CHAPTER 84

AN ACT

RELATING TO DRUGS; DEFINING CONTROLLED SUBSTANCES AND DANGEROUS DRUGS; PROVIDING FOR ADMINISTRATION; PROVIDING PENALTIES; AMENDING AND REPEALING CERTAIN SECTIONS; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--Sections 1 through 42 of this act may be cited as the "Controlled Substances Act".

Section 2. DEFINITIONS.--As used in the Controlled Substances Act:

A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or his agent;

B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman;

C. "board" means the board of pharmacy;

D. "bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency;

E. "controlled substance" means a drug, substance or immediate precursor listed in Schedules I through V of the Controlled Substances Act or regulations adopted thereto;

F. "counterfeit substance" means a controlled substance which bears the unauthorized trademark, trade name, imprint, number, device or other identifying mark or likeness of a manufacturer, dis-

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tributor or dispenser other than the person who in fact manufactured, distributed or dispensed the controlled substance;

G. "deliver" means the actual, constructive or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship;

H. "dispense" means to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery;

I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

J. "distribute" means to deliver other than by administering or dispensing a controlled substance;

K. "drug" or "substance" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary or any respective supplement to these publications. It does not include devices or their components, parts or accessories;

L. "hashish" means the resin extracted from any part of marijuana whether growing or not, and every compound, manufacture, salt, derivative, mixture or preparation of such resins;

M. "immediate precursor" means a substance which the board has designated by regulation as being the principal compound commonly

used or produced primarily as an immediate chemical intermediary used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture;

N. "manufacture" means the production, preparation, compounding, conversion or processing of a controlled substance by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packing or labeling of a controlled substance:

(1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(2) by a practitioner, or by his agent under his supervision for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

O. "marijuana" means all parts of the plant Cannabis sativa L., whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative,

mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

P. "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) opium and opiate, and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation which is a chemical equivalent of any of the substances referred to in Paragraph (1), except the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw including all parts of the plant of the species Papaver somniferum L. except its seeds; or

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation which is a chemical equivalent of any of these substances except decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine;

Q. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. Opiate does not include, unless specifically designated as controlled under Section 5 of the Controlled Substances Act, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Opiate does include its racemic and

levorotatory forms.

R. "person" includes a partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

S. "practitioner" means a physician, dentist, veterinarian or other person licensed to prescribe and administer drugs which are subject to the Controlled Substances Act;

T. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber and in accordance with the Controlled Substances Act or regulations adopted thereto;

U. "scientific investigator" means a person registered to conduct research with controlled substances in the course of his professional practice or research and includes analytical laboratories; and

V. "ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal under the care, custody and control of the person or by a member of his household.

Section 3. DUTY TO ADMINISTER.--

A. The board shall administer the Controlled Substances Act and may add by regulation substances to the list of substances enumerated in Schedules I through IV pursuant to the procedures of the Uniform Licensing Act. In determining whether a substance has the potential

for abuse, the board shall consider the following:

(1) the actual or relative abuse of the substance;

(2) the scientific evidence of the pharmacological effect of the substance, if known;

(3) the state of current scientific knowledge regarding the substance;

(4) the history and current pattern of abuse;

(5) the scope, duration and significance of abuse;

(6) the risk to the public health;

(7) the potential of the substance to produce psychic or physiological dependence liability; and

(8) whether the substance is an immediate precursor of a substance already controlled under the Controlled Substances Act.

B. After considering the factors enumerated in Subsection A, the board shall make findings and issue regulations controlling the substance if it finds the substance has a potential for abuse.

C. If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

D. If any substance is designated as a controlled substance under federal law and notice is given to the board, the board may, by regulation, similarly control the substance under the Controlled Substances Act after providing for a hearing pursuant to the Uniform Licensing Act.

E. Authority to control under this section does not extend

to distilled spirits, wine, malt beverages, tobacco or economic poisons as defined in Section 45-9-2 NMSA 1953.

F. The board shall exclude any non-narcotic substance from a schedule if such substance may, under Section 67-9-53 NMSA 1953, be lawfully sold over the counter without a prescription.

Section 4. NOMENCLATURE.--The controlled substances listed or to be listed in Schedules I through V are included by whatever official, common, usual, chemical or trade name designated.

Section 5. SCHEDULES--CRITERIA.--There are established five schedules of controlled substances to be known as Schedules I, II, III, IV and V.

A. The board shall place a substance in Schedule I if it finds that the substance:

(1) has a high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

B. The board shall place a substance in Schedule II if it finds that:

(1) the substance has a high potential for abuse;

(2) the substance has a currently-accepted medical use in treatment in the United States or currently-accepted medical use with severe restrictions; and

(3) the abuse of the substance may lead to severe psychic or physical dependence.

C. The board shall place a substance in Schedule III if it finds that:

(1) the substance has a potential for abuse less than the substances listed in Schedules I and II;

(2) the substance has a currently-accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

D. The board shall place a substance in Schedule IV if it finds that:

(1) the substance has a low potential for abuse relative to the substances in Schedule III;

(2) the substance has a currently-accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substance in Schedule III.

E. The board shall place a substance in Schedule V if it finds that:

(1) the substance has a currently accepted medical use in treatment in the United States; and

(2) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule IV.

Section 6. SCHEDULE I.--The following controlled substances are

included in Schedule I:

A. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically exempted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) acetylmethadol;

(2) allylprodine;

(3) alphacetylmethadol;

(4) alphameprodine;

(5) alphamethadol;

(6) benzethidine;

(7) betacetylmethadol;

(8) betameprodine;

(9) betamethadol;

(10) betaprodine;

(11) clonitazene;

(12) dextromoramide;

(13) dextrorphan;

(14) diampromide;

(15) diethylthiambutene;

(16) dimenoxadol;

(17) dimepheptanol;

(18) dimethylthiambutene;

(19) dioxaphetyl butyrate;

(20) dipipanone;

(21) ethylmethylthiambutene;

(22) etonitazene;

(23) etoxeridine;

(24) furethidine;

(25) hydroxypethidine;

(26) ketobemidone;

(27) levomoramide;

(28) levophenacylmorphan;

(29) morpheridine;

(30) noracymethadol;

(31) norlevorphanol;

(32) normethadone;

(33) norpipanone;

(34) phenadoxone;

(35) phenampromide;

(36) phenomorphan;

(37) phenoperidine;

(38) piritramide;

(39) proheptazine;

(40) properidine;

(41) racemoramide; and

(42) trimeperidine.

B. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible

within the specific chemical designation:

(1) acetorphine;

(2) acetyldihydrocodeine;

(3) benzylmorphine;

(4) codeine methylbromide;

(5) codeine-N-oxide;

(6) cyprenorphine;

(7) desomorphine;

(8) dihydromorphine;

(9) etorphine;

(10) heroin;

(11) hydromorphinol;

(12) methyldesorphine;

(13) methyldihydromorphine;

(14) morphine methylbromide;

(15) morphine methylsulfonate;

(16) morphine-N-oxide;

(17) myrophine;

(18) nicocodeine;

(19) nicomorphine;

(20) normorphine;

(21) pholcodine;

(22) thebacon.

C. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances,

their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine;

(2) 5-methoxy-3,4-methylenedioxy amphetamine;

(3) 3,4,5-trimethoxy amphetamine;

(4) bufotenine;

(5) diethyltryptamine;

(6) dimethyltryptamine;

(7) 4-methyl-2,5-dimethoxy amphetamine;

(8) ibogaine;

(9) lysergic acid diethylamide;

(10) marijuana;

(11) mescaline;

(12) peyote, except as otherwise provided in the Controlled Substances Act;

(13) N-ethyl-3-piperidyl benzilate;

(14) N-methyl-3-piperidyl benzilate;

(15) psilocybin;

(16) psilocyn;

(17) tetrahydrocannabinols; and

(18) hashish.

D. The enumeration of peyote as a controlled substance does not apply to the use of peyote in bona fide religious ceremonies by a bona fide religious organization, and members of the organization so

using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the organization or its members shall comply with the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 and all other requirements of law.

