

# HOUSE BILL No. 6323

August 9, 2006, Introduced by Rep. Newell and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7405, 17703, 17708, 17709, 17745, 17751, and 17763 (MCL 333.7405, 333.17703, 333.17708, 333.17709, 333.17745, 333.17751, and 333.17763), section 7405 as amended by 2004 PA 536, section 17703 as amended by 1992 PA 281, sections 17708, 17751, and 17763 as amended by 2005 PA 85, and section 17745 as amended by 1997 PA 186, and by adding section 17754.

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

1           Sec. 7405. (1) A person:  
2           (a) Who is licensed by the administrator under this article  
3 shall not distribute, prescribe, or dispense a controlled substance  
4 in violation of section 7333.

1 (b) Who is a licensee shall not manufacture a controlled  
2 substance not authorized by his or her license or distribute,  
3 prescribe, or dispense a controlled substance not authorized by his  
4 or her license to another licensee or other authorized person,  
5 except as authorized by rules promulgated by the administrator.

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

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

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

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

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

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

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

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

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

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

17           (c) A substance, other than food, intended to affect the  
18 structure or a function of the body of human beings or other  
19 animals.

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

23           **(5) "ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC SOUND, SYMBOL,**  
24 **OR PROCESS ATTACHED TO OR LOGICALLY ASSOCIATED WITH A RECORD AND**  
25 **EXECUTED OR ADOPTED BY A PERSON WITH THE INTENT TO SIGN THE RECORD.**

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

1           (2) "Prescriber" means a licensed dentist, a licensed doctor  
2 of medicine, a licensed doctor of osteopathic medicine and surgery,  
3 a licensed doctor of podiatric medicine and surgery, a licensed  
4 optometrist certified under part 174 to administer and prescribe  
5 therapeutic pharmaceutical agents, a licensed veterinarian, or  
6 another licensed health professional acting under the delegation  
7 and using, recording, or otherwise indicating the name of the  
8 delegating licensed doctor of medicine or licensed doctor of  
9 osteopathic medicine and surgery.

10           (3) "Prescription" means an order for a drug or device written  
11 and signed or transmitted by **FACSIMILE, ELECTRONIC TRANSMISSION, OR**  
12 other means of communication by a prescriber to be filled,  
13 compounded, or dispensed. Prescribing is limited to a prescriber.  
14 An order transmitted in other than written form shall be recorded,  
15 **PRINTED,** or written and immediately dated by the pharmacist, and  
16 that record constitutes the original prescription. In a health  
17 facility or agency licensed under article 17 or other medical  
18 institution, an order for a drug or device in the patient's chart  
19 constitutes for the purposes of this definition the original  
20 prescription. Subject to section 17751(2), prescription includes,  
21 but is not limited to, an order for a drug, not including a  
22 controlled substance as defined in section 7104 except under  
23 circumstances described in section 17763(e), written and signed or  
24 transmitted by **FACSIMILE, ELECTRONIC TRANSMISSION, OR** other means  
25 of communication by a physician prescriber licensed to practice in  
26 a state other than Michigan.

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

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

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

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

6 Sec. 17709. (1) **"SIGN" MEANS TO AFFIX ONE'S SIGNATURE MANUALLY**  
7 **TO A DOCUMENT OR TO USE AN ELECTRONIC SIGNATURE.**

8 (2) ~~(1)~~ "Substitute" means to dispense, without the  
9 prescriber's authorization, a different drug in place of the drug  
10 prescribed.

11 (3) ~~(2)~~ "Wholesale distributor" means a person, other than a  
12 manufacturer, who supplies, distributes, sells, offers for sale,  
13 barter, or otherwise disposes of, to other persons for resale,  
14 compounding, or dispensing, a drug or device salable on  
15 prescription only that the distributor has not prepared, produced,  
16 derived, propagated, compounded, processed, packaged, or  
17 repackaged, or otherwise changed the container or the labeling  
18 thereof.

19 Sec. 17745. (1) Except as otherwise provided in this  
20 subsection, a prescriber who wishes to dispense prescription drugs  
21 shall obtain from the board a drug control license for each  
22 location in which the storage and dispensing of prescription drugs  
23 occur. A drug control license is not necessary if the dispensing  
24 occurs in the emergency department, emergency room, or trauma  
25 center of a hospital licensed under article 17 or if the dispensing  
26 involves only the issuance of complimentary starter dose drugs.

