

SENATE BILL NO. 248

March 21, 2019, Introduced by Senators JOHNSON, DALEY, HOLLIER and GEISS and referred to the Committee on Health Policy and Human Services.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7333, 16221, 16226, and 17754 (MCL 333.7333, 333.16221, 333.16226, and 333.17754), section 7333 as amended by 2018 PA 34, sections 16221 and 16226 as amended by 2017 PA 249, and section 17754 as amended by 2014 PA 525.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7333. (1) As used in this section, "good faith" means the

1 prescribing or dispensing of a controlled substance by a
2 practitioner licensed under section 7303 in the regular course of
3 professional treatment to or for an individual who is under
4 treatment by the practitioner for a pathology or condition other
5 than that individual's physical or psychological dependence upon or
6 addiction to a controlled substance, except as provided in this
7 article. Application of good faith to a pharmacist means the
8 dispensing of a controlled substance pursuant to a prescriber's
9 order which, in the professional judgment of the pharmacist, is
10 lawful. The pharmacist shall be guided by nationally accepted
11 professional standards including, but not limited to, all of the
12 following, in making the judgment:

13 (a) Lack of consistency in the doctor-patient relationship.

14 (b) Frequency of prescriptions for the same drug by 1
15 prescriber for larger numbers of patients.

16 (c) Quantities beyond those normally prescribed for the same
17 drug.

18 (d) Unusual dosages.

19 (e) Unusual geographic distances between patient, pharmacist,
20 and prescriber.

21 (2) Except as otherwise provided in this section, a
22 practitioner, in good faith, may dispense a controlled substance
23 included in schedule 2 **that is a prescription drug as determined**
24 **under section 503(b) of the federal food, drug, and cosmetic act,**
25 **21 USC 353, or section 17708,** upon receipt of ~~a~~**either of the**
26 **following:**

27 **(a) A** prescription of a practitioner licensed under section
28 7303 on a prescription form. ~~A practitioner may issue more~~ **More**
29 than 1 prescription for a controlled substance **may be** included in

1 schedule 2 on a single prescription form.

2 **(b) A prescription that is electronically transmitted under**
3 **section 17754.**

4 (3) In an emergency situation, as described in R 338.3165 of
5 the Michigan Administrative Code, a controlled substance included
6 in schedule 2 may be dispensed upon the oral prescription of a
7 practitioner if the prescribing practitioner promptly fills out a
8 prescription form and forwards the prescription form to the
9 dispensing pharmacy within 7 days after the oral prescription is
10 issued. A prescription for a controlled substance included in
11 schedule 2 must not be filled more than 90 days after the date on
12 which the prescription was issued. A pharmacist, consistent with
13 federal law and regulations on the partial filling of a controlled
14 substance included in schedule 2, may partially fill in increments
15 a prescription for a controlled substance included in schedule 2.

16 (4) A practitioner, in good faith, may dispense a controlled
17 substance included in schedule 3, 4, or 5 that is a prescription
18 drug as determined under section 503(b) of the federal food, drug,
19 and cosmetic act, 21 USC 353, or section 17708, upon receipt of a
20 **any of the following:**

21 **(a) A prescription on a prescription form. ~~or an~~**

22 **(b) An oral prescription of a practitioner.**

23 **(c) A prescription that is electronically transmitted under**
24 **section 17754.**

25 (5) A prescription for a controlled substance included in
26 schedule 3 or 4 must not be filled or refilled without specific
27 refill instructions noted by the prescriber. A prescription for a
28 controlled substance included in schedule 3 or 4 must not be filled
29 or refilled later than 6 months after the date of the prescription

1 or be refilled more than 5 times, unless renewed by the prescriber
2 in accordance with rules promulgated by the administrator.

3 (6) ~~(5)~~—A controlled substance included in schedule 5 must not
4 be distributed or dispensed other than for a medical purpose, or in
5 any manner except in accordance with rules promulgated by the
6 administrator.

7 (7) ~~(6)~~—If a prescription is required under this section, the
8 prescription must contain the quantity of the controlled substance
9 prescribed in both written and numerical terms. A prescription is
10 in compliance with this subsection if, in addition to containing
11 the quantity of the controlled substance prescribed in written
12 terms, it contains preprinted numbers representative of the
13 quantity of the controlled substance prescribed next to which is a
14 box or line the prescriber may check.