Section 7. SCHEDULE II.--The following controlled substances are included in Schedule II:

A. Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) opium and opiate, and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in Paragraph (1), but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw; and

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

B. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence

of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) alphaprodine;

(2) anileridine;

(3) bezitramide;

(4) dihydrocodeine;

(5) diphenoxylate;

(6) fentanyl;

(7) isomethadone;

(8) levomethorphan;

(9) levorphanol;

(10) metazocine;

(11) methadone;

(12) methadone--intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(13) moramide--intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

(14) pethidine;

(15) pethidine--intermediate--A, 4-cyano-1-methyl-4-phenylpiperidine;

(16) pethidine--intermediate--B, ethyl-4-phenylpiperidine-4-carboxylate;

(17) pethidine--intermediate--C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(18) phenazocine;

(19) piminodine;

(20) racemethorphan; and

(21) racemorphan.

C. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) phenmetrazine and its salts;

(3) methamphetamine, its salts, isomers, and salts of isomers; and

(4) methylphenidate.

Section 8. SCHEDULE III.--The following controlled substances are included in Schedule III:

A. Any material, compound, mixture, or preparation containing limited quantities of any substance having a stimulant effect on the central nervous system which is controlled and listed in Schedule II.

B. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of

barbituric acid, except those substances which are specifically listed in other schedules;

(2) chlorhexadol;

(3) glutethimide;

(4) lysergic acid;

(5) lysergic acid amide;

(6) methyprylon;

(7) phencyclidine;

(8) sulfondiethylmethane;

(9) sulfonethylmethane; or

(10) sulfonmethane.

C. Nalorphine.

D. Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) not more than one and eight-tenths grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) not more than one and eight-tenths grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(3) not more than three hundred milligrams of dihydrocodeinone, or any of its salts, per one hundred milliliters or not

more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) not more than three hundred milligrams of dihydrocodeinone, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) not more than one and eight-tenths grams of dihydrocodeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) not more than three hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts;

(7) not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(8) not more than fifty milligrams of morphine, or any of its salts, per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

E. The board may exempt by regulation any compound, mixture or preparation containing any stimulant or depressant substance listed in Subsections A and B from the application of any part of the

Controlled Substances Act if the compound, mixture or preparation contains any active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

Section 9. SCHEDULE IV.--The following controlled substances are included in Schedule IV:

A. Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) barbital;

(2) chloral betaine;

(3) chloral hydrate;

(4) ethchlorvynol;

(5) ethinamate;

(6) methohexital;

(7) meprobamate;

(8) methylphenobarbital;

(9) paraldehyde;

(10) petrichloral; or

(11) phenobarbital.

B. The board may exempt by regulation any compound, mixture or preparation containing any depressant substance listed in Subsection

A from the application of all or any part of the Controlled Substances Act if the compound, mixture or preparation contains any active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

Section 10. SCHEDULE V.--The following controlled substances are included in Schedule V:

A. Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) not more than two hundred milligrams of codeine, or any of its salts, per one hundred milliliters or per one hundred grams;

(2) not more than one hundred milligrams of dihydrocodeine, or any of its salts, per one hundred milliliters or per one hundred grams;

(3) not more than one hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or per one hundred grams;

(4) not more than two and five-tenths milligrams of

diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit; or

(5) not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams.

B. The board may by regulation exempt any compound, mixture or preparation containing any depressant or stimulant substance enumerated in Schedules III, IV or V from the application of the Controlled Substances Act if:

(1) the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system; and

(2) such ingredients are included in such combinations, quantity, proportion or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

Section 11. REGULATIONS.--The board may promulgate regulations and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances.

Section 12. REGISTRATION REQUIREMENTS.--

A. Every person who manufactures, distributes or dispenses any controlled substance or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance must obtain annually a registration issued by the board in accordance with its regulations.

B. Persons registered by the board to manufacture, distrib-

ute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense, prescribe or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of the Controlled Substances Act.

C. The following persons need not register and may lawfully possess controlled substances:

(1) an agent of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his principal's business or employment;

(2) a common or contract carrier or warehouseman, or an employee whose possession of any controlled substance is in the usual course of the common or contract carrier or warehouseman's business; or

(3) an ultimate user.

D. The board may waive by regulation the requirement for registration of certain manufacturers, distributors or dispensers if it is consistent with the public health and safety.

E. The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's regulations.

Section 13. REGISTRATIONS.--

A. The board shall register an applicant to manufacture or distribute controlled substances unless it determines that the issuance of that registration would be inconsistent with the public interest.

In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;

(2) compliance with applicable state and local law;

(3) any convictions of the applicant under any federal or state laws relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under the Controlled Substances Act;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

B. Registration under this section does not entitle a registrant to manufacture and distribute controlled substances in Schedules I or II other than those allowed in the registration.

C. Compliance by manufacturers and distributors with the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 respecting registration, excluding state registration fees entitles them to be registered under the Controlled

Substances Act.

D. Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under Section 39 of the Controlled Substances Act. The board need not require separate registration under this act for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under the Controlled Substances Act in another capacity. Practitioners or scientific investigators registered under the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the board evidence of that federal registration.

Section 14. REVOCATION AND SUSPENSION OF REGISTRATION.--

A. A registration under Section 13 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the board upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed with the board;

(2) has been convicted of a felony under any state or federal law relating to a controlled substance;

(3) has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances; or

(4) has had his practitioner's license suspended or

revoked by his professional licensing board.

B. The board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

C. If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court.

D. Upon a revocation order becoming final, the board may apply to the court for an order to sell all controlled substances under seal. The court shall order the sale of such controlled substances under such terms and conditions that the court deems appropriate.

E. The board shall promptly notify the bureau of all orders suspending or revoking registration and all sales of controlled substances.

Section 15. ORDER TO SHOW CAUSE.--

A. Before denying, suspending or revoking a registration or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked or suspended or why the renewal should not be

refused. The order to show cause shall contain a statement of the basis of the order and shall require the applicant or registrant to appear before the board not less than thirty days after the date of service of the order, but in the case of a denial of renewal of registration the order shall be served not later than thirty days before the expiration of the registration unless the proceedings relate to suspension or revocation of a registration. These proceedings shall be conducted in accordance with the Uniform Licensing Act without regard to any criminal prosecution or other proceeding. Proceedings to suspend or revoke a registration or to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the proceeding.

B. The board may suspend, without an order to show cause, any registrant simultaneously with the institution of proceedings under Section 14 or where renewal of registration is refused if it finds that there is such a substantial and imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

Section 16. RECORDS OF REGISTRANTS.--

A. Every registrant under the Controlled Substances Act manufacturing, distributing or dispensing a controlled substance shall maintain, on a current basis, a complete and accurate record of each substance manufactured, received, sold or delivered by him in accord-

ance with regulations of the board.

Inventories as required in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 shall be deemed compliance with inventory requirements under this section.

B. Records for drugs under Schedules I and II shall be kept separate from other records. Prescriptions for all Schedule I and II drugs and narcotic prescriptions for controlled substances listed in Schedules III, IV and V shall be maintained separately from other prescription drugs in accordance with regulations of the board.

C. Records for nonnarcotic controlled substances under Schedules III, IV and V shall be maintained either separately or in such form that they are readily retrievable and are marked for ready identification in accordance with regulations of the board. Prescriptions for nonnarcotic controlled substances shall be maintained either in a separate prescription file or in such form that they are readily retrievable from other prescription records and are marked for ready identification in accordance with regulations of the board.

D. Records shall be maintained for a period of at least three years from the date of the record and may be inspected as required by authorized agents of the board.

E. A practitioner is not required to keep records of controlled substances listed in Schedules II through V which he prescribes or administers in the lawful course of his professional practice. He shall keep records of controlled substances which he dispenses other than by prescribing or administering.

Section 17. ORDER FORMS.--Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 respecting order forms shall be deemed compliance with this section.

Section 18. PRESCRIPTIONS.--

A. No controlled substance listed in Schedule II which is a prescription drug as determined by the federal food and drug administration, may be dispensed without a written prescription of a practitioner, unless administered directly to an ultimate user. No prescription for a Schedule II substance may be refilled. No person other than a practitioner shall prescribe or write a prescription.

