

**SENATE BILL NO. 665**

July 10, 1997, Introduced by Senators DINGELL and SCHWARZ  
and referred to the Committee on Health Policy and Senior  
Citizens.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending sections 7405, 16106, 17704, 17708, 17751, and 17763  
(MCL 333.7405, 333.16106, 333.17704, 333.17708, 333.17751, and  
333.17763), section 7405 as amended by 1988 PA 30, section 17708  
as amended by 1994 PA 384, and section 17763 as amended by 1993  
PA 79.

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

- 1       Sec. 7405. (1) A person:  
2       (a) Who is licensed by the administrator under this article  
3 shall not distribute, prescribe, or dispense a controlled sub-  
4 stance in violation of section 7333.  
5       (b) Who is a licensee shall not manufacture a controlled  
6 substance not authorized by his or her license or distribute,  
7 prescribe, or dispense a controlled substance not authorized by

1 his or her license to another licensee or other authorized  
2 person, except as authorized by rules promulgated by the  
3 administrator.

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

6 (d) Shall not knowingly keep or maintain a store, shop,  
7 warehouse, dwelling, building, vehicle, boat, aircraft, or other  
8 structure or place, ~~which~~ THAT is ~~resorted to~~ FREQUENTED by  
9 persons using controlled substances in violation of this article  
10 for the purpose of using ~~these~~ CONTROLLED substances, or  
11 ~~which~~ THAT is used for keeping or selling ~~them~~ CONTROLLED  
12 SUBSTANCES in violation of this article.

13 (E) WHO IS A PRACTITIONER SHALL NOT DISPENSE A PRESCRIPTION  
14 FOR A CONTROLLED SUBSTANCE WRITTEN AND SIGNED OR TRANSMITTED BY A  
15 PRESCRIBER LICENSED TO PRACTICE IN A STATE OTHER THAN MICHIGAN,  
16 UNLESS THE PRESCRIPTION IS ISSUED BY A PRESCRIBER RESIDING ADJA-  
17 CENT TO THE LAND BORDER BETWEEN THIS STATE AND AN ADJOINING STATE  
18 WHO IS AUTHORIZED UNDER THE LAWS OF THAT STATE TO PRACTICE A  
19 HEALTH PROFESSION AND TO PRESCRIBE CONTROLLED SUBSTANCES AND  
20 WHOSE PRACTICE MAY EXTEND INTO THIS STATE, BUT WHO DOES NOT MAIN-  
21 TAIN AN OFFICE OR DESIGNATE A PLACE TO MEET PATIENTS OR RECEIVE  
22 CALLS IN THIS STATE.

23 (2) A PERSON WHO VIOLATES SUBSECTION (1) IS SUBJECT TO THE  
24 PENALTIES PRESCRIBED IN SECTION 7406.

25 Sec. 16106. (1) "Incompetence" means a departure from, or  
26 failure to conform to, minimal standards of acceptable and

1 prevailing practice for the health profession, whether or not  
2 actual injury to an individual occurs.

3 (2) "License", EXCEPT AS OTHERWISE PROVIDED IN THIS  
4 SUBSECTION, means an authorization issued under this article to  
5 practice where practice would otherwise be unlawful. ~~It~~  
6 LICENSE includes an authorization to use a designated title which  
7 use would otherwise be prohibited under this article and may be  
8 used to refer to a health profession subfield license, limited  
9 license, or a temporary license. FOR PURPOSES OF THE DEFINITION  
10 OF "PRESCRIBER" CONTAINED IN SECTION 17708(2) ONLY, LICENSE  
11 INCLUDES AN AUTHORIZATION ISSUED UNDER THE LAWS OF ANOTHER STATE  
12 TO PRACTICE IN THAT STATE WHERE PRACTICE WOULD OTHERWISE BE  
13 UNLAWFUL.

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

18 (4) "Limitation" means an action by which a board imposes  
19 restrictions or conditions, or both, on a license.

20 (5) "Limited license" means a license to which restrictions  
21 or conditions, or both, as to scope of practice, place of prac-  
22 tice, supervision of practice, duration of licensed status, or  
23 type or condition of patient or client served are imposed by a  
24 board.

25 Sec. 17704. (1) "Federal act" means the federal food,  
26 drug, and cosmetic act, ~~of 1938, 21 U.S.C. 301 to 392~~ CHAPTER  
27 675, 52 Stat. 1040, 21 U.S.C. 301 TO 321, 331 TO 333, 334 TO

1 343-2, 344 TO 346a, 347, 348 TO 353, 355 TO 360, 360b TO 360dd,  
2 360hh TO 363, 371 TO 376, AND 378 TO 395.

3 (2) "Generic name" means the established or official name of  
4 a drug or drug product.

5 (3) "Harmful drug" means a drug intended for use by human  
6 beings ~~which~~ is harmful because of its toxicity, habit-forming  
7 nature, or other potential adverse effect, the method of its use,  
8 or the collateral measures necessary to its safe and effective  
9 use, and ~~which~~ THAT is designated as harmful by the board  
10 according to rule.

11 (4) "Internship" means an educational program of profes-  
12 sional and practical experience for an intern.