15 (8) ~~(7)~~—A prescribing practitioner shall not use a
16 prescription form for a purpose other than prescribing. A
17 prescribing practitioner shall not postdate a prescription form
18 that contains a prescription for a controlled substance. ~~A~~
19 ~~prescriber may transmit a prescription by facsimile of a printed~~
20 ~~prescription form and by electronic transmission of a printed~~
21 ~~prescription form, if not prohibited by federal law. If, with the~~
22 ~~patient's consent, a prescription is electronically transmitted, it~~
23 ~~must be transmitted directly to a pharmacy of the patient's choice~~
24 ~~by the prescriber or the prescriber's authorized agent, and the~~
25 ~~data must not be altered, modified, or extracted in the~~
26 ~~transmission process.~~

27 (9) ~~(8)~~—Notwithstanding subsections (1) to ~~(5)~~, ~~(6)~~, a class B
28 dealer may acquire a limited permit only for the purpose of buying,
29 possessing, and administering a commercially prepared, premixed

1 solution of sodium pentobarbital to perform euthanasia on injured,
2 sick, homeless, or unwanted domestic pets and other animals, if the
3 class B dealer does all of the following:

4 (a) Applies to the administrator for a permit in accordance
5 with rules promulgated under this part. The application must
6 contain the name of the individual in charge of the day-to-day
7 operations of the class B dealer's facilities and the name of the
8 individual responsible for designating employees who will be
9 performing euthanasia on animals pursuant to this act.

10 (b) Complies with the rules promulgated by the administrator
11 for the storage, handling, and use of a commercially prepared,
12 premixed solution of sodium pentobarbital to perform euthanasia on
13 animals. The class B dealer shall maintain a record of use and
14 shall make the record available for inspection by the department of
15 licensing and regulatory affairs, the department of agriculture and
16 rural development, and the United States Department of Agriculture.

17 (c) Subject to subdivision (d), certifies that the class B
18 dealer or an employee of the class B dealer has received, and can
19 document completion of, a minimum of 16 hours of training,
20 including at least 12 hours of content training and at least 4
21 hours of practical training, in the use of a commercially prepared,
22 premixed solution of sodium pentobarbital and an animal
23 tranquilizer to perform euthanasia on animals from a training
24 program approved by the state veterinarian, in consultation with
25 the Michigan board of veterinary medicine, and given by a licensed
26 veterinarian pursuant to rules promulgated by the administrator.
27 The training described in this subdivision shall comply with the
28 American Veterinary Medical Association's guidelines for the
29 euthanasia of animals.

1 (d) Until December 31, 2021, ensures that the class B dealer
2 or an employee of the class B dealer who received, and can document
3 the completion of, the 8 hours of training required immediately
4 before ~~the effective date of the 2018 amendatory act that amended~~
5 ~~this section~~ **May 22, 2018** only administers a commercially prepared,
6 premixed solution of sodium pentobarbital to perform euthanasia on
7 the animals described in this subsection. Beginning January 1,
8 2022, the individuals described in this subdivision must have
9 received, and be able to document the completion of, the training
10 described in subdivision (c) to administer a commercially prepared,
11 premixed solution of sodium pentobarbital or an animal tranquilizer
12 to perform euthanasia on the animals described in this subsection.

13 (e) Certifies that only an individual described in subdivision
14 (c) or (d) or an individual otherwise permitted to use a controlled
15 substance pursuant to this article will administer the commercially
16 prepared, premixed solution of sodium pentobarbital or an animal
17 tranquilizer according to written procedures established by the
18 class B dealer.

19 (f) Beginning January 1, 2022, certifies that the individual
20 in charge of the day-to-day operations of the class B dealer's
21 facilities has received, and can document the completion of, the
22 training described in subdivision (c).

23 (g) Complies with all state and federal laws, rules, and
24 regulations regarding the acquisition, use, and security of
25 controlled substances.

26 **(10)** ~~(9)~~ Notwithstanding subsections (1) to ~~(5)~~, **(6)**, an
27 animal control shelter or animal protection shelter registered with
28 the department of agriculture and rural development pursuant to
29 1969 PA 287, MCL 287.331 to 287.340, may acquire a limited permit

1 only for the purpose of buying, possessing, and administering a
2 commercially prepared, premixed solution of sodium pentobarbital,
3 or an animal tranquilizer, to use exclusively as an adjunct in the
4 process of performing euthanasia on injured, sick, homeless, or
5 unwanted domestic pets and other animals, if the animal control
6 shelter or animal protection shelter does all of the following:

7 (a) Applies to the administrator for a permit in accordance
8 with rules promulgated under this part. The application must
9 contain the name of the individual in charge of the day-to-day
10 operations of the animal control shelter or animal protection
11 shelter and the name of the individual responsible for designating
12 employees who will be performing euthanasia on animals pursuant to
13 this act.