B. Prescriptions for Schedules II through IV shall contain the following information:

(1) the name and address of the patient for whom the drug is prescribed; and

(2) the name, address and registry number of the person prescribing the drug. The name of the pharmacist and the dispensing date of the drug shall be inscribed on the face of the prescription.

C. A controlled substance included in Schedules III or IV, which is a prescription drug as determined under the New Mexico Drug and Cosmetic Act, shall not be dispensed without a written or oral prescription of a practitioner, except when administered directly by a practitioner to an ultimate user. The prescription shall not be

filled or refilled more than six months after the date of issue or be refilled more than five times, unless renewed by the practitioner and a new prescription is placed in the file. Prescriptions shall be retained in conformity with the regulations of the board.

D. The label affixed to the dispensing container of a drug listed in Schedules II, III or IV, when dispensed to or for a patient, shall contain the following information:

(1) date of dispensing and prescription number;

(2) name and address of the pharmacy;

(3) name of the patient;

(4) name of the practitioner; and

(5) directions for use and cautionary statements, if any.

E. The label affixed to the dispensing container of a drug listed in Schedule II, III or IV when dispensed to or for a patient, shall contain a clear concise warning that it is a crime to transfer the drug to any person other than the patient.

F. No controlled substance included in Schedule V, which is a proprietary non-prescription drug, shall be distributed, offered for sale or dispensed other than for a medical purpose and a record of the sale shall be made in accordance with the regulations of the board.

G. In emergency situations, as defined by regulation, Schedule II drugs may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing and filed by the pharmacy in accordance with regulations of the board.

Section 19. DISTRIBUTIONS BY MANUFACTURERS OR DISTRIBUTORS.--A registered manufacturer or distributor may distribute controlled substances to the following:

A. a registered manufacturer, pharmacy or distributor;

B. a registered practitioner;

C. a registered hospital or clinic; and

D. to a person in charge of a registered laboratory, but only for use by that laboratory for scientific and medical purposes.

Section 20. TRAFFICKING CONTROLLED SUBSTANCES--VIOLATION--PENALTIES.--

A. As used in the Controlled Substances Act "traffic" means the:

(1) manufacture of any controlled substance enumerated in Schedules I through V;

(2) distribution, sale, barter or giving away any controlled substance enumerated in Schedules I or II which is a narcotic drug; or

(3) possession with intent to distribute any controlled substance enumerated in Schedules I or II which is a narcotic drug.

B. Except as authorized by the Controlled Substances Act, it is unlawful for any person to intentionally traffic. Any person who violates this subsection is, for the first offense, guilty of a second degree felony and, for the second and subsequent offenses, guilty of a first degree felony.

Section 21. DISTRIBUTION TO A MINOR.--Except as authorized by

the Controlled Substances Act, no person who is eighteen years of age or older shall intentionally distribute a controlled substance to a person under the age of eighteen years. Any person who violates this section with respect to:

A. marijuana is, for the first offense, guilty of a third degree felony and, for the second and subsequent offenses, guilty of a second degree felony; and

B. any other controlled substance enumerated in Schedules I, II, III or IV is, for the first offense, guilty of a second degree felony and, for the second and subsequent offenses, guilty of a first degree felony.

Section 22. CONTROLLED OR COUNTERFEIT SUBSTANCES--DISTRIBUTION PROHIBITED--PENALTIES.--

A. Except as authorized by the Controlled Substances Act, it is unlawful for any person to intentionally distribute or possess with intent to distribute a controlled substance except a substance enumerated in Schedules I or II which is a narcotic drug. Any person who violates this subsection with respect to:

(1) marijuana is, for the first offense, guilty of a fourth degree felony and for the second and subsequent offenses guilty of a third degree felony;

(2) any other controlled substance enumerated in Schedules I, II, III or IV except a substance enumerated in Schedules I or II which is a narcotic drug, is, for the first offense, guilty of a third degree felony and for the second and subsequent offenses,

guilty of a second degree felony; and

(3) a controlled substance enumerated in Schedule V is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment for not less than one hundred eighty days nor more than one year, or both.

B. Except as authorized by the Controlled Substances Act, it is unlawful for any person to intentionally create or deliver, or possess with intent to deliver, a counterfeit substance. Any person who violates this subsection with respect to:

(1) a counterfeit substance enumerated in Schedules I, II, III or IV is guilty of a fourth degree felony; and

(2) a counterfeit substance enumerated in Schedule V is guilty of a petty misdemeanor.

C. Notwithstanding Subsection A of this section, distribution of a small amount of marijuana for no remuneration shall be treated as provided in Section 23 B (3).

Section 23. CONTROLLED SUBSTANCES--POSSESSION PROHIBITED--PENALTIES.--

A. It is unlawful for any person intentionally to possess a controlled substance unless the substance was obtained pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Controlled Substances Act.

B. Any person who violates this section with respect to:

(1) one ounce or less of marijuana is, for the first offense, guilty of a petty misdemeanor and shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) and by imprisonment for not more than fifteen days and, for the second and subsequent offenses, guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or by imprisonment for not more than one year, or both;

(2) more than one ounce and less than eight ounces of marijuana is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars or by imprisonment for not more than one year, or both;

(3) eight ounces or more of marijuana is guilty of a fourth degree felony;

(4) any amount of any other controlled substance enumerated in Schedules I, II, III or IV, except a narcotic drug enumerated in Schedules I or II, is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) or by imprisonment for not less than thirty days nor more than one year, or both; and

(5) a narcotic drug enumerated in Schedules I or II is guilty of a fourth degree felony.

Section 24. CONTROLLED SUBSTANCES--VIOLATIONS OF ADMINISTRATIVE PROVISIONS--PENALTIES.--

A. It is unlawful for any person:

(1) who is subject to Sections 11 through 19 to intentionally distribute or dispense a controlled substance in violation of Section 18;

(2) who is a registrant, to intentionally manufacture a controlled substance not authorized by his registration, or to intentionally distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) to intentionally refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under the Controlled Substances Act; or

(4) to intentionally refuse an entry into any premises for any inspection authorized by the Controlled Substances Act.

B. Any person who violates this section is guilty of a fourth degree felony.

Section 25. CONTROLLED SUBSTANCES--PROHIBITED ACTS--PENALTIES.--

A. It is unlawful for any person:

(1) who is a registrant to distribute a controlled substance classified in Schedules I or II, except pursuant to an order form as required by Section 17 of the Controlled Substances Act;

(2) to intentionally use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person;

(3) to intentionally acquire or obtain possession of a

controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(4) to intentionally furnish false or fraudulent material information in, or omit any material information from, any application, report or other document required to be kept or filed under the Controlled Substances Act, or any record required to be kept by this act; or

(5) to intentionally make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing, upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

B. Any person who violates this section is guilty of a fourth degree felony.

Section 26. PENALTIES UNDER OTHER LAWS.--

A. Any penalty imposed for violation of the Controlled Substances Act is in addition to any civil or administrative penalty or sanction otherwise provided by law.

B. A municipality may, by ordinance, prohibit distribution or possession of a controlled substance enumerated in Schedules I, II, III or IV but penalty provisions shall be the same as those provided for a similar crime in the Controlled Substances Act.

Section 27. BAR TO PROSECUTION.--If a violation of the Controlled Substances Act is a violation of a federal law, the law of another

state or the ordinance of a municipality, a conviction or acquittal under federal law, the law of another state or the ordinance of a municipality for the same act is a bar to prosecution.

Section 28. CONDITIONAL DISCHARGE FOR POSSESSION AS FIRST OFFENSE.--

A. If any person who has not previously been convicted of violating the laws of any state or any laws of the United States relating to narcotic drugs, marijuana, hallucinogenic or depressant or stimulant substances, is found guilty of a violation of Section 23, after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place him on probation upon reasonable conditions and for a period, not to exceed one year, as the court may prescribe.

B. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against the person and discharge him from probation before the expiration of the maximum period prescribed from the person's probation.

