SUBSTITUTE FOR

HOUSE BILL NO. 4217

A bill to amend 1978 PA 368, entitled

"Public health code,"

by amending sections 7333, 16221, 16221b, 16226, 17744, 17751, and 17754 (MCL 333.7333, 333.16221, 333.16221b, 333.16226, 333.17744, 333.17751, and 333.17754), section 7333 as amended by 2018 PA 34, sections 16221 and 16226 as amended by 2018 PA 463, section 16221b as added by 2017 PA 249, section 17744 as added by 2012 PA 209, section 17751 as amended by 2017 PA 165, and section 17754 as amended by 2014 PA 525, and by adding section 17754a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 7333. (1) As used in this section, "good faith" means the prescribing or dispensing of a controlled substance by a practitioner licensed under section 7303 in the regular course of

professional treatment to or for an individual who is under treatment by the practitioner for a pathology or condition other than that individual's physical or psychological dependence upon or addiction to a controlled substance, except as provided in this article. Application of good faith to a pharmacist means the dispensing of a controlled substance pursuant to a prescriber's order which, in the professional judgment of the pharmacist, is lawful. The pharmacist shall be guided by nationally accepted professional standards including, but not limited to, all of the following, in making the judgment:

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

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

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

(d) Unusual dosages.

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

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

(a) A prescription of a practitioner licensed under section 7303 on a prescription form. ~~A practitioner may issue more~~ **More** than 1 prescription for a controlled substance included in schedule 2 **may be included** on a single prescription form.

(b) A prescription that is electronically transmitted under

section 17754a.

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

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

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

(b) An oral prescription of a practitioner.

(c) A prescription that is electronically transmitted under section 17754a.

(5) A prescription for a controlled substance included in schedule 3 or 4 must not be filled or refilled without specific refill instructions noted by the prescriber. A prescription for a controlled substance included in schedule 3 or 4 must not be filled or refilled later than 6 months after the date of the prescription or be refilled more than 5 times, unless renewed by the prescriber in accordance with rules promulgated by the administrator.

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

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

(8) ~~(7)~~ A prescribing practitioner shall not use a prescription form for a purpose other than prescribing. A prescribing practitioner shall not postdate a prescription form that contains a prescription for a controlled substance. ~~A~~ **Until the date on which section 17754a applies, a** prescriber may transmit a prescription by facsimile of a printed prescription form and by electronic transmission of a printed prescription form, if not prohibited by federal law. If, with the patient's consent, a prescription is electronically transmitted **under this subsection,** it must be transmitted directly to a pharmacy of the patient's choice by the prescriber or the prescriber's authorized agent, and the data must not be altered, modified, or extracted in the transmission process.

(9) ~~(8)~~ Notwithstanding subsections (1) to ~~(5),~~ **(6),** a class B dealer may acquire a limited permit only for the purpose of buying, possessing, and administering a commercially prepared, premixed solution of sodium pentobarbital to perform euthanasia on injured,

sick, homeless, or unwanted domestic pets and other animals, if the class B dealer does all of the following:

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

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

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

(d) Until December 31, 2021, ensures that the class B dealer

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

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

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

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

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

commercially prepared, premixed solution of sodium pentobarbital, or an animal tranquilizer, to use exclusively as an adjunct in the process of performing euthanasia on injured, sick, homeless, or unwanted domestic pets and other animals, if the animal control shelter or animal protection shelter does all of the following:

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

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

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

veterinarian pursuant to rules promulgated by the administrator. The training described in this subdivision must comply with the American Veterinary Medical Association's guidelines for the euthanasia of animals.

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

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

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

(g) Complies with all state and federal laws and regulations

regarding the acquisition, use, and security of controlled substances.

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

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

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

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

(13) ~~(12)~~ A veterinarian, including a veterinarian who trains

individuals as described in subsection ~~(8)(c),~~ **(9)(c)**, (d), or (f), or ~~(9)(c),~~ **(10)(c)**, (d), or (f), is not civilly or criminally liable for the use of a commercially prepared, premixed solution of sodium pentobarbital or an animal tranquilizer by an animal control shelter or animal protection shelter or a class B dealer, unless the veterinarian is employed by or under contract with the animal control shelter or animal protection shelter or class B dealer and the terms of the veterinarian's employment or the contract require the veterinarian to be responsible for the use or administration of the commercially prepared, premixed solution of sodium pentobarbital or animal tranquilizer.

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

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

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

(a) Applies to the administrator for a permit in accordance

with the rules promulgated under this part. The application must contain the name of the individual in charge of the day-to-day operations of the animal control shelter and the name of the individual responsible for designating employees who will be administering an animal tranquilizer pursuant to this act.