14 (b) Complies with the rules promulgated by the administrator
15 for the storage, handling, and use of a commercially prepared,
16 premixed solution of sodium pentobarbital or an animal tranquilizer
17 to perform euthanasia on animals. The animal control shelter or
18 animal protection shelter shall maintain a record of use and make
19 the record available for inspection by the department of licensing
20 and regulatory affairs and the department of agriculture and rural
21 development.

22 (c) Subject to subdivision (d), certifies that an employee of
23 the animal control shelter or animal protection shelter has
24 received, and can document completion of, a minimum of 16 hours of
25 training, including at least 12 hours of content training and at
26 least 4 hours of practical training, in the use of a commercially
27 prepared, premixed solution of sodium pentobarbital and an animal
28 tranquilizer to perform euthanasia on animals from a training
29 program approved by the state veterinarian, in consultation with

1 the Michigan board of veterinary medicine, and given by a licensed
2 veterinarian pursuant to rules promulgated by the administrator.
3 The training described in this subdivision must comply with the
4 American Veterinary Medical Association's guidelines for the
5 euthanasia of animals.

6 (d) Until December 31, 2021, ensures that an employee of the
7 animal control shelter or animal protection shelter who received,
8 and can document the completion of, the training required
9 immediately before ~~the effective date of the 2018 amendatory act~~
10 ~~that amended this section~~ **May 22, 2018** only administers a
11 commercially prepared solution of xylazine hydrochloride or a
12 commercially prepared, premixed solution of sodium pentobarbital to
13 perform euthanasia on the animals described in this subsection in
14 accordance with his or her training. Beginning January 1, 2022, the
15 employee described in this subdivision must have received, and be
16 able to document the completion of, the training described in
17 subdivision (c) to administer a commercially prepared, premixed
18 solution of sodium pentobarbital or an animal tranquilizer to
19 perform euthanasia on the animals described in this subsection.

20 (e) Certifies that only an individual described in subdivision
21 (c) or (d) or an individual otherwise permitted to use a controlled
22 substance pursuant to this article will administer a commercially
23 prepared, premixed solution of sodium pentobarbital or an animal
24 tranquilizer according to written procedures established by the
25 animal control shelter or animal protection shelter.

26 (f) Beginning January 1, 2022, certifies that the individual
27 in charge of the day-to-day operations of the animal control
28 shelter or animal protection shelter has received, and can document
29 the completion of, the training described in subdivision (c).

1 (g) Complies with all state and federal laws and regulations
 2 regarding the acquisition, use, and security of controlled
 3 substances.

4 **(11)** ~~(10)~~The application described in subsection ~~(8)~~~~or~~~~(9)~~
 5 **or (10)** must include the names and addresses of all individuals
 6 employed by the animal control shelter or animal protection shelter
 7 or class B dealer who have been trained as described in subsection
 8 ~~(8)(e)~~, **(9) (c)**, (d), and (f) or ~~(9)(e)~~, **(10) (c)**, (d), and (f) and
 9 the name of the veterinarian who trained them. The list of names
 10 and addresses must be updated every 6 months.

11 **(12)** ~~(11)~~If an animal control shelter or animal protection
 12 shelter or class B dealer issued a permit pursuant to subsection
 13 ~~(8)~~~~or~~~~(9)~~ **or (10)** does not have in its employ an individual
 14 trained as described in subsection ~~(8)(e)~~~~(9) (c)~~ or (d) and ~~(8)(f)~~,
 15 **(9) (f)**, or ~~(9)(e)~~~~(10) (c)~~ or (d) and ~~(9)(f)~~, **(10) (f)**, the animal
 16 control shelter or animal protection shelter or class B dealer
 17 shall immediately notify the administrator and shall cease to
 18 administer a commercially prepared, premixed solution of sodium
 19 pentobarbital or an animal tranquilizer for the purposes described
 20 in subsection ~~(8)~~~~or~~~~(9)~~ **or (10)** until the administrator is
 21 notified that 1 of the following has occurred:

22 (a) An individual trained as described in subsection ~~(8)(e)~~,
 23 **(9) (c)**, (d), or (f) or ~~(9)(e)~~, **(10) (c)**, (d), or (f) has been hired
 24 by the animal control shelter or animal protection shelter or class
 25 B dealer.