C. If during the period of his probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt, but a non-public record shall be retained by the attorney general solely for the purpose of use by the courts in determining whether or not, in subsequent

proceedings, the person qualifies under this section. A discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the penalties prescribed under this section for second or subsequent convictions or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

D. Upon the dismissal of a person and discharge of the proceedings against him under this section, a person, if he was not over eighteen years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, trial, finding or plea of guilty, and dismissal and discharge pursuant to this section except non-public records filed with the attorney general. If the court determines, after hearing, that the person was dismissed and the proceedings against him discharged and that he was not over eighteen years of age at the time of the offense, it shall enter the order. The effect of the order shall be to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person in whose behalf an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

Section 29. POWERS OF ENFORCEMENT PERSONNEL.--Any officer or employee designated by the board may:

A. serve search warrants, arrest warrants and administrative inspection warrants;

B. make arrests without warrant for any offense under the Controlled Substances Act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of the Controlled Substances Act which may constitute a felony; or

C. make seizures of property pursuant to the Controlled Substances Act.

Section 30. ADMINISTRATIVE INSPECTIONS AND WARRANTS.--Issuance and execution of administrative inspection warrants shall be as follows:

A. a magistrate, within his jurisdiction and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections and seizures of property authorized by the Controlled Substances Act. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of the Controlled Substances Act sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

B. a warrant shall issue only upon an affidavit of a designated officer or employee having actual knowledge of the alleged

facts, sworn to before the magistrate and establishing the grounds for issuing the warrant. If the magistrate is satisfied that grounds for the warrant exist, he shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(1) state the grounds for its issuance and the name of each person whose affidavit has been taken in its support;

(2) be directed to a person authorized by Section 29 or a state police officer to serve and carry out the warrant;

(3) command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(4) identify the items or types of property to be seized, if any; and

(5) direct that it be served during normal business hours or other hours designated by the magistrate and designate the magistrate to whom it shall be returned;

C. a warrant issued pursuant to this section must be served and returned within five days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy of the warrant shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the

warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person serving the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person serving the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and the applicant for the warrant; and

D. the magistrate who has issued a warrant shall attach a copy of the return and all papers returnable in connection with it and file them with the clerk of the magistrate court.

Section 31. ADMINISTRATIVE INSPECTIONS.--The board may make administrative inspections of controlled premises in accordance with the following provisions:

A. For purposes of this section, "controlled premises" means:

(1) places where persons registered or exempted from registration requirements under the Controlled Substances Act are required to keep records; and

(2) places, including factories, warehouses, establishments and conveyances in which persons registered or exempted from registration requirements under the Controlled Substances Act are permitted to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any controlled substance.

B. When authorized by an administrative inspection warrant

issued pursuant to Section 30, an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter the controlled premises for the purpose of conducting an administrative inspection.

C. When authorized by an administrative inspection warrant, an officer or employee designated by the board may:

(1) inspect and copy records required by the Controlled Substances Act to be kept;

(2) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in Subsection E, all other things bearing on violations of the Controlled Substances Act, including records, files, papers, processes, controls and facilities; and

(3) inventory any stock of any controlled substance and obtain samples.

D. This section does not prevent entries and administrative inspections, including seizures of property, without a warrant:

(1) if the owner, operator or agent in charge of the controlled premises consents;

(2) in situations presenting substantial imminent danger to health or safety; or

(3) in all other situations in which a warrant is not constitutionally required.

E. An inspection authorized by this section shall not

extend to financial data, sales data other than shipment data or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

Section 32. INJUNCTIONS.--

A. The district courts may exercise jurisdiction to restrain or enjoin violations of the Controlled Substances Act.

B. The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

Section 33. FORFEITURES--PROPERTY SUBJECT.--The following are subject to forfeiture:

A. all controlled substances which have been manufactured, distributed, dispensed or acquired in violation of the Controlled Substances Act;

B. all raw materials, products and equipment of any kind which are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of the Controlled Substances Act;

C. all property which is used, or intended for use, as a container for property described in Subsections A or B;

D. all conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in Subsections A or B;

E. all books, records and research products and materials, including formulas, microfilm, tapes, and data which are used, or

intended for use, in violation of the Controlled Substances Act; and

F. notwithstanding Subsection D:

(1) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of the Controlled Substances Act;

(2) no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner to have been committed or omitted without his knowledge or consent;

(3) a conveyance is not subject to forfeiture for a violation of law the penalty for which is a misdemeanor; and

(4) a forfeiture of a conveyance encumbered by a bona fide security interest shall be subject to the interest of a secured party if the secured party neither had knowledge of nor consented to the act or omission.

Section 34. FORFEITURE--PROCEDURE.--

A. Property subject to forfeiture under the Controlled Substances Act may be seized by any enforcement officer upon an order issued by the district court having jurisdiction.

B. Seizure without such an order may be made if:

(1) the seizure is incident to an arrest or search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the state in an injunction or forfeiture proceeding based upon the Controlled Substances Act;

(3) the enforcement officer has probable cause to believe that the property, which is a controlled substance, is directly or indirectly dangerous to health or safety; or

(4) the enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of the Controlled Substances Act.

C. In the event of seizure pursuant to Subsection A, proceedings under Subsection D shall be instituted promptlv.

D. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the state police subject only to the orders and decrees of the district court. When property is seized under the Controlled Substances Act, the enforcement officer may:

(1) place the property under seal;

(2) remove the property to a place designated by the enforcement officer; or

(3) require the state police to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

E. When property is forfeited under the Controlled Substances Act the state police shall:

(1) sell that which is not required to be destroyed

by law. The proceeds shall revert to the general fund;

(2) take custody of the property for use by law enforcement agencies in the enforcement of the Controlled Substances Act or remove it for disposition in accordance with law; or

(3) forward property the proceeds from the sale of which are not required to revert to the general fund to the bureau for disposition.

Section 35. SUMMARY FORFEITURE.--

A. Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of the Controlled Substances Act are contraband and shall be seized and summarily forfeited to the state.

B. Controlled substances listed in Schedule I which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

C. Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of the Controlled Substances Act, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

Section 36. BURDEN OF PROOF.--It is not necessary for the state to negate any exemption or exception in the Controlled Substances Act in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under the Controlled Sub-

stances Act. The burden of proof of any exemption or exception is upon the person claiming it.

Section 37. COOPERATIVE DUTIES OF BOARD.--

A. The board shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end it may:

(1) arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) cooperate in training programs concerning controlled substances law enforcement at local and state levels; and

(3) cooperate with the bureau by establishing a centralized unit to accept, catalogue, file and collect statistics and make the information available for federal, state and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under Section 39.

B. Results, information, and evidence received from the bureau relating to the regulatory functions of the Controlled Substances Act, including results of inspections conducted by it, may be relied and acted upon by the board in the exercise of its regulatory functions under the Controlled Substances Act.

Section 38. EDUCATION.--The board shall provide for educational programs designed to prevent and deter misuse and abuse of controlled

substances. In connection with these programs it may:

A. promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry;

B. assist the regulated industry in contributing to the reduction of misuse and abuse of controlled substances; and

C. assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

Section 39. RESEARCH--CONFIDENTIALITY.--

A. The board shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of the Controlled Substances Act, it may register public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations or special projects which bear directly on misuse and abuse of controlled substances.

B. The board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

C. The board may authorize the possession and distribution of controlled substances by persons engaged in research. Such

authorization shall contain the conditions and terms of the research to be conducted. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

D. A practitioner engaged in medical practice or research shall not be required to furnish the name or identity of a patient or research subject to the board, nor may he be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

Section 40. SAVINGS CLAUSE.--

A. Prosecution for any violation of law occurring prior to the effective date of the Controlled Substances Act is not affected by the Controlled Substances Act. If the offense being prosecuted is similar to one set out in Sections 20 through 25 of the Controlled Substances Act, then the penalties under Sections 20 through 25 apply if they are less than those under prior law.

B. Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of the Controlled Substances Act are not affected by the Controlled Substances Act.