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

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

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

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

(d) Until December 31, 2021, ensures that an employee of the animal control shelter who received, and can document the completion of, the training required immediately before ~~the effective date of the 2018 amendatory act that amended this section~~ **May 22, 2018** only administers a commercially prepared solution of xylazine hydrochloride to sedate or immobilize the animals described in this subsection. Beginning January 1, 2022, the

employee described in this subdivision must have received, and be able to document the completion of, the training described in subdivision (c) to administer an animal tranquilizer to perform euthanasia on the animals described in this subsection.

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

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

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

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

(18) ~~(17)~~ If an animal control shelter issued a permit pursuant to subsection ~~(15)~~ **(16)** does not have in its employ an individual trained as described in subsection ~~(15)(c),~~ **(16)(c)** or (d) and ~~(15)(f),~~ **(16)(f)**, the animal control shelter shall immediately notify the administrator and shall cease to administer an animal tranquilizer for the purposes described in subsection ~~(15)~~ **(16)** until the administrator is notified that 1 of the

following has occurred:

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

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

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

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

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

(b) "Class B dealer" means a class B dealer licensed by the United States Department of Agriculture pursuant to the animal welfare act, 7 USC 2131 to ~~2159~~ **2160** and the department of agriculture and rural development pursuant to 1969 PA 224, MCL 287.381 to 287.395.

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

administer oaths, and order the taking of relevant testimony. After its investigation, the department shall provide a copy of the administrative complaint to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

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

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

(*i*) Incompetence.

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

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

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

(*v*) Conviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; conviction of a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or conviction of any felony other than a felony listed or described in another subparagraph of this subdivision. A certified copy of

the court record is conclusive evidence of the conviction.

(*vi*) Lack of good moral character.

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

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

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

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

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

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

(*xiii*) Conviction of a criminal offense under section 83, 84, 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal

code, 1931 PA 328, MCL 750.83, 750.84, 750.316, 750.317, 750.321, 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the court record is conclusive evidence of the conviction.

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

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

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

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

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

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

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

(*i*) False or misleading advertising.

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

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

(e) Except as otherwise specifically provided in this section, unprofessional conduct, consisting of 1 or more of the following:

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

(*ii*) Betrayal of a professional confidence.

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

(*iv*) Either of the following:

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

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

the revision by reference, the department shall not make any changes to the revision. As used in this sub-subparagraph, "designated health service" means that term as defined in 42 USC 1395nn and the regulations promulgated under that section and "physician" means that term as defined in sections 17001 and 17501.

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

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

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

(*viii*) A violation of section 16655(4) by a dental therapist.

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

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

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

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

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

(k) A violation of section 17013 or 17513.

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

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

(n) A violation of section 17016 or 17516.

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

(p) A violation of section 5654 or 5655.

(q) A violation of section 16274.

(r) A violation of section 17020 or 17520.

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

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

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

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

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

(x) A violation of section 7303b.

(y) A violation of section 17754a.

Sec. 16221b. **(1)** If the department has a reasonable basis to believe that a licensee has violated ~~section 7303a(4) or (5),~~ **any of the following,** the department is not required to investigate under section 16221 or 16231 and may issue a letter to the licensee notifying the licensee that he or she may be in violation of ~~section 7303a(4) or (5).~~**the applicable section:**

(a) Section 7303a(4).

(b) Section 7303a(5).

(c) Section 17754a.

(2) A letter that is issued under this section is not considered discipline.

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

Violations of Section 16221	Sanctions
Subdivision (a), (b)(*i*), (b)(*ii*), (b)(*iii*), (b)(*iv*), (b)(*v*), (b)(*vi*), (b)(*vii*), (b)(*ix*), (b)(*x*), (b)(*xi*), or (b)(*xii*)	Probation, limitation, denial, suspension, revocation, permanent revocation, restitution, or fine.
Subdivision (b)(*viii*)	Revocation, permanent revocation, or denial.

Subdivision (b)(*xiii*)	Permanent revocation for a violation described in subsection (5); otherwise, probation, limitation, denial, suspension, revocation, restitution, or fine.
Subdivision (b)(*xiv*)	Permanent revocation.
Subdivision (c)(*i*)	Denial, revocation, suspension, probation, limitation, or fine.
Subdivision (c)(*ii*)	Denial, suspension, revocation, restitution, or fine.
Subdivision (c)(*iii*)	Probation, denial, suspension, revocation, restitution, or fine.
Subdivision (c)(*iv*) or (d)(*iii*)	Fine, probation, denial, suspension, revocation, permanent revocation, or restitution.
Subdivision (d)(*i*) or (d)(*ii*)	Reprimand, fine, probation, denial, or restitution.
Subdivision (e)(*i*), (e)(*iii*), (e)(*iv*), (e)(*v*), (h), or (s)	Reprimand, fine, probation, limitation, suspension, revocation, permanent revocation,