26 (b) An individual employed by the animal control shelter or
 27 animal protection shelter or class B dealer has been trained as
 28 described in subsection ~~(8)(e)~~~~(9) (c)~~ or (f) or ~~(9)(e)~~~~(10) (c)~~ or
 29 (f).

1 **(13)** ~~(12)~~—A veterinarian, including a veterinarian who trains
2 individuals as described in subsection ~~(8)(e)~~, **(9)(c)**, (d), or (f),
3 or ~~(9)(e)~~, **(10)(c)**, (d), or (f), is not civilly or criminally
4 liable for the use of a commercially prepared, premixed solution of
5 sodium pentobarbital or an animal tranquilizer by an animal control
6 shelter or animal protection shelter or a class B dealer, unless
7 the veterinarian is employed by or under contract with the animal
8 control shelter or animal protection shelter or class B dealer and
9 the terms of the veterinarian's employment or the contract require
10 the veterinarian to be responsible for the use or administration of
11 the commercially prepared, premixed solution of sodium
12 pentobarbital or animal tranquilizer.

13 **(14)** ~~(13)~~—A person shall not knowingly use or permit the use
14 of a commercially prepared, premixed solution of sodium
15 pentobarbital or an animal tranquilizer in violation of this
16 section.

17 **(15)** ~~(14)~~—This section does not require that a veterinarian be
18 employed by or under contract with an animal control shelter or
19 animal protection shelter or class B dealer to obtain, possess, or
20 administer a commercially prepared, premixed solution of sodium
21 pentobarbital or an animal tranquilizer pursuant to this section.

22 **(16)** ~~(15)~~—Notwithstanding subsections (1) to ~~(5)~~, **(6)**, an
23 animal control shelter registered with the department of
24 agriculture and rural development pursuant to 1969 PA 287, MCL
25 287.331 to 287.340, may acquire a limited permit only for the
26 purpose of buying, possessing, and administering an animal
27 tranquilizer to sedate or immobilize an animal running at large
28 that is dangerous or difficult to capture, if the animal control
29 shelter does all of the following:

1 (a) Applies to the administrator for a permit in accordance
2 with the rules promulgated under this part. The application must
3 contain the name of the individual in charge of the day-to-day
4 operations of the animal control shelter and the name of the
5 individual responsible for designating employees who will be
6 administering an animal tranquilizer pursuant to this act.

7 (b) Complies with the rules promulgated by the administrator
8 for the storage, handling, and use of an animal tranquilizer. The
9 animal control shelter shall maintain a record of use and shall
10 make the record available for inspection by the department of
11 licensing and regulatory affairs and the department of agriculture
12 and rural development.

13 (c) Subject to subdivision (d), certifies that an employee of
14 the animal control shelter has received, and can document
15 completion of, both of the following in the following order:

16 (i) The training described in subsection ~~(9)(e)~~ **(10)(c)**.

17 (ii) A minimum of 16 hours of training, including at least 12
18 hours of content training and at least 4 hours of practical
19 training, in the use of animal tranquilizers to sedate or
20 immobilize the animals described in this subsection from a training
21 program approved by the state veterinarian, in consultation with
22 the Michigan board of veterinary medicine, and given by a licensed
23 veterinarian pursuant to rules promulgated by the administrator.

24 (d) Until December 31, 2021, ensures that an employee of the
25 animal control shelter who received, and can document the
26 completion of, the training required immediately before ~~the~~
27 ~~effective date of the 2018 amendatory act that amended this section~~
28 **May 22, 2018** only administers a commercially prepared solution of
29 xylazine hydrochloride to sedate or immobilize the animals

1 described in this subsection. Beginning January 1, 2022, the
 2 employee described in this subdivision must have received, and be
 3 able to document the completion of, the training described in
 4 subdivision (c) to administer an animal tranquilizer to perform
 5 euthanasia on the animals described in this subsection.