C. All administrative proceedings pending under prior laws, which are superseded by the Controlled Substances Act, shall be continued and brought to a final determination in accord with the laws and regulations in effect prior to the effective date of the Controlled Substances Act.

D. The board shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution or dispensing of any controlled substance prior to the effective date of the Controlled Substances Act and who are registered or licensed by the state.

E. The Controlled Substances Act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

Section 41. CONTINUATION OF RULES.--Any orders and regulations affected by the Controlled Substances Act in effect on the effective date of the Controlled Substances Act, and not in conflict with it, continue in effect until modified, superseded or repealed.

Section 42. SEVERABILITY.--If any part or application of the Controlled Substances Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 43. Section 54-6-27 NMSA 1953 (being Laws 1967, Chapter 23, Section 2, as amended) is amended to read:

"54-6-27. DEFINITIONS.--As used in the New Mexico Drug and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent or agents;

B. "person" includes individual, partnership, corporation, association, institution or establishment;

C. "controlled substance" means any drug, substance or

immediate precursor enumerated in Schedules I through V of the Controlled Substances Act;

D. "drug" means:

(1) articles recognized in an official compendium;

(2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

(3) articles, other than food, which affect the structure or any function of the body of man or other animals; and

(4) articles intended for use as a component of Paragraphs (1), (2) or (3) but does not include devices or their component parts or accessories;

E. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, which, because of any potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug, and hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the layman can use a drug or device safely and for the purposes for which it is intended. A drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer such drug, if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance, or any chemical derivative of

such substance, which has been found under the federal act and the board of pharmacy to be habit-forming;

(2) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug;

(3) is limited by an approved application by Section 505 of the federal act to the use under the professional supervision of a practitioner licensed by law to administer such drug;

(4) bears the legend: "Caution: federal law prohibits dispensing without prescription"; or

(5) bears the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.";

F. "counterfeit drug" means a drug other than a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint or device, or any likeness, of a drug manufacturer, processor, packer or distributor other than the person or persons who in fact manufactured, processed, packed or distributed such drug and which falsely purports, or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer or distributor;

G. "device", except when used in Subsection O of this section and in Sections 3G, 11A(3) and 11L and Section 24C of the

New Mexico Drug and Cosmetic Act, means instruments, apparatus or contrivances, including their components, parts and accessories, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals, or to affect the structure of any function of the body of man or other animals;

H. "prescription" means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist, or indirectly by means of a written order, signed by the prescriber, and shall bear the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue. No person other than a practitioner shall prescribe or write a prescription;

I. "practitioner" means a physician, dentist, veterinarian or other person licensed to prescribe and administer drugs which are subject to the New Mexico Drug and Cosmetic Act;

J. "cosmetic" means:

(1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and

(2) articles intended for use as a component of any such articles, except that such term shall not include soap;

K. "official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States,

official national formulary or any supplement to any of them;

L. "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under the authority of the New Mexico Drug and Cosmetic Act that any word, statement or other information appearing on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of such article, or is easily legible through the outside container or wrapper;

M. "immediate container" does not include package liners;

N. "labeling" means all labels and other written, printed or graphic matter:

(1) upon any article or any of its containers or wrappers; or

(2) accompanying such article;

O. "misbranded" means a label to an article which is misleading. In determining whether the label is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or in any combination of the foregoing, but also the extent to which the label fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual;

P. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs, devices or cosmetics;

Q. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body;

R. "new drug" means:

(1) any drug, the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) any drug, the composition of which is such that such drug, as a result of investigation to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

S. "contaminated with filth" applies to any drug, device or cosmetic not securely protected from dirt, dust, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or any drug, device or cosmetic found to

contain any dirt, dust, foreign or injurious contamination or infestation;

T. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale, and the sale, and the supplying or applying of any such article in the conduct of any drug or cosmetic establishment;

U. "color additive" means a material which:

(1) is a dye, pigment or other substance made by a process of synthesis or similar artifice, or extracted, isolated or otherwise derived, with or without intermediate or final change of identity from a vegetable, mineral, animal or other source; or

(2) when added or applied to a drug or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with other substances, of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the federal act; and

V. "federal act" means the Federal Food, Drug and Cosmetic Act 21 USC §301, et. seq."

Section 44. Section 54-6-28 NMSA 1953 (being Laws 1967, Chapter 23, Section 3) is amended to read:

"54-6-28. PROHIBITED ACTS.--The following acts are prohibited:

A. the sale of any drug, device or cosmetic that is adulterated, misbranded or a counterfeit drug which is not a controlled substance;

B. the adulteration or misbranding of any drug, device or cosmetic;

C. the receipt or delivery in commerce of any drug, device or cosmetic that is adulterated, misbranded or a counterfeit drug which is not a controlled substance;

D. the dissemination of any false advertisement;

E. the giving of a false guaranty or undertaking, except by a person who relied on a guaranty or undertaking as attested by label or labeling from whom he received in good faith the drug, device or cosmetic, for sale;

F. any act with respect to a drug, device or cosmetic, when such act is done while the drug, device or cosmetic is held for sale and results in the drug, device or cosmetic being misbranded or adulterated;

G. the creation, sale, disposition, possession or concealment of any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint, device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render such drug a counterfeit drug;

H. concealment, disposition or possession with intent to sell or preparation with intent to defraud of a counterfeit drug;

I. in the case of a dangerous drug distributed or offered for sale in this state, the failure of the manufacturer, or repackager to transmit, to any practitioner licensed to administer such drug who

makes a written request for information, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed under other provisions of the New Mexico Drug and Cosmetic Act and the Controlled Substances Act; and

J. dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the person ordering or prescribing."

Section 45. Section 54-6-31 NMSA 1953 (being Laws 1967, Chapter 23, Section 6, as amended) is amended to read:

"54-6-31. DETECTION OF DRUGS, DEVICES OR COSMETIC BELIEVED ADULTERATED, MISBRANDED OR COUNTERFEIT--CONDEMNATION--DESTRUCTION OR CORRECTION OF DEFECT--FORFEITURE AND SALE.--

A. Whenever an authorized agent of the board has probable cause to believe that any drug, device or cosmetic is adulterated, misbranded or counterfeit, he shall affix to such article appropriate marking, giving notice that the article is suspected of being adulterated, misbranded or counterfeit and has been detained or embargoed, and warning all persons not to remove or dispose of such article until permission for removal or disposal is given by the agent or the court. It is unlawful for any person to remove or dispose of such detained or embargoed article without such permission.

B. When an article detained or embargoed has been found by the agent to be adulterated, misbranded or counterfeit he shall petition the judge of the district court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When the agent has found that an article so detained or embargoed is not adulterated, misbranded or counterfeit he shall remove the marking.

C. If the court finds that a detained or embargoed article is adulterated or misbranded or counterfeit, the article shall, after entry of the decree, be destroyed at the expense of the claimant under the supervision of the agent, and all court costs and fees, and storage and other proper expenses shall be taxed against the claimant of the article or his agent. However, when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after costs, fees and expenses have been paid and a sufficient bond has been executed, conditioned that the article shall be so labeled or processed, may by order direct that the article be delivered to the claimant for labeling or processing under the supervision of an agent of the board. The expense of the supervision shall be paid by the claimant. The bond shall be returned to the claimant of the article on representation to the court by the board that the article is no longer in violation of the New Mexico Drug and Cosmetic Act and that the expenses of the supervision have been paid.

D. The following may be seized by a duly authorized law

enforcement official of the state whenever he has reasonable grounds to believe they are:

(1) a drug other than a controlled substance, that is counterfeit;

(2) a container of a counterfeit drug;

(3) any punch, die, plate, stone, labeling, container or other thing used or designed for use in making a counterfeit drug or drugs.