27 (2) A dispensing prescriber shall dispense prescription drugs

1 only to his or her own patients.

2 (3) A dispensing prescriber shall include in a patient's chart  
3 or clinical record a complete record, including prescription drug  
4 names, dosages, and quantities, of all prescription drugs dispensed  
5 directly by the dispensing prescriber or indirectly under his or  
6 her delegatory authority. If prescription drugs are dispensed under  
7 the prescriber's delegatory authority, the delegatee who dispenses  
8 the prescription drugs shall initial the patient's chart, clinical  
9 record, or log of prescription drugs dispensed. In a patient's  
10 chart or clinical record, a dispensing prescriber shall distinguish  
11 between prescription drugs dispensed to the patient and  
12 prescription drugs prescribed for the patient. A dispensing  
13 prescriber shall retain information required under this subsection  
14 for not less than 5 years after the information is entered in the  
15 patient's chart or clinical record.

16 (4) A dispensing prescriber shall store prescription drugs  
17 under conditions that will maintain their stability, integrity, and  
18 effectiveness and will assure that the prescription drugs are free  
19 of contamination, deterioration, and adulteration.

20 (5) A dispensing prescriber shall store prescription drugs in  
21 a substantially constructed, securely lockable cabinet. Access to  
22 the cabinet shall be limited to individuals authorized to dispense  
23 prescription drugs in compliance with this part and article 7.

24 (6) Unless otherwise requested by a patient, a dispensing  
25 prescriber shall dispense a prescription drug in a safety closure  
26 container that complies with the poison prevention packaging act of  
27 1970, Public Law 91-601, 84 Stat. 1670.

1 (7) A dispensing prescriber shall dispense a drug in a  
2 container that bears a label containing all of the following  
3 information:

4 (a) The name and address of the location from which the  
5 prescription drug is dispensed.

6 (b) The patient's name and record number.

7 (c) The date the prescription drug was dispensed.

8 (d) The prescriber's name.

9 (e) The directions for use.

10 (f) The name and strength of the prescription drug.

11 (g) The quantity dispensed.

12 (h) The expiration date of the prescription drug or the  
13 statement required under section 17756.

14 (8) A dispensing prescriber who dispenses a complimentary  
15 starter dose drug to a patient shall give the patient at least all  
16 of the following information, either by dispensing the  
17 complimentary starter dose drug to the patient in a container that  
18 bears a label containing the information or by giving the patient a  
19 written document which may include, but is not limited to, a  
20 preprinted insert that comes with the complimentary starter dose  
21 drug, that contains the information:

22 (a) The name and strength of the complimentary starter dose  
23 drug.

24 (b) Directions for the patient's use of the complimentary  
25 starter dose drug.

26 (c) The expiration date of the complimentary starter dose drug  
27 or the statement required under section 17756.

1           (9) The information required under subsection (8) is in  
2 addition to, and does not supersede or modify, other state or  
3 federal law regulating the labeling of prescription drugs.

4           (10) In addition to meeting the requirements of this part, a  
5 dispensing prescriber who dispenses controlled substances shall  
6 comply with section 7303a.

7           (11) The board may periodically inspect locations from which  
8 prescription drugs are dispensed.

9           (12) The act, task, or function of dispensing prescription  
10 drugs shall be delegated only as provided in section 16215 and this  
11 part.

12           (13) A supervising physician may delegate in writing to a  
13 pharmacist practicing in a hospital pharmacy within a hospital  
14 licensed under article 17 the receipt of complimentary starter dose  
15 drugs other than controlled substances as defined by article 7 or  
16 federal law. When the delegated receipt of complimentary starter  
17 dose drugs occurs, both the pharmacist's name and the supervising  
18 physician's name shall be used, recorded, or otherwise indicated in  
19 connection with each receipt. A pharmacist described in this  
20 subsection may dispense a prescription for complimentary starter  
21 dose drugs written or transmitted by **FACSIMILE, ELECTRONIC**  
22 **TRANSMISSION, OR** other means of communication by a prescriber.

23           (14) As used in this section, "complimentary starter dose"  
24 means a prescription drug packaged, dispensed, and distributed in  
25 accordance with state and federal law that is provided to a  
26 dispensing prescriber free of charge by a manufacturer or  
27 distributor and dispensed free of charge by the dispensing



1 prescriber to his or her patients.