	denial, or restitution.
Subdivision (e)(*ii*) or ~~*(i)*~~ **(i)**	Reprimand, probation, suspension, revocation, permanent revocation, restitution, denial, or fine.
Subdivision (e)(*vi*), (e)(*vii*), or (e)(*viii*)	Probation, suspension, revocation limitation, denial, restitution, or fine.
Subdivision (f)	Reprimand, denial, limitation, probation, or fine.
Subdivision (g)	Reprimand or fine.
Subdivision (j)	Suspension or fine.
Subdivision (k), (p), or (r)	Reprimand, probation, suspension, revocation, permanent revocation, or fine.
Subdivision (*l*)	Reprimand, denial, or limitation.
Subdivision (m) or (o)	Denial, revocation, restitution, probation, suspension, limitation, reprimand, or fine.

Subdivision (n)	Revocation or denial.
Subdivision (q)	Revocation.
Subdivision (t)	Revocation, permanent revocation, fine, or restitution.
Subdivision (u)	Denial, revocation, probation, suspension, limitation, reprimand, or fine.
Subdivision (v) or (x)	Probation, limitation, denial, fine, suspension, revocation, or permanent revocation.
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.

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

(6) Except as otherwise provided in subsection (5) and this subsection, a disciplinary subcommittee shall not impose the sanction of permanent revocation under this section without a finding that the licensee or registrant engaged in a pattern of intentional acts of fraud or deceit resulting in personal financial gain to the licensee or registrant and harm to the health of patients under the licensee's or registrant's care. This subsection

does not apply if a disciplinary subcommittee finds that a licensee or registrant has violated section 16221(b)(*xiv*).

(7) A disciplinary subcommittee shall impose a fine of $250.00 for each violation of section 16221(y).

Sec. 17744. (1) A prescriber may designate an agent to act on behalf of or at the discretion of that prescriber. A designation of an agent by a prescriber under this section is not required to be in writing to be a valid designation. If a designation of an agent by a prescriber under this section is contained in a written document, the prescriber or the agent may transmit that document to a pharmacy that will dispense a prescription issued by that prescriber.

(2) Only a prescriber acting within the scope of his or her practice may issue a prescription. An agent may prepare and transmit a prescription that has been signed by the prescriber, including a signature that meets the requirements of section 17754 **or 17754a.** The prescriber issuing a prescription and the pharmacist dispensing a drug or device under a prescription is responsible for all of the requirements of state and federal law, rules, and regulations regarding the issuance of prescriptions and dispensing of drugs or devices under prescriptions.

(3) A prescriber or his or her agent may transmit to a pharmacy a prescription that is contained within a patient's chart in a health facility or agency licensed under article 17 or other medical institution. A prescription that is contained within a patient's chart in a health facility or agency licensed under article 17 or other medical institution and that is created in an electronic format may contain more than 6 prescriptions and may contain prescriptions for schedule 3 through 5 controlled

substances and noncontrolled substances on the same form.

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

(2) Subject to subsection (5), a pharmacist may dispense a prescription written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication by a physician prescriber, dentist prescriber, or veterinarian prescriber in another state, but not including a prescription for a controlled substance except under circumstances described in section 17763(e), only if the pharmacist in the exercise of his or her professional judgment determines all of the following:

(a) Except as otherwise authorized under section 5110, 17744a, or 17744b, if the prescriber is a physician or dentist, that the prescription was issued pursuant to an existing physician-patient or dentist-patient relationship.

(b) That the prescription is authentic.

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

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

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

(5) A pharmacist shall not dispense a drug or device under a prescription transmitted by facsimile or created in electronic

format and printed out for use by the patient unless the document is manually signed by the prescriber. This subsection does not apply to a prescription that is transmitted by a computer to a facsimile machine if that prescription complies with section 17754 **or 17754a.**

(6) After consultation with and agreement from the prescriber, a pharmacist may add or change a patient's address, a dosage form, a drug strength, a drug quantity, a direction for use, or an issue date with regard to a prescription. A pharmacist shall note the details of the consultation and agreement required under this subsection on the prescription and shall maintain that documentation with the prescription as required in section 17752. A pharmacist shall not change the patient's name, controlled substance prescribed unless authorized to dispense a lower cost generically equivalent drug product under section 17755, or the prescriber's signature with regard to a prescription.

(7) A prescription that is contained within a patient's chart in a health facility or agency licensed under article 17 or other medical institution and that is transmitted to a pharmacy under section 17744 is the original prescription. If all other requirements of this part are met, a pharmacist shall dispense a drug or device under a prescription described in this subsection. A pharmacist may dispense a drug or device under a prescription described in this subsection even if the prescription does not contain the quantity ordered. If a prescription described in this subsection does not contain the quantity ordered, the pharmacist shall consult with the prescriber to determine an agreed-upon quantity. The pharmacist shall record the quantity dispensed on the prescription and shall maintain that documentation with the

prescription as required in section 17752.