E. When an article, equipment or other thing is seized under Section 6D of the New Mexico Drug and Cosmetic Act, the proceedings shall be brought in the name of the state by the prosecuting attorney of the county in which the article was seized, and the libel shall be verified by a duly authorized agent of the state in a manner required by the law of this state. The libel shall describe the merchandise, state its location, state the name of the person in actual possession, state the name of the owner, if known to the duly authorized agent of the state, allege the essential elements of the violation which is claimed to exist, and shall conclude with a prayer of due process to enforce the forfeiture. Upon the filing of libel the court shall properly cause process to issue to the authorized law enforcement official commanding him to seize the goods described in the libel and to hold the same for further order of the court. The authorized law enforcement official shall at the time of seizure serve a copy of said process upon the owner of said merchandise. Such service may be made personally, by mail or by publication according to the rules governing the

service of civil process in this state. At the expiration of twenty days after such seizure, if no claimant has appeared to defend the libel, the court shall order the authorized law enforcement official to dispose of said merchandise.

F. Any person having an interest in the alleged article, equipment or other thing proceeded against, or any person against whom a civil or criminal liability would exist if said merchandise is in violation of Section 3 of the New Mexico Drug and Cosmetic Act may, within twenty days following the authorized law enforcement official's seizure, appear and file answer or demurrer to the libel. The answer or demurrer shall allege the interest or liability of the party filing it. In all other respects the issue shall be made up as in other civil actions.

G. Any article, equipment or other thing condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds, if sold, less the legal costs and charges, shall be paid to the general fund; but such article, equipment or other thing shall not be sold under such decree contrary to provisions of the New Mexico Drug and Cosmetic Act. Whenever in any proceedings under this section the condemnation of any equipment or other thing, other than a drug, is decreed, the court shall allow the claim of any claimant, to the extent of such claimant's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court that he has not committed or caused to be

committed any prohibited act referred to in this section and has no interest in any drug referred to therein; that he has an interest in such equipment or other thing as owner or lienor or otherwise, acquired by him in good faith; and that he at no time had any knowledge or reason to believe that such equipment or other thing was being or would be used in, or to facilitate, the violation of the laws of this state relating to counterfeit drugs.

H. When a decree of condemnation is entered against the article, equipment or other thing, court costs and fees and storage and other proper expenses may be awarded against the person, if any, intervening as claimant of the article."

Section 46. Section 54-6-36 NMSA 1953 (being Laws 1967, Chapter 23, Section 11) is amended to read:

"54-6-36. DRUG OR DEVICE--MISBRANDING.--

A. A drug or device shall be deemed to be misbranded:

(1) if its labeling is false or misleading in any particular;

(2) if in package form, unless it bears a label containing the name and place of the business of the manufacturer, packer or distributor, and an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided, that reasonable variations shall be permitted, and exemptions as to small packages shall be allowed, in accordance with regulations prescribed by the board or issued under the federal act;

(3) if any word, statement or other information re-

quired by or under authority of the New Mexico Drug and Cosmetic Act to appear on the label or labeling is not prominently placed with such conspicuousness, as compared with other words, statements, designs or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) if it is for use by man and contains any quantity of a narcotic or hypnotic substance, or any chemical derivative of such substance which derivative after investigation has been found to be and designated as habit-forming, by regulations issued pursuant to Section 502(d) or 511 of the federal act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning--May be habit-forming" and meets labeling requirements of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970; or

(5) if it is a drug, unless the label bears, to the exclusion of any other non-proprietary name, except the applicable systematic chemical name or the chemical formula, the established name, as defined in this section, of the drug, if such there be, and in the case it is fabricated from two or more active ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, antipyrine, amidropyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glycosides,

mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided, that the requirements for stating the quantity of the active ingredients, other than the quantity of those specifically named in this section, shall apply only to prescription drugs; provided further, that to the extent that compliance with the requirements of this section is impracticable, exemptions shall be allowed under regulations promulgated by the board, or under the federal act.

B. As used in this section, the term "established name" with respect to a drug or ingredient, means:

(1) the applicable official name designated pursuant to Section 508 of the federal act; or

(2) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title in such compendium or if neither applies, then the common or usual name, if any, of such drug or of such ingredient; provided further, that where an article is recognized in the United States pharmacopoeia and in the homeopathic pharmacopoeia under different official titles, the official title used in the United States pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the homeopathic pharmacopoeia shall apply.

C. Unless its labeling bears adequate directions for use; and such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against

unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users; provided, that where adequate directions for use as applied to any drug or device are not necessary for the protection of the public health, the board shall promulgate regulations exempting such drug or device from such requirements; provided further, that articles exempted under regulations issued under Section 502(f) of the federal act may also be exempt.

D. If it purports to be a drug the name of which is recognized in an official compendium, unless it is packed and labeled as prescribed therein; provided, that the method of packing may be modified with the consent of the board. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not those of the United States pharmacopoeia; provided further that in the event of inconsistency between the requirements of this subsection and those of Subsection A(5) as to the name by which the drug or its ingredients shall be designated, the requirements of Subsection A(5) shall prevail.

E. If it has been found by the board, or under the federal act to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears the statement of such pre-

cautions, as the regulations issued by the board or under the federal act require as necessary for the protection of public health. No regulation shall be established for any drug recognized in an official compendium until the board shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

F. If it is a drug and its container is so made, formed or filled as to be misleading; or if it is an imitation of another drug; or if it is offered for sale under the name of another drug; or if it bears a copy, counterfeit, or colorable imitation of a trademark, label, container or identifying name or design of another drug.

G. If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended or suggested in the labeling.

H. If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless it is from a batch with respect to which a certificate or release has been issued pursuant to Section 506 of the federal act, and such certificate or release is in effect with respect to such drug.

I. If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin or any other antibiotic drug, or any derivative thereof, unless it is from a batch with respect to which a certificate or release has been issued pursuant to Section

507 of the federal act, and such certificate or release is in effect with respect to such drug; provided, that this subsection shall not apply to any drug or class of drugs exempted by regulations promulgated under Section 507(c) or (d) of the federal act. For the purpose of this subsection the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution, including the chemically synthesized equivalent of any such substance.

J. If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of Section 9C of the New Mexico Drug and Cosmetic Act or of the federal act.

K. In the case of any dangerous drug distributed or offered for sale in this state, unless the manufacturer, packer, distributor or retailer thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer or distributor or retailer with respect to that drug a true statement of:

(1) the established name, as defined in Subsection A(5) of this section; and

(2) the formula showing quantitatively each ingredient of such drug to the extent required for labels under Section 502(e)

of the federal act; and

(3) such other information in brief summary relating to side effects and contraindications as shall be required in regulations issued under the federal act.

L. If a trademark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

M. Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally packaged in accordance with requirements of the New Mexico Drug and Cosmetic Act; provided, that such drugs or devices are being delivered, manufactured, processed, labeled, repacked or otherwise held in compliance with regulations issued by the board or under the federal act.

N. A dangerous drug shall be deemed to be misbranded if at any time prior to dispensing, its label fails to bear the statement: "Caution: Federal law prohibits dispensing without prescription."."

Section 47. Section 54-6-38 NMSA 1953 (being Laws 1967, Chapter 23, Section 13) is repealed and a new Section 54-6-38 NMSA 1953 is enacted to read:

"54-6-38. PACKAGING AND LABELING REQUIREMENTS--PROPRIETARY PREPARATIONS.--

A. The principal display panel of an over-the-counter packaged drug or device shall bear as one of its principal features a statement of the identity of the commodity. The statement shall

include the established name of the drug or the common name of the device and an accurate statement of the general pharmacological category of the drug or the principal intended action of the drug or device in terms meaningful to the layman.

B. In the case of an over-the-counter drug that is a mixture with no established name, a conspicuous enumeration of each active ingredient that is a mixture with no established name and a conspicuous enumeration of each active ingredient immediately followed by an accurate statement of the general pharmacological category of the ingredients or of its principal intended action in terms that are meaningful to the layman.

C. This section shall not apply to any drug or class of drugs exempted by regulations promulgated under the federal Fair Packaging and Labeling Act.

D. The label of an over-the-counter packaged drug or device shall bear a declaration of the net quantity of its contents.

E. Dangerous drugs or over-the-counter preparations subject to the federal Poison Prevention Packaging Act of 1970 shall meet the safety closure standards and regulations promulgated pursuant to the federal Poison Prevention Packaging Act of 1970."