6 (e) Certifies that only an individual described in subdivision
 7 (c) or (d) or an individual otherwise permitted to use a controlled
 8 substance pursuant to this article will administer an animal
 9 tranquilizer according to written procedures established by the
 10 animal control shelter.

11 (f) Beginning January 1, 2022, certifies that the individual
 12 in charge of the day-to-day operations of the animal control
 13 shelter has received, and can document the completion of, the
 14 training described in subdivision (c).

15 (g) Complies with all state and federal laws, rules, and
 16 regulations regarding the acquisition, use, and security of
 17 controlled substances.

18 **(17)** ~~(16)~~—The application described in subsection ~~(15)~~—**(16)**
 19 must include the names and business addresses of all individuals
 20 employed by the animal control shelter who have been trained as
 21 described in subsection ~~(15)(e)~~, **(16)(c)**, (d), and (f) and must
 22 include documented proof of the training. The list of names and
 23 business addresses must be updated every 6 months.

24 **(18)** ~~(17)~~—If an animal control shelter issued a permit
 25 pursuant to subsection ~~(15)~~—**(16)** does not have in its employ an
 26 individual trained as described in subsection ~~(15)(e)~~, **(16)(c)** or
 27 (d) and ~~(15)(f)~~, **(16)(f)**, the animal control shelter shall
 28 immediately notify the administrator and shall cease to administer
 29 an animal tranquilizer for the purposes described in subsection

1 ~~(15)~~ **(16)** until the administrator is notified that 1 of the
 2 following has occurred:

3 (a) An individual trained as described in subsection ~~(15)(e)~~,
 4 **(16)(c)**, (d), or (f) has been hired by the animal control shelter.

5 (b) An individual employed by the animal control shelter has
 6 been trained as described in subsection ~~(15)(e)~~ **(16)(c)** or (f).

7 **(19)** ~~(18)~~ A veterinarian, including a veterinarian who trains
 8 individuals as described in subsection ~~(15)(e)~~, **(16)(c)**, (d), or
 9 (f), is not civilly or criminally liable for the use of an animal
 10 tranquilizer by an animal control shelter unless the veterinarian
 11 is employed by or under contract with the animal control shelter
 12 and the terms of the veterinarian's employment or the contract
 13 require the veterinarian to be responsible for the use or
 14 administration of an animal tranquilizer.

15 **(20)** ~~(19)~~ As used in this section:

16 (a) "Animal tranquilizer" means a commercially prepared
 17 solution of xylazine hydrochloride, a commercially prepared
 18 solution of ketamine, or a commercially prepared compound
 19 containing tiletamine and zolazepam.

20 (b) "Class B dealer" means a class B dealer licensed by the
 21 United States Department of Agriculture pursuant to the animal
 22 welfare act, 7 USC 2131 to 2159 and the department of agriculture
 23 and rural development pursuant to 1969 PA 224, MCL 287.381 to
 24 287.395.

25 Sec. 16221. Subject to section 16221b, the department shall
 26 investigate any allegation that 1 or more of the grounds for
 27 disciplinary subcommittee action under this section exist, and may
 28 investigate activities related to the practice of a health
 29 profession by a licensee, a registrant, or an applicant for

1 licensure or registration. The department may hold hearings,
2 administer oaths, and order the taking of relevant testimony. After
3 its investigation, the department shall provide a copy of the
4 administrative complaint to the appropriate disciplinary
5 subcommittee. The disciplinary subcommittee shall proceed under
6 section 16226 if it finds that 1 or more of the following grounds
7 exist:

8 (a) Except as otherwise specifically provided in this section,
9 a violation of general duty, consisting of negligence or failure to
10 exercise due care, including negligent delegation to or supervision
11 of employees or other individuals, whether or not injury results,
12 or any conduct, practice, or condition that impairs, or may impair,
13 the ability to safely and skillfully engage in the practice of the
14 health profession.

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

17 (i) Incompetence.

18 (ii) Subject to sections 16165 to 16170a, substance use
19 disorder as defined in section 100d of the mental health code, 1974
20 PA 258, MCL 330.1100d.

21 (iii) Mental or physical inability reasonably related to and
22 adversely affecting the licensee's or registrant's ability to
23 practice in a safe and competent manner.

24 (iv) Declaration of mental incompetence by a court of competent
25 jurisdiction.

