
 26 **IN WRITING TO BE A VALID DESIGNATION. IF A DESIGNATION OF AN AGENT**
 27 **BY A PRESCRIBER UNDER THIS SECTION IS CONTAINED IN A WRITTEN**

1 DOCUMENT, THE PRESCRIBER OR THE AGENT MAY TRANSMIT THAT DOCUMENT TO
2 A PHARMACY THAT WILL DISPENSE A PRESCRIPTION ISSUED BY THAT
3 PRESCRIBER.

4 (2) ONLY A PRESCRIBER ACTING WITHIN THE SCOPE OF HIS OR HER
5 PRACTICE MAY ISSUE A PRESCRIPTION. AN AGENT MAY PREPARE AND
6 TRANSMIT A PRESCRIPTION THAT HAS BEEN SIGNED BY THE PRESCRIBER,
7 INCLUDING A SIGNATURE THAT MEETS THE REQUIREMENTS OF SECTION 17754.
8 THE PRESCRIBER ISSUING A PRESCRIPTION AND THE PHARMACIST DISPENSING
9 A DRUG OR DEVICE UNDER A PRESCRIPTION IS RESPONSIBLE FOR ALL OF THE
10 REQUIREMENTS OF STATE AND FEDERAL LAW, RULES, AND REGULATIONS
11 REGARDING THE ISSUANCE OF PRESCRIPTIONS AND DISPENSING OF DRUGS OR
12 DEVICES UNDER PRESCRIPTIONS.

13 (3) A PRESCRIBER OR HIS OR HER AGENT MAY TRANSMIT TO A
14 PHARMACY A PRESCRIPTION THAT IS CONTAINED WITHIN A PATIENT'S CHART
15 IN A HEALTH FACILITY OR AGENCY LICENSED UNDER ARTICLE 17 OR OTHER
16 MEDICAL INSTITUTION. A PRESCRIPTION THAT IS CONTAINED WITHIN A
17 PATIENT'S CHART IN A HEALTH FACILITY OR AGENCY LICENSED UNDER
18 ARTICLE 17 OR OTHER MEDICAL INSTITUTION AND THAT IS CREATED IN AN
19 ELECTRONIC FORMAT MAY CONTAIN MORE THAN 6 PRESCRIPTIONS AND MAY
20 CONTAIN PRESCRIPTIONS FOR SCHEDULE 3 THROUGH 5 CONTROLLED
21 SUBSTANCES AND NONCONTROLLED SUBSTANCES ON THE SAME FORM.

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

27 (2) ~~A~~-SUBJECT TO SUBSECTION (5), A pharmacist may dispense a

1 prescription written and signed; ~~or~~ **WRITTEN OR CREATED IN AN**
2 **ELECTRONIC FORMAT, SIGNED, AND** transmitted by facsimile; ~~or~~
3 ~~electronic transmission,~~ **OR TRANSMITTED ELECTRONICALLY** or **BY** other
4 means of communication by a physician prescriber or dentist
5 prescriber in a state other than Michigan, but not including a
6 prescription for a controlled substance as defined in section 7104
7 except under circumstances described in section 17763(e), only if
8 the pharmacist in the exercise of his or her professional judgment
9 determines all of the following:

10 (a) That the prescription was issued pursuant to an existing
11 physician-patient or dentist-patient relationship.

12 (b) That the prescription is authentic.

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

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

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

20 **(5) A PHARMACIST SHALL NOT DISPENSE A DRUG OR DEVICE UNDER A**
21 **PRESCRIPTION TRANSMITTED BY FACSIMILE OR CREATED IN ELECTRONIC**
22 **FORMAT AND PRINTED OUT FOR USE BY THE PATIENT UNLESS THE DOCUMENT**
23 **IS MANUALLY SIGNED BY THE PRESCRIBER. THIS SUBSECTION DOES NOT**
24 **APPLY TO A PRESCRIPTION THAT IS TRANSMITTED BY A COMPUTER TO A**
25 **FACSIMILE MACHINE IF THAT PRESCRIPTION COMPLIES WITH SECTION 17754.**

26 **(6) AFTER CONSULTATION WITH AND AGREEMENT FROM THE PRESCRIBER,**
27 **A PHARMACIST MAY ADD OR CHANGE A PATIENT'S ADDRESS, DOSAGE FORM,**

1 DRUG STRENGTH, DRUG QUANTITY, DIRECTIONS FOR USE, OR ISSUE DATE
2 WITH REGARD TO A PRESCRIPTION. A PHARMACIST SHALL NOTE THE DETAILS
3 OF THE CONSULTATION AND AGREEMENT REQUIRED UNDER THIS SUBSECTION ON
4 THE PRESCRIPTION AND SHALL MAINTAIN THAT DOCUMENTATION WITH THE
5 PRESCRIPTION AS REQUIRED IN SECTION 17752. A PHARMACIST SHALL NOT
6 CHANGE THE PATIENT'S NAME, CONTROLLED SUBSTANCE PRESCRIBED UNLESS
7 AUTHORIZED TO DISPENSE A LOWER COST GENERICALLY EQUIVALENT DRUG
8 PRODUCT UNDER SECTION 17755, OR THE PRESCRIBER'S SIGNATURE WITH
9 REGARD TO A PRESCRIPTION.

