

HOUSE BILL No. 5549

February 17, 2004, Introduced by Reps. Gaffney, Ward, Lipsey, Wojno, Hune, DeRoche, Stahl, O'Neil, Rocca, Farrah, Plakas, Woronchak, Adamini, Stakoe, Hardman and Daniels and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7333 (MCL 333.7333), as amended by 2001 PA
231.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7333. (1) As used in this section, "good faith" means
2 the prescribing or dispensing of a controlled substance by a
3 practitioner licensed under section 7303 in the regular course of
4 professional treatment to or for an individual who is under
5 treatment by the practitioner for a pathology or condition other
6 than that individual's physical or psychological dependence upon
7 or addiction to a controlled substance, except as provided in
8 this article. Application of good faith to a pharmacist means
9 the dispensing of a controlled substance pursuant to a
10 prescriber's order which, in the professional judgment of the

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1 pharmacist, is lawful. The pharmacist shall be guided by
2 nationally accepted professional standards including, but not
3 limited to, all of the following, in making the judgment:

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

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

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

9 (d) Unusual dosages.

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

12 (2) Except as otherwise provided in this section, a
13 practitioner, in good faith, may dispense a controlled substance
14 included in schedule 2 upon receipt of a prescription of a
15 practitioner licensed under section 7303 on a prescription form.
16 A practitioner shall not issue more than 1 prescription for a
17 controlled substance included in schedule 2 on a single
18 prescription form.

19 (3) In an emergency situation, as described in R 338.3165 of
20 the Michigan administrative code, a controlled substance included
21 in schedule 2 may be dispensed upon the oral prescription of a
22 practitioner if, the prescribing practitioner promptly fills out
23 a prescription form and forwards the prescription form to the
24 dispensing pharmacy within 7 days after the oral prescription is
25 issued. Except for a terminally ill patient whose terminal
26 illness the pharmacist documents pursuant to rules promulgated by
27 the administrator, a prescription for a controlled substance

1 included in schedule 2 shall not be filled more than 60 days
2 after the date on which the prescription was issued. A
3 prescription for a controlled substance included in schedule 2
4 for a terminally ill patient whose terminal illness the
5 pharmacist documents pursuant to rules promulgated by the
6 administrator may be partially filled in increments for not more
7 than 60 days after the date on which the prescription was
8 issued.

9 (4) A practitioner, in good faith, may dispense a controlled
10 substance included in schedule 3, 4, or 5 that is a prescription
11 drug as determined under section 503(b) of the federal food,
12 drug, and cosmetic act, ~~chapter 675, 52 Stat. 1051, 21~~
13 ~~U.S.C. 353~~ **21 USC 353**, or section 17708, upon receipt of a
14 prescription on a prescription form or an oral prescription of a
15 practitioner. A prescription for a controlled substance included
16 in schedule 3 or 4 shall not be filled or refilled without
17 specific refill instructions noted by the prescriber. A
18 prescription for a controlled substance included in schedule 3 or
19 4 shall not be filled or refilled later than 6 months after the
20 date of the prescription or be refilled more than 5 times, unless
21 renewed by the prescriber in accordance with rules promulgated by
22 the administrator.

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

27 (6) If a prescription is required under this section, the

1 prescription shall contain the quantity of the controlled
2 substance prescribed in both written and numerical terms. A
3 prescription is in compliance with this subsection if, in
4 addition to containing the quantity of the controlled substance
5 prescribed in written terms, it contains preprinted numbers
6 representative of the quantity of the controlled substance
7 prescribed next to which is a box or line the prescriber may
8 check.

9 (7) A prescribing practitioner shall not use a prescription
10 form for a purpose other than prescribing. A prescribing
11 practitioner shall not postdate a prescription form that contains
12 a prescription for a controlled substance. A prescriber may
13 transmit a prescription by facsimile of a printed prescription
14 form and by electronic transmission of a printed prescription
15 form, if not prohibited by federal law. If, with the patient's
16 consent, a prescription is electronically transmitted **under this**
17 **subsection or subsection (8)**, it shall be transmitted directly to
18 a pharmacy of the patient's choice by the prescriber or the
19 prescriber's authorized agent, and the data shall not be altered,
20 modified, or extracted in the transmission process.