26 (v) Conviction of a misdemeanor punishable by imprisonment for
27 a maximum term of 2 years; conviction of a misdemeanor involving
28 the illegal delivery, possession, or use of a controlled substance;
29 or conviction of any felony other than a felony listed or described

1 in another subparagraph of this subdivision. A certified copy of
2 the court record is conclusive evidence of the conviction.

3 (vi) Lack of good moral character.

4 (vii) Conviction of a criminal offense under section 520e or
5 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and
6 750.520g. A certified copy of the court record is conclusive
7 evidence of the conviction.

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

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

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

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

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

29 (xiii) Conviction of a criminal offense under section 83, 84,

1 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal
2 code, 1931 PA 328, MCL 750.83, 750.84, 750.316, 750.317, 750.321,
3 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the
4 court record is conclusive evidence of the conviction.

5 (xiv) Conviction of a violation of section 136 or 136a of the
6 Michigan penal code, 1931 PA 328, MCL 750.136 and 750.136a. A
7 certified copy of the court record is conclusive evidence of the
8 conviction.

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

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

12 (ii) Permitting a license or registration to be used by an
13 unauthorized person.

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

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

20 (d) Except as otherwise specifically provided in this section,
21 unethical business practices, consisting of 1 or more of the
22 following:

23 (i) False or misleading advertising.

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

27 (iii) Fraud or deceit in obtaining or attempting to obtain third
28 party reimbursement.

29 (e) Except as otherwise specifically provided in this section,

1 unprofessional conduct, consisting of 1 or more of the following:

2 (i) Misrepresentation to a consumer or patient or in obtaining
3 or attempting to obtain third party reimbursement in the course of
4 professional practice.

5 (ii) Betrayal of a professional confidence.

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

8 (iv) Either of the following:

9 (A) A requirement by a licensee other than a physician or a
10 registrant that an individual purchase or secure a drug, device,
11 treatment, procedure, or service from another person, place,
12 facility, or business in which the licensee or registrant has a
13 financial interest.

14 (B) A referral by a physician for a designated health service
15 that violates 42 USC 1395nn or a regulation promulgated under that
16 section. For purposes of this subdivision, 42 USC 1395nn and the
17 regulations promulgated under that section as they exist on June 3,
18 2002 are incorporated by reference. A disciplinary subcommittee
19 shall apply 42 USC 1395nn and the regulations promulgated under
20 that section regardless of the source of payment for the designated
21 health service referred and rendered. If 42 USC 1395nn or a
22 regulation promulgated under that section is revised after June 3,
23 2002, the department shall officially take notice of the revision.
24 Within 30 days after taking notice of the revision, the department
25 shall decide whether or not the revision pertains to referral by
26 physicians for designated health services and continues to protect
27 the public from inappropriate referrals by physicians. If the
28 department decides that the revision does both of those things, the
29 department may promulgate rules to incorporate the revision by

1 reference. If the department does promulgate rules to incorporate
2 the revision by reference, the department shall not make any
3 changes to the revision. As used in this sub-subparagraph,
4 "designated health service" means that term as defined in 42 USC
5 1395nn and the regulations promulgated under that section and
6 "physician" means that term as defined in sections 17001 and 17501.

7 (v) For a physician who makes referrals under 42 USC 1395nn or
8 a regulation promulgated under that section, refusing to accept a
9 reasonable proportion of patients eligible for Medicaid and
10 refusing to accept payment from Medicaid or Medicare as payment in
11 full for a treatment, procedure, or service for which the physician
12 refers the individual and in which the physician has a financial
13 interest. A physician who owns all or part of a facility in which
14 he or she provides surgical services is not subject to this
15 subparagraph if a referred surgical procedure he or she performs in
16 the facility is not reimbursed at a minimum of the appropriate
17 Medicaid or Medicare outpatient fee schedule, including the
18 combined technical and professional components.

19 (vi) Any conduct by a health professional with a patient while
20 he or she is acting within the health profession for which he or
21 she is licensed or registered, including conduct initiated by a
22 patient or to which the patient consents, that is sexual or may
23 reasonably be interpreted as sexual, including, but not limited to,
24 sexual intercourse, kissing in a sexual manner, or touching of a
25 body part for any purpose other than appropriate examination,
26 treatment, or comfort.

27 (vii) Offering to provide practice-related services, such as
28 drugs, in exchange for sexual favors.

29 (f) Failure to notify under section 16222(3) or (4).

1 (g) Failure to report a change of name or mailing address as
2 required in section 16192.