Section 48. Section 54-6-40 NMSA 1953 (being Laws 1967, Chapter 23, Section 15) is repealed and a new Section 54-6-40 NMSA 1953 is enacted to read:

"54-6-40. DANGEROUS DRUGS--VETERINARY USE.--

A. A dangerous drug intended for veterinary use which is

not safe for animal use except under the direct supervision of a licensed veterinarian and for which adequate directions for use cannot be prepared, shall bear the legend "CAUTION; federal law restricts this drug to use by or on the order of a licensed veterinarian" and the label shall meet the requirements of the federal act.

B. Dangerous drugs which are exempted by the federal act for veterinary use without a prescription shall be labeled "For Veterinary Use" and the label shall meet the requirements of the federal act."

Section 49. Section 54-6-41 NMSA 1953 (being Laws 1967, Chapter 23, Section 16) is amended to read:

"54-6-41. DANGEROUS DRUGS--CONDITIONS FOR SALE--PRESCRIPTION REFILLING--LIMITATIONS.--

A. It is unlawful for any person to sell, dispose of or possess any "dangerous drugs", unless:

(1) manufacturers or distributors, their agents or employees are licensed by the board to ship dangerous drugs into the state; or

(2) distributors, hospitals, nursing homes, clinics or pharmacies and other authorized retailers of dangerous drugs in this state, are licensed by the board and appropriate records of dangerous drugs receipt and disposition are kept. These records shall be open to inspection by an enforcement officer of this state;

B. Practitioners licensed in this state may dispense or prescribe any dangerous drugs, except that records of controlled

substances shall be kept in accordance with the provisions of the Controlled Substances Act. A record of all such dispensations, except administration to a patient upon whom the practitioner personally attends, shall be kept showing the date when the drug was issued and bearing the name and address of the patient for whom the drug was dispensed, or the owner of the animal for which the drug is dispensed. The record shall be open to inspection by any enforcement officer of this state.

C. Pharmacists are prohibited from selling or disposing of any dangerous drug except on prescription of a practitioner and except as such sale or possession is authorized under Subsection A of this section. It shall be the duty of all pharmacists to keep an accurate record of all disposals, which record shall be open to inspection by an enforcement officer of this state.

D. No enforcement officer having knowledge by virtue of his office of any prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.

E. It is unlawful, except as otherwise authorized under Subsection A of this section or the Controlled Substances Act, and except for the college of pharmacy of the university of New Mexico or a public health laboratory, for any person to possess any dangerous drug unless such substance has been dispensed to him either directly

by a practitioner or on a prescription.

F. Except as provided in this section, it shall be the duty of every licensed physician, dentist, veterinarian or pharmacist, when dispensing any dangerous drugs to mark on the dispensing container, the name of the patient, the date and the name and address of the person dispensing the same, adequate directions for use and the prescription number when applicable.

G. All records required to be kept under the provisions of the New Mexico Drug and Cosmetic Act shall be preserved for a period of three years.

H. No prescription can be lawfully refilled:

(1) if it is marked by the issuing practitioner as not to be refilled;

(2) when the practitioner indicates a specific number of refills or a specific period of time, on the original prescription calling for a dangerous drug, it may be refilled the number of times or for the period of time indicated; provided, the date of refill, the initials of the pharmacist refilling the prescription and the amount of drug dispensed, if it differs from the amount called for on the original prescription, is recorded on the original prescription; provided, a prescription issued for drugs controlled by the Controlled Substances Act shall comply with that act;

(3) when the practitioner does not indicate refill instructions on the original prescription calling for a dangerous drug, unless:

(a) the practitioner is contacted orally, by telephone, telegraph or other means of communication for instruction;

(b) if authorization to refill is given the pharmacist, the following information will be immediately transferred to the original prescription: 1) date; 2) name of person authorizing the refill; 3) pharmacist's initials; 4) amount dispensed if different than the amount indicated on the original prescription;

(4) when the practitioner indicates on the original prescription calling for dangerous drugs that it may be refilled "prn" the pharmacist may refill it, within the limits of the dosage directions for a period of twelve months; provided, the date of refilling and the initials of the pharmacist are recorded on the original prescription. At the expiration of the twelve-month period, the practitioner must be contacted for a new prescription; provided, that this is not to be construed to apply to those drugs regulated by the Controlled Substances Act."

Section 50. Section 54-6-43 NMSA 1953 (being Laws 1967, Chapter 23, Section 18) is repealed and a new Section 54-6-43 NMSA 1953 is enacted to read:

"54-6-43. PROMULGATING REGULATIONS--PROCEDURE.--

A. The board may promulgate regulations for the efficient enforcement of the New Mexico Drug and Cosmetic Act. The board shall conform the regulations promulgated under the New Mexico Drug and Cosmetic Act, insofar as practical with regulations promulgated under the federal act.

B. The board of pharmacy shall by regulation declare a substance a "dangerous drug" when necessary and notification shall be sent to all registered pharmacies in the state within sixty days of the adoption of the regulation.

C. All regulations promulgated by the board shall be in accordance with the Uniform Licensing Act."

Section 51. Section 54-6-47 NMSA 1953 (being Laws 1967, Chapter 23, Section 22) is amended to read:

"54-6-47. UNLAWFUL MEANS OF OBTAINING DANGEROUS DRUGS ENUMERATED.--It shall be unlawful for any person to obtain or attempt to obtain any dangerous drug or to procure or attempt to procure the administration of any dangerous drugs other than a controlled substance:

A. by fraud, deceit, misrepresentation, or subterfuge; or

B. by forgery or alteration of a prescription or of any written order; or

C. by the concealment of a material fact; or

D. by the use of a false name or the giving of a false name or the giving of a false address."

Section 52. Section 54-6-48 NMSA 1953 (being Laws 1967, Chapter 23, Section 23) is amended to read:

"54-6-48. FALSE STATEMENTS--FALSE PRETENSES--FORGERY OF LABELS OR PRESCRIPTIONS PROHIBITED.--It shall be unlawful for any person to:

A. willfully make a false statement in any prescription, order, report, or record required by the New Mexico Drug and Cosmetic

Act;

B. falsely assume the title of or represent himself to be a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other authorized person for the purpose of obtaining any of the dangerous drugs;

C. make or utter any false or forged label to a package containing any of the dangerous drugs; or

D. make or utter any false or forged prescription or false or forged written order for dangerous drugs other than controlled substances."

Section 53. Section 54-6-51 NMSA 1953 (being Laws 1967, Chapter 23, Section 26, as amended) is amended to read:

"54-6-51. PENALTIES.--

A. Any person who knowingly violates any of the provisions of Sections 54-6-28 A, B, C or G NMSA 1953 of the New Mexico Drug and Cosmetic Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year for the first offense and for second and subsequent offenses is guilty of a fourth degree felony.

B. Except as provided for in Subsection A of this section, any person violating any of the provisions of the New Mexico Drug and Cosmetic Act is guilty of a petty misdemeanor for the first offense and for second and subsequent offenses is guilty of a fourth degree felony."

Section 54. Section 54-10-13 NMSA 1953 (being Laws 1971, Chapter 296, Section 1) is amended to read:

"54-10-13. DRUG ABUSE CRIMINAL IMMUNITY--DEFINITIONS--LIMITATIONS.--

A. As used in this section:

(1) "drug abuse treatment" includes confinement and treatment in an institution and supervised aftercare treatment in the community or treatment provided for in a drug abuse rehabilitation program and includes medical, educational, social, psychological and vocational services, corrective and preventive guidance and training and other rehabilitative services designed to protect the public and benefit the person by correcting his antisocial tendencies, ending his physiological or psychological dependence on dangerous drugs and susceptibility to drug addiction;

(2) "controlled substance" means any substance enumerated in Schedules I, II, III or IV of the Controlled Substances Act;

(3) "drug abuse rehabilitation program" means a program of a local government, state agency, private nonprofit entity which is funded in whole or in part by the state, local or federal government, or combinations thereof, which provides drug abuse treatment.

B. No person participating in a drug abuse rehabilitation program shall be compelled to disclose information concerning violations of the laws of this state or of local ordinances pertaining to controlled substances if the information is obtained by the participant at the drug abuse rehabilitation facility.