21 (8) **If a prescription is handwritten, it shall be legibly**
22 **printed in a type not smaller than 10 point, written with ink or**
23 **an indelible pencil, and signed by the prescriber. A prescriber**
24 **may transmit a handwritten prescription by facsimile or any other**
25 **electronic transmission, if not prohibited by federal law.**

26 (9) ~~(8)~~ Notwithstanding subsections (1) to (5), a dog pound
27 or animal shelter licensed or registered by the department of

1 agriculture pursuant to 1969 PA 287, MCL 287.331 to 287.340, or a
2 class B dealer may acquire a limited permit only for the purpose
3 of buying, possessing, and administering a commercially prepared,
4 premixed solution of sodium pentobarbital to practice euthanasia
5 on injured, sick, homeless, or unwanted domestic pets and other
6 animals, if the dog pound or animal shelter or class B dealer
7 does all of the following:

8 (a) Applies to the administrator for a permit in accordance
9 with rules promulgated under this part. The application shall
10 contain the name of the individual in charge of the day to day
11 operations of the dog pound or animal shelter or class B dealer's
12 facilities and the name of the individual responsible for
13 designating employees who will be practicing euthanasia on
14 animals pursuant to this act.

15 (b) Complies with the rules promulgated by the administrator
16 for the storage, handling, and use of commercially prepared,
17 premixed solution of sodium pentobarbital to practice euthanasia
18 on animals. A record of use shall be maintained and shall be
19 available for inspection.

20 (c) Certifies that an employee of the dog pound or animal
21 shelter or class B dealer has received, and can document
22 completion of, a minimum of 8 hours of training given by a
23 licensed veterinarian in the use of sodium pentobarbital to
24 practice euthanasia on animals pursuant to rules promulgated by
25 the administrator, in consultation with the Michigan board of
26 veterinary medicine as these rules relate to this training, and
27 that only an individual described in this subdivision or an

1 individual otherwise permitted to use a controlled substance
2 pursuant to this article will administer the commercially
3 prepared, premixed solution of sodium pentobarbital according to
4 written procedures established by the dog pound or animal shelter
5 or class B dealer.

6 **(10)** ~~-(9)-~~ The application described in subsection ~~-(8)-~~ **(9)**
7 shall include the names and addresses of all individuals employed
8 by the dog pound or animal shelter or class B dealer who have
9 been trained as described in subsection ~~-(8)(e)-~~ **(9)(c)** and the
10 name of the veterinarian who trained them. The list of names and
11 addresses shall be updated every 6 months.

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

20 (a) An individual trained as described in subsection ~~-(8)(e)-~~
21 **(9)(c)** has been hired by the dog pound or animal shelter or class
22 B dealer.

23 (b) An employee of the dog pound or animal shelter or class B
24 dealer has been trained as described in subsection ~~-(8)(e)-~~
25 **(9)(c)**.

26 **(12)** ~~-(11)-~~ A veterinarian, including a veterinarian who
27 trains individuals as described in subsection ~~-(8)(e)-~~ **(9)(c)**, is

1 not civilly or criminally liable for the use of a commercially
2 prepared, premixed solution of sodium pentobarbital by a dog
3 pound or animal shelter or class B dealer unless the veterinarian
4 is employed by or under contract with the dog pound or animal
5 shelter or class B dealer and the terms of the veterinarian's
6 employment or the contract require the veterinarian to be
7 responsible for the use or administration of the commercially
8 prepared, premixed solution of sodium pentobarbital.

9 **(13)** ~~-(12)-~~ A person shall not knowingly use or permit the
10 use of a commercially prepared, premixed solution of sodium
11 pentobarbital in violation of this section.

12 **(14)** ~~-(13)-~~ This section does not require that a veterinarian
13 be employed by or under contract with a dog pound or animal
14 shelter or class B dealer to obtain, possess, or administer a
15 commercially prepared, premixed solution of sodium pentobarbital
16 pursuant to this section.

17 **(15)** ~~-(14)-~~ As used in this section, "class B dealer" means a
18 class B dealer licensed by the United States department of
19 agriculture pursuant to the animal welfare act, ~~Public Law~~
20 ~~89-544, 7 U.S.C. 2131 to 2147, 2149, and 2151 to 2159~~ **7 USC 2131**
21 **to 2159** and the department of agriculture pursuant to 1969
22 PA 224, MCL 287.381 to 287.395.