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

5 (i) Failure to comply with a subpoena issued pursuant to this
6 part, failure to respond to a complaint issued under this article,
7 article 7, or article 8, failure to appear at a compliance
8 conference or an administrative hearing, or failure to report under
9 section 16222(1) or 16223.

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

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

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

16 (m) A violation of section 17015, 17015a, 17017, 17515, or
17 17517.

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

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

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

21 (q) A violation of section 16274.

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

23 (s) A violation of the medical records access act, 2004 PA 47,
24 MCL 333.26261 to 333.26271.

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

26 (u) Failure to comply with the terms of a practice agreement
27 described in section 17047(2)(a) or (b), 17547(2)(a) or (b), or
28 18047(2)(a) or (b).

29 (v) A violation of section 7303a(2).

1 (w) A violation of section 7303a(4) or (5).

2 (x) A violation of section 7303b.

3 **(y) A violation of section 17754.**

4 Sec. 16226. (1) After finding the existence of 1 or more of
5 the grounds for disciplinary subcommittee action listed in section
6 16221, a disciplinary subcommittee shall impose 1 or more of the
7 following sanctions for each violation:

8 <u>Violations of Section 16221</u>	<u>Sanctions</u>
9 Subdivision (a), (b) (i), (b) (ii), 10 (b) (iii), (b) (iv), (b) (v), (b) (vi), 11 (b) (vii), (b) (ix), (b) (x), (b) (xi), 12 or (b) (xii)	Probation, limitation, denial, suspension, revocation, permanent revocation, restitution, or fine.
13 14 Subdivision (b) (viii)	Revocation, permanent revocation, or denial.
15 16 17 Subdivision (b) (xiii)	Permanent revocation for a violation described in subsection (5); otherwise, probation, limitation, denial, suspension, revocation, restitution, or fine.
18 19 20 21 22 23 24 Subdivision (b) (xiv)	Permanent revocation.
25 26 Subdivision (c) (i)	Denial, revocation, suspension, probation, limitation, or fine.
27 28	

1	Subdivision (c) <i>(ii)</i>	Denial, suspension, revocation,
2		restitution, or fine.
3		
4	Subdivision (c) <i>(iii)</i>	Probation, denial, suspension,
5		revocation, restitution, or fine.
6		
7	Subdivision (c) <i>(iv)</i> or (d) <i>(iii)</i>	Fine, probation, denial,
8		suspension, revocation, permanent
9		revocation, or restitution.
10		
11	Subdivision (d) <i>(i)</i> or (d) <i>(ii)</i>	Reprimand, fine, probation,
12		denial, or restitution.
13		
14	Subdivision (e) <i>(i)</i> , (e) <i>(iii)</i> ,	Reprimand, fine, probation,
15	(e) <i>(iv)</i> , (e) <i>(v)</i> , (h), or (s)	limitation, suspension,
16		revocation, permanent revocation,
17		denial, or restitution.
18		
19	Subdivision (e) <i>(ii)</i> or (i)	Reprimand, probation, suspension,
20		revocation, permanent
21		revocation, restitution, denial,
22		or fine.
23		
24	Subdivision (e) <i>(vi)</i> or (e) <i>(vii)</i>	Probation, suspension,
25		revocation, limitation, denial,
26		restitution, or fine.
27		
28	Subdivision (f)	Reprimand, denial, limitation,
29		probation, or fine.

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2	Subdivision (g)	Reprimand or fine.
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4	Subdivision (j)	Suspension or fine.
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6	Subdivision (k), (p), or (r)	Reprimand, probation, suspension,
7		revocation, permanent revocation,
8		or fine.
9		
10	Subdivision (l)	Reprimand, denial, or limitation.
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12	Subdivision (m) or (o)	Denial, revocation, restitution,
13		probation, suspension,
14		limitation, reprimand, or fine.
15		
16	Subdivision (n)	Revocation or denial.
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18	Subdivision (q)	Revocation.
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20	Subdivision (t)	Revocation, permanent revocation,
21		fine, or restitution.
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23	Subdivision (u)	Denial, revocation, probation,
24		suspension, limitation,
25		reprimand, or fine.
26		
27	Subdivision (v) or (x)	Probation, limitation, denial,
28		fine, suspension, revocation, or
29		permanent revocation.

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Subdivision (w)

Denial, fine, reprimand,
probation, limitation,
suspension, revocation, or
permanent revocation.