10 (7) A PRESCRIPTION THAT IS CONTAINED WITHIN A PATIENT'S CHART
11 IN A HEALTH FACILITY OR AGENCY LICENSED UNDER ARTICLE 17 OR OTHER
12 MEDICAL INSTITUTION AND THAT IS TRANSMITTED TO A PHARMACY UNDER
13 SECTION 17744 IS THE ORIGINAL PRESCRIPTION. IF ALL OTHER
14 REQUIREMENTS OF THIS PART ARE MET, A PHARMACIST SHALL DISPENSE A
15 DRUG OR DEVICE UNDER A PRESCRIPTION DESCRIBED IN THIS SUBSECTION. A
16 PHARMACIST MAY DISPENSE A DRUG OR DEVICE UNDER A PRESCRIPTION
17 DESCRIBED IN THIS SUBSECTION EVEN IF THE PRESCRIPTION DOES NOT
18 CONTAIN THE QUANTITY ORDERED. IF A PRESCRIPTION DESCRIBED IN THIS
19 SUBSECTION DOES NOT CONTAIN THE QUANTITY ORDERED, THE PHARMACIST
20 SHALL CONSULT WITH THE PRESCRIBER TO DETERMINE AN AGREED-UPON
21 QUANTITY. THE PHARMACIST SHALL RECORD THE QUANTITY DISPENSED ON THE
22 PRESCRIPTION AND SHALL MAINTAIN THAT DOCUMENTATION WITH THE
23 PRESCRIPTION AS REQUIRED IN SECTION 17752.

24 Sec. 17754. (1) Except as otherwise provided under article 7
25 and the federal act, a prescription may be transmitted
26 electronically as long as the prescription is transmitted in
27 compliance with the health insurance portability and accountability

1 act of 1996, Public Law 104-191, or regulations promulgated under
2 that act, 45 CFR parts 160 and 164, by a prescriber or ~~the~~
3 ~~prescriber's authorized~~ **HIS OR HER** agent and the data are not
4 altered or modified in the transmission process. The electronically
5 transmitted prescription shall include all of the following
6 information:

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

8 (b) The full name of the patient for whom the prescription is
9 issued.

10 (c) An electronic signature or other identifier that
11 specifically identifies and authenticates the prescriber or ~~the~~
12 ~~prescriber's authorized~~ **HIS OR HER** agent.

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

14 (e) The identity of the pharmacy intended to receive the
15 transmission.

16 (f) Any other information required by the federal act or state
17 law.

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

1 (3) Prior to dispensing a prescription that is electronically
2 transmitted, the pharmacist shall exercise professional judgment
3 regarding the accuracy, validity, and authenticity of the
4 transmitted prescription.

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

7 Sec. 17763. In addition to the grounds set forth in part 161,
8 the disciplinary subcommittee may fine, reprimand, or place a
9 pharmacist licensee on probation, or deny, limit, suspend, or
10 revoke the license of a pharmacist or order restitution or
11 community service for a violation or abetting in a violation of
12 this part or rules promulgated under this part, or for 1 or more of
13 the following grounds:

14 (a) Permitting the dispensing of prescriptions by an
15 individual who is not a pharmacist, pharmacist intern, or
16 dispensing prescriber.

17 (b) Permitting the dispensing of prescriptions by a pharmacist
18 intern, except in the presence and under the personal charge of a
19 pharmacist.

20 (c) Selling at auction drugs in bulk or in open packages
21 unless the sale has been approved in accordance with rules of the
22 board.

23 (d) Promoting a prescription drug to the public in any manner.

24 (e) In addition to the prohibition contained in section
25 7405(1)(e), dispensing a prescription for a controlled substance as
26 defined in section 7104 that is written and signed; ~~or~~ **WRITTEN OR**
27 **CREATED IN AN ELECTRONIC FORMAT, SIGNED, AND** transmitted by

1 facsimile; ~~, electronic transmission,~~ **OR TRANSMITTED ELECTRONICALLY**
2 or **BY** other means of communication by a physician prescriber or
3 dentist prescriber in a state other than Michigan, unless the
4 prescription is issued by a physician prescriber or dentist
5 prescriber who is authorized under the laws of that state to
6 practice dentistry, medicine, or osteopathic medicine and surgery
7 and to prescribe controlled substances.