(8) If, after consulting with a patient, a pharmacist determines in the exercise of his or her professional judgment that dispensing additional quantities of a prescription drug is appropriate for the patient, the pharmacist may dispense, at one time, additional quantities of the prescription drug up to the total number of dosage units authorized by the prescriber on the original prescription for the patient and any refills of the prescription. Except for a controlled substance included in schedule 5 that does not contain an opioid, this subsection does not apply to a prescription for a controlled substance.

Sec. 17754. (1) Except as otherwise provided under article 7, article 8, and the federal act, a prescription may be transmitted electronically if the prescription is transmitted in compliance with the health insurance portability and accountability act of 1996, Public Law 104-191, or regulations promulgated under that act, 45 CFR parts 160 and 164, by a prescriber or his or her agent and the data are not altered or modified in the transmission process. The electronically transmitted prescription shall include all of the following information:

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

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

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

(d) The time and date of the transmission.

(e) The identity of the pharmacy intended to receive the

transmission.

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

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

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

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

(5) This section does not apply beginning on the date on which section 17754a applies.

Sec. 17754a. (1) Except as otherwise provided under article 8, the federal act, or subsection (5), and subject to subsection (10), beginning January 1, 2021, a prescriber or his or her agent shall electronically transmit a prescription, including a prescription for a controlled substance, directly to a pharmacy of the patient's choice. A prescription that is transmitted electronically under this section must be in compliance with the health insurance portability and accountability act of 1996, Public Law 104-191, or

regulations promulgated under that act, 45 CFR parts 160 and 164, and the data must not be altered or modified in the transmission process. The electronically transmitted prescription must include all of the following information:

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

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

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

(d) The time and date of the transmission.

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

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

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

(3) Before dispensing a prescription that is electronically transmitted under this section, the pharmacist shall exercise professional judgment regarding the accuracy, validity, and

authenticity of the transmitted prescription.

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

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

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

(b) Subject to subsection (6), if the prescription is issued under a circumstance in which electronic transmission is not available due to a temporary technological or electrical failure.

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

(d) Subject to subsection (6), if the prescription is issued by a prescriber who reasonably believes that electronically transmitting the prescription would make it impractical for the patient who is the subject of the prescription to obtain the prescription drug in a timely manner and that the delay would adversely affect the patient's medical condition.

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

(f) Subject to subsection (6), if the prescription is issued by a prescriber to be dispensed outside of this state.

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

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

used in this subdivision, "health care facility" includes, but is not limited to, any of the following:

(*i*) A hospital.

(*ii*) A hospice.

(*iii*) A dialysis treatment clinic.

(*iv*) A freestanding surgical outpatient facility.

(*v*) A nursing home.

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

(i) Subject to subsection (6), if the prescription contains content that is not supported by the National Council for Prescription Drug Programs Prescriber/Pharmacist Interface SCRIPT Standard.

(j) Subject to subsection (6), if the prescription is for a drug for which the FDA requires the prescription to contain content that cannot be transmitted electronically.

(k) If the prescription is issued under circumstances in which the prescriber is not required to include on the prescription a name of a patient for whom the prescription is issued including, but not limited to, a prescription issued under section 5110.

(*l*) Subject to subsection (6), if the prescription is issued by a prescriber who is prescribing the drug under a research protocol.

(6) If a prescription for a controlled substance is not electronically transmitted under an exception described in subsection (5)(b), (d), (f), (i), (j), or (*l*), the prescriber shall document the applicable exception at the time the prescriber issues the prescription. If the prescription is not electronically transmitted under an exception described in subsection (5)(d), the

prescriber shall also document the specific reason for not electronically transmitting the prescription. A prescriber shall provide the documentation required under this subsection to the department on request.

(7) If a prescriber cannot meet the requirements of subsection (1) or (2), the prescriber may apply to the department for a waiver. The department shall grant a waiver to a prescriber if the department determines that the prescriber cannot meet the requirements of subsection (1) or (2) due to an economic hardship, a technological limitation that is not reasonably within the control of the prescriber, such as insufficient internet connectivity or the use of a health record technology certified by the federal Centers for Medicare and Medicaid Services that does not allow for the electronic transmission of a prescription for a controlled substance, or another exceptional circumstance. A waiver that is granted under this subsection is valid for a period not to exceed 1 year and is renewable.

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

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

(10) If the federal Centers for Medicare and Medicaid Services delays the Medicare requirement for the electronic transmission of prescriptions for controlled substances beyond January 1, 2021, then the department shall, by rule, delay the implementation date of subsection (1) to the date established by the federal Centers for Medicare and Medicaid Services for the Medicare requirement.