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

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

25 (3) "Prescription" means an order for ~~drugs or devices~~ A  
26 DRUG OR DEVICE written and signed or transmitted by other means  
27 of communication by a prescriber to be filled, compounded, or

1 dispensed. Prescribing ~~shall be~~ IS limited to a prescriber.  
2 An order transmitted in other than written form shall be recorded  
3 or written and immediately dated by the pharmacist, and that  
4 record constitutes the original prescription. In a health facil-  
5 ity or AGENCY LICENSED UNDER ARTICLE 17 OR other medical  
6 institution, an order for ~~drugs or devices~~ A DRUG OR DEVICE in  
7 the patient's chart constitutes for the purposes of this defini-  
8 tion the original prescription. SUBJECT TO SECTION 17751(2),  
9 PRESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, AN ORDER FOR A  
10 DRUG, NOT INCLUDING A CONTROLLED SUBSTANCE AS DEFINED IN SECTION  
11 7104 EXCEPT UNDER CIRCUMSTANCES DESCRIBED IN SECTION 17763(G),  
12 WRITTEN AND SIGNED OR TRANSMITTED BY OTHER MEANS OF COMMUNICATION  
13 BY A PRESCRIBER LICENSED TO PRACTICE IN A STATE OTHER THAN  
14 MICHIGAN.

15 (4) "Prescription drug" means ~~any~~ 1 OR MORE of the  
16 following:

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

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

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

22 Sec. 17751. (1) A PHARMACIST SHALL NOT DISPENSE A drug  
23 requiring a prescription under the federal act or a law of this  
24 state ~~shall not be dispensed~~ except under authority of an orig-  
25 inal prescription or AN equivalent record ~~thereof~~ OF AN ORIGI-  
26 NAL PRESCRIPTION approved by the board.

1 (2) A PHARMACIST MAY DISPENSE A PRESCRIPTION WRITTEN AND  
2 SIGNED OR TRANSMITTED BY OTHER MEANS OF COMMUNICATION BY A  
3 PRESCRIBER LICENSED TO PRACTICE IN A STATE OTHER THAN MICHIGAN,  
4 BUT NOT INCLUDING A PRESCRIPTION FOR A CONTROLLED SUBSTANCE AS  
5 DEFINED IN SECTION 7104 EXCEPT UNDER CIRCUMSTANCES DESCRIBED IN  
6 SECTION 17763(G), ONLY IF THE PHARMACIST IN THE EXERCISE OF HIS  
7 OR HER PROFESSIONAL JUDGMENT DETERMINES ALL OF THE FOLLOWING:

8 (A) THAT THE PRESCRIPTION WAS ISSUED PURSUANT TO AN EXISTING  
9 HEALTH PROFESSIONAL-PATIENT RELATIONSHIP.

10 (B) THAT THE PRESCRIPTION IS AUTHENTIC.

11 (C) THAT THE PRESCRIBED DRUG IS APPROPRIATE AND NECESSARY  
12 FOR THE TREATMENT OF AN ACUTE, CHRONIC, OR RECURRENT CONDITION.

13 (3) ~~(2)~~ A prescription shall be dispensed ~~only~~ by a  
14 pharmacist or by a prescriber ONLY if the prescription falls  
15 within the scope of practice of the prescriber.

16 (4) ~~(3)~~ A prescription shall not be knowingly dispensed  
17 after the death of the prescriber or patient.

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

25 (a) Employing the mail to sell, distribute, or deliver a  
26 drug ~~which~~ THAT requires a prescription when the prescription  
27 for the drug is received by mail.

1 (b) Adulterating, misbranding, or substituting a drug or  
2 device knowing or intending that ~~it shall~~ THE DRUG OR DEVICE  
3 WILL be used.

4 (c) Permitting the dispensing of prescriptions by an indi-  
5 vidual who is not a pharmacist, pharmacist intern, or dispensing  
6 prescriber.

7 (d) Permitting the dispensing of prescriptions by a pharma-  
8 cist intern, except in the presence and under the personal charge  
9 of a pharmacist.

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

13 (f) Promoting A PRESCRIPTION DRUG to the public in any  
14 manner. ~~a prescription drug.~~

15 (G) IN ADDITION TO THE PROHIBITION CONTAINED IN  
16 SECTION 7405(1)(E), DISPENSING A PRESCRIPTION FOR A CONTROLLED  
17 SUBSTANCE AS DEFINED IN SECTION 7104 THAT IS WRITTEN AND SIGNED  
18 OR TRANSMITTED BY A PRESCRIBER LICENSED TO PRACTICE IN A STATE  
19 OTHER THAN MICHIGAN, UNLESS THE PRESCRIPTION IS ISSUED BY A PRE-  
20 SCRIBER RESIDING ADJACENT TO THE LAND BORDER BETWEEN THIS STATE  
21 AND AN ADJOINING STATE WHO IS AUTHORIZED UNDER THE LAWS OF THAT  
22 STATE TO PRACTICE A HEALTH PROFESSION AND TO PRESCRIBE CONTROLLED  
23 SUBSTANCES AND WHOSE PRACTICE MAY EXTEND INTO THIS STATE, BUT WHO  
24 DOES NOT MAINTAIN AN OFFICE OR DESIGNATE A PLACE TO MEET PATIENTS  
25 OR RECEIVE CALLS IN THIS STATE.