C. No person employed by or assisting in any manner with

a drug abuse rehabilitation program at a drug rehabilitation facility shall disclose any information concerning violations of the laws of this state or of local ordinances pertaining to controlled substances by a participant in a drug abuse rehabilitation program without the participant's consent if the information is disclosed to him in his capacity as such employee or assistant.

D. No law enforcement officer shall conduct a surveillance on a drug abuse rehabilitation program facility for the purpose of obtaining names and other information concerning a person seeking assistance at the facility."

Section 55. Section 67-9-37 NMSA 1953 (being Laws 1969, Chapter 29, Section 5) is amended to read:

"67-9-37. POWERS AND DUTIES OF BOARD.--The board shall:

A. adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act after hearings open to the public;

B. provide for at least two examinations a year of applicants for registration as a pharmacist;

C. provide for the registration and the annual renewal of certificates of registration for pharmacists;

D. provide for the registration of pharmacist interns, their certification, annual renewal of certification, training, supervision and discipline;

E. provide for the licensing of retail pharmacies, wholesale drug dealers, drug manufacturers, hospital pharmacies and the

drug rooms of hospitals, nursing home drug facilities, industrial and public health clinics and all places where dangerous drugs are dispensed and provide for the inspection of their facilities and activities;

F. enforce the provisions of all laws of the state pertaining to the practice of pharmacy, the manufacture, production, sale or distribution of drugs, cosmetics or poisons and their standards of strength and purity;

G. conduct hearings upon charges relating to the discipline of a registrant or licensee, or the denial, suspension or revocation of a certificate of registration or a license in accordance with the Uniform Licensing Act;

H. provide for the institution of proceedings concerning minor violations of the Pharmacy Act, whenever the board believes that the public interest will be adequately served by a suitable written notice or warning or by a suspension of registration or licensure for a period not to exceed thirty days;

I. cause the prosecution of any person violating the Pharmacy Act, the New Mexico Drug and Cosmetic Act and the Controlled Substances Act;

J. keep a record of all proceedings of the board;

K. make an annual report to the governor;

L. appoint and employ, in the board's discretion, a qualified person who is not a member of the board to serve as executive officer to the board, and define his duties and responsibilities,

except that the power to grant, deny, revoke or suspend any license or registration authorized by the Pharmacy Act shall not be delegated by the board;

M. appoint and employ inspectors necessary to enforce the provisions of all acts under the administration of the board, which inspectors shall be pharmacists and have all the powers and duties of peace officers; and

N. provide for qualified employees necessary to carry out the provisions of the Pharmacy Act."

Section 56. Section 67-9-39 NMSA 1953 (being Laws 1969, Chapter 29, Section 7) is amended to read:

"67-9-39. DRUG RECORDS TO BE KEPT.--Records shall be kept by all hospitals, institutions or clinics of all dangerous drugs, their receipt, withdrawal from stock and use or other disposal. The records shall be open to inspection by the board or its agents and both the pharmacist in charge and the hospital, institution or clinic shall be responsible for the maintenance of the records in proper form."

Section 57. Section 67-9-51 NMSA 1953 (being Laws 1969, Chapter 29, Section 19) is amended to read:

"67-9-51. DISCIPLINARY PROCEEDINGS--UNIFORM LICENSING ACT.--

A. In accordance with the Uniform Licensing Act, the board may deny, withhold, suspend or revoke any certificate of registration held or applied for under the Pharmacy Act upon grounds that the licensee or applicant:

(1) is guilty of gross immorality, dishonorable or

unprofessional conduct as defined by regulation of the board;

(2) is convicted of a violation of any federal law relating to controlled substances, any federal food and drug law or any federal law requiring the maintenance of drug records;

(3) is guilty of a violation of the Controlled Substances Act, the Pharmacy Act or the New Mexico Drug and Cosmetic Act;

(4) is addicted to the use of dangerous drugs or narcotic drugs of any kind;

(5) is habitually intemperate;

(6) is guilty of knowingly or fraudulently adulterating or misbranding or causing to be adulterated or misbranded any drugs;

(7) is guilty of procuring or attempting to procure registration as a pharmacist or pharmacist intern or licensure for a pharmacy or pharmaceutical business in this state for himself or another by knowingly making or causing to be made false representations to the board;

(8) is unfit or unable to practice pharmacy by reason of a physical or mental disease or disability as determined by the board and based on competent medical authority, during the period of such disability; or

(9) fails to maintain any drug records required by any federal law resulting in the condemnation of any drugs in his possession or control.

B. Disciplinary proceedings may be instituted by any person, shall be by sworn complaint and shall conform with the provisions

of the Uniform Licensing Act. Any party to the hearing may obtain a copy of the hearing record upon payment of costs for such copy.

C. The board may modify any prior order of revocation, suspension or refusal to issue a license or certificate of registration of a pharmacist or a pharmacy intern but only upon a finding by the board that there no longer exist any grounds for disciplinary action, provided that any cessation of the practice of pharmacy for twelve months or more shall require the pharmacist to undergo additional education, internship or examination as the board shall determine necessary.

D. Nothing in the Pharmacy Act shall be construed as requiring the board to report, for the institution of proceedings, minor violations of the Pharmacy Act, whenever the board believes that the public interest will be adequately served by a suitable written notice or warning or by a suspension of a certificate of registration, license or permit for a period not to exceed thirty days, after an informal hearing."

Section 58. Section 67-9-54 NMSA 1953 (being Laws 1969, Chapter 29, Section 22) is amended to read:

"67-9-54. CONSTRUCTION OF LAWS RELATING TO DRUGS.--

A. The Pharmacy Act does not amend or repeal any of the laws which govern the manufacture, sale or distribution of controlled substances.

B. The Pharmacy Act does not prevent or apply to the sale or use of economic poisons as defined under the New Mexico Economic

Poisons Act of 1951.

C. The Pharmacy Act does not amend or repeal the New Mexico Drug and Cosmetic Act."

Section 59. Section 67-9-55 NMSA 1953 (being Laws 1969, Chapter 29, Section 23) is amended to read:

"67-9-55. VIOLATIONS--PENALTIES.--It is a petty misdemeanor for any person to:

A. practice or attempt to practice pharmacy without a certificate of registration and a current license from the board;

B. use the title of a registered pharmacist, unless he is licensed as such under the Pharmacy Act;

C. procure or attempt to procure registration as a pharmacist or to procure a license for a pharmacy for himself or another by making or causing to be made false representations to the board;

D. allow any other person in his employ or under his supervision to compound or dispense prescriptions or sell or compound poisons unless he is a pharmacist or registered as a pharmacist intern in accordance with the Pharmacy Act, or exempted under the provisions of the act;

E. own, operate or maintain a pharmacy, hospital pharmacy, clinic, custodial care facility or drug distribution business unless licensed to do so under the Pharmacy Act."

Section 60. REPEAL.--Sections 54-5-1 through 54-5-11 and 54-5-16, 54-6-27.1, 54-7-1 through 54-7-22, 54-7-25, 54-7-26 through 54-7-50 and 54-9-1 through 54-9-4 (being Laws 1921, Chapter 168,

Sections 1 and 2, Laws 1909, Chapter 142, Sections 2, 6, 7, 8, 5, 3, 4, 9 and 10, Laws 1929, Chapter 91, Section 1, Laws 1969, Chapter 236, Section 4, Laws 1935, Chapter 145, Sections 1 through 14, Laws 1971, Chapter 245, Section 7, Laws 1957, Chapter 160, Section 1, Laws 1966, Chapter 41, Sections 1 and 2, Laws 1935, Chapter 145, Sections 15 through 20, Laws 1969, Chapter 120, Section 1, Laws 1971, Chapter 241, Section 2, Laws 1965, Chapter 239, Sections 4 through 14, Laws 1935, Chapter 145, Sections 27 through 47 and 49, Laws 1959, Chapter 107, Section 1 and Laws 1971, Chapter 245, Sections 9 through 12, as amended) are repealed.

Section 61. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.