Subdivision (y)

Subject to subsection (7), fine.

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

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

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

1 (5) A disciplinary subcommittee shall impose the sanction of
 2 permanent revocation for a violation of section 16221(b) (xiii) if the
 3 violation occurred while the licensee or registrant was acting
 4 within the health profession for which he or she was licensed or
 5 registered.

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

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

20 Sec. 17754. (1) Except as otherwise provided under ~~article 7,~~
 21 ~~article 8, and the federal act, or subsection (5), beginning~~
 22 **January 1, 2020, a prescriber or his or her agent shall**
 23 **electronically transmit** a prescription, ~~may be transmitted~~
 24 ~~electronically if the prescription is transmitted including a~~
 25 **prescription for a controlled substance, directly to a pharmacy of**
 26 **the patient's choice. A prescription that is transmitted**
 27 **electronically under this section must be** in compliance with the
 28 health insurance portability and accountability act of 1996, Public
 29 Law 104-191, or regulations promulgated under that act, 45 CFR

1 parts 160 and 164, ~~by a prescriber or his or her agent~~ and the data
2 ~~are~~**must** not **be** altered or modified in the transmission process.
3 The electronically transmitted prescription ~~shall~~**must** include all
4 of the following information:

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

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

9 (c) An electronic signature or other identifier that
10 specifically identifies and authenticates the prescriber or his or
11 her agent.

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

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

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

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

27 (3) Before dispensing a prescription that is electronically
28 transmitted, the pharmacist shall exercise professional judgment
29 regarding the accuracy, validity, and authenticity of the

1 transmitted prescription.

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

4 (5) The requirement to transmit a prescription electronically
5 under subsection (1) does not apply under any of the following
6 circumstances:

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

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

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

14 (d) If the prescription is issued by a prescriber who
15 reasonably believes that electronically transmitting the
16 prescription would make it impractical for the patient who is the
17 subject of the prescription to obtain the prescription drug in a
18 timely manner and that the delay would adversely affect the
19 patient's medical condition.

20 (e) If the prescription is orally prescribed under section
21 7333(3) or (4).

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

24 (g) If the prescription is issued by a prescriber who is
25 located outside of this state to be dispensed by a pharmacy located
26 inside of this state.

27 (h) If the prescription is issued and dispensed in the same
28 health care facility and the individual for whom the prescription
29 is issued uses the drug exclusively in the health care facility. As

1 used in this subdivision, "health care facility" includes, but is
2 not limited to, a hospital, hospice, or another long-term care
3 facility that provides rehabilitative, restorative, or ongoing
4 skilled nursing care to an individual who is in need of assistance
5 with activities of daily living.

6 (i) If the prescription contains content that is not supported
7 by the National Council for Prescription Drug Programs
8 Prescriber/Pharmacist Interface SCRIPT Standard.

9 (j) If the prescription is for a drug for which the FDA
10 requires the prescription to contain content that cannot be
11 transmitted electronically.

12 (k) If the prescription is issued under circumstances in which
13 the prescriber is not required to include on the prescription a
14 name of a patient for whom the prescription is issued.

15 (l) If the prescription is issued by a prescriber who is
16 prescribing the drug under a research protocol.

17 (m) If the prescription is for a drug that is administered to
18 the individual for whom the drug is prescribed in a hospital,
19 nursing home, hospice, dialysis treatment clinic, freestanding
20 surgical outpatient facility, or assisted living residence.

21 (6) If a prescriber cannot meet the requirements of subsection
22 (1) or (2), the prescriber may apply to the department for a
23 waiver. The department shall grant a waiver to a prescriber, if the
24 department determines that the prescriber cannot meet the
25 requirements of subsection (1) or (2) due to an economic hardship,
26 a technological limitation that is not reasonably within the
27 control of the prescriber, or another exceptional circumstance. A
28 prescriber who is granted a waiver under this subsection shall
29 notify the department in writing if he or she is subsequently able

1 to meet the requirements of subsections (1) and (2). A waiver that
2 is granted under this subsection is valid for a period not to
3 exceed 1 year and is renewable.

4 (7) A pharmacist who receives a prescription that was not
5 transmitted electronically to the pharmacy may dispense the
6 prescription without determining whether an exception under
7 subsection (5) applies.

8 (8) The department, in consultation with the board, shall
9 promulgate rules to implement this section.

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