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

7       (2) A pharmacist may dispense a prescription written and  
8 signed or transmitted by **FACSIMILE, ELECTRONIC TRANSMISSION, OR**  
9 other means of communication by a physician prescriber in a state  
10 other than Michigan, but not including a prescription for a  
11 controlled substance as defined in section 7104 except under  
12 circumstances described in section 17763(e), only if the pharmacist  
13 in the exercise of his or her professional judgment determines all  
14 of the following:

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

17       (b) That the prescription is authentic.

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

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

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

25       **SEC. 17754. (1) EXCEPT AS OTHERWISE PROVIDED UNDER ARTICLE 7**  
26 **AND THE FEDERAL ACT, A PRESCRIPTION MAY, UPON THE REQUEST OF THE**  
27 **PATIENT, BE TRANSMITTED ELECTRONICALLY AS LONG AS THE PRESCRIPTION**

1 IS TRANSMITTED DIRECTLY TO A PHARMACY OF THE PATIENT'S CHOICE BY A  
2 PRESCRIBER OR THE PRESCRIBER'S AUTHORIZED AGENT AND THE DATA ARE  
3 NOT ALTERED, MODIFIED, OR EXTRACTED IN THE TRANSMISSION PROCESS.  
4 THE ELECTRONICALLY TRANSMITTED PRESCRIPTION SHALL INCLUDE ALL OF  
5 THE FOLLOWING INFORMATION:

6 (A) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE PRESCRIBER.

7 (B) THE FULL NAME OF THE PATIENT FOR WHOM THE PRESCRIPTION IS  
8 ISSUED.

9 (C) AN ELECTRONIC SIGNATURE OR OTHER IDENTIFIER WHICH  
10 SPECIFICALLY IDENTIFIES, AUTHENTICATES, AND SECURES THE ELECTRONIC  
11 TRANSMISSION OF THE PRESCRIPTION.

12 (D) THE TIME AND DATE OF THE TRANSMISSION.

13 (E) THE NAME 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 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 BE COMMUNICATED IN  
23 A RETRIEVABLE, RECOGNIZABLE FORM ACCEPTABLE TO THE INTENDED  
24 RECIPIENT. THE ELECTRONIC FORM UTILIZED IN THE TRANSMISSION OF A  
25 PRESCRIPTION SHALL NOT INCLUDE "DISPENSE AS WRITTEN" OR "D.A.W." AS  
26 THE DEFAULT SETTING. IF THE PRESCRIBER DOES NOT WANT A LOWER COST  
27 GENERICALLY EQUIVALENT DRUG PRODUCT DISPENSED, THE PRESCRIBER SHALL

1 INCLUDE THE TYPEWRITTEN PHRASE "DISPENSE AS WRITTEN" OR "D.A.W." IN  
2 THE ELECTRONICALLY TRANSMITTED PRESCRIPTION.

3 (3) PRIOR TO DISPENSING A PRESCRIPTION THAT IS ELECTRONICALLY  
4 TRANSMITTED, THE PHARMACIST SHALL EXERCISE PROFESSIONAL JUDGMENT  
5 REGARDING THE ACCURACY, VALIDITY, AND AUTHENTICITY OF THE  
6 TRANSMITTED PRESCRIPTION.

7 (4) AN ELECTRONICALLY TRANSMITTED PRESCRIPTION THAT MEETS THE  
8 REQUIREMENTS OF THIS SECTION IS THE ORIGINAL PRESCRIPTION.

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

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

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

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

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

26 (e) In addition to the prohibition contained in section  
27 7405(1)(e), dispensing a prescription for a controlled substance as

1 defined in section 7104 that is written and signed or transmitted  
2 by **FACSIMILE, ELECTRONIC TRANSMISSION, OR OTHER MEANS OF**  
3 **COMMUNICATION BY** a physician prescriber in a state other than  
4 Michigan, unless the prescription is issued by a physician  
5 prescriber who resides adjacent to the land border between this  
6 state and an adjoining state or resides in Illinois or Minnesota  
7 and who is authorized under the laws of that state to practice  
8 medicine or osteopathic medicine and surgery and to prescribe  
9 controlled substances and whose practice may extend into this  
10 state, but who does not maintain an office or designate a place to  
11 meet patients or receive calls in this state.