CHAPTER 878*

AN ACT to amend the public health law and the penal law, in relation to controlled substances and dangerous drugs, and repealing articles thirty-three, thirty-three-A and thirty-three-B of the public health law, and section 220.00 of the penal law, in relation thereto

Became a law June 8, 1972, with the approval of the Governor. Passed by a majority vote, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Articles thirty-three, thirty-three-A and thirty-three-B of the public health law are hereby repealed.

§ 2. The public health law is hereby amended by inserting therein a new article, to be article thirty-three, to read as follows:

ARTICLE 33

CONTROLLED SUBSTANCES

TITLE I

GENERAL PROVISIONS

TITLE II

MANUFACTURE AND DISTRIBUTION OF CONTROLLED SUBSTANCES

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* NOTE.—Articles thirty-three, thirty-three-A and thirty-three-B of the public health law, proposed to be repealed by this act, regulate the manufacture, sale, use and possession of narcotics, depressant and stimulant drugs, hypodermic instruments and glue. These matters are more comprehensively covered by new article thirty-three, added by this act.

Section 220.00 of the penal law, dealing with definitions of terms relating to dangerous drug offenses and proposed to be repealed by this act, would be replaced by a new section 220.00 in conformity with the proposed new article thirty-three of the public health law, as added by this act.

TITLE III

RESEARCH, INSTRUCTIONAL ACTIVITIES, AND CHEMICAL ANALYSIS RELATING TO CONTROLLED SUBSTANCES

TITLE IV

DISPENSING TO ULTIMATE USERS

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

TITLE V

DISPENSING TO ADDICTS AND HABITUAL USERS

TITLE VI

RECORDS AND REPORTS

TITLE VII

OFFENSES, VIOLATIONS AND ENFORCEMENT

ARTICLE 33

CONTROLLED SUBSTANCES

TITLE I

GENERAL PROVISIONS

§ 3300. Short title. This article shall be known as the New York State Controlled Substances Act.

§ 3301. Applicability of this article to actions and matters occurring or arising before and after the effective date. Unless otherwise expressly provided, or unless the context otherwise requires:

(a) the provisions of this article shall govern and control the possession, manufacture, dispensing, administering, and distribution of controlled substances with respect to any matter, act or omission, arising or occurring on or after the effective date hereof;

(b) the provisions of this article do not apply to or govern any matter, act, or omission arising or occurring prior to the effective date hereof. Such matters, acts, or omissions must be governed and construed according to provisions of law existing at the time such matter, act or omission arose or occurred in the same manner as if this article had not been enacted.

§ 3302. Definitions of terms of general use in this article. Except where different meanings are expressly specified in subsequent provisions of this article, the following terms have the following meanings:

1. "Addict" means a person who habitually uses a narcotic drug and who by reason of such use is dependent thereon.

2. "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject.

3. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. No person may be authorized to so act if under title VIII of the education law such person would not be permitted to engage in such conduct. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

4. "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency.

5. "Concentrated Cannabis" means

(a) the separated resin, whether crude or purified, obtained from a plant of the genus Cannabis; or

(b) a material, preparation, mixture, compound or other substance which contains more than two and one-half percent by weight of delta-9 tetrahydrocannabinol, or its isomer, delta-8 diben-

zopyran numbering system, or delta-1 tetrahydrocannabinol or its isomer, delta 1 (6) monoterpene numbering system.

6. "Controlled substance" means a substance or substances listed in section thirty-three hundred six of this chapter.

7. "Commissioner" means commissioner of health of the state of New York.

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

9. "Department" means the department of health of the state of New York.

10. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by lawful means and includes the packaging, labeling, or compounding necessary to prepare the substance for such delivery.

11. "Institutional dispenser" means a hospital, veterinary hospital, clinic, dispensary, maternity home, nursing home, mental hospital or similar facility approved and certified by the department as authorized to obtain controlled substances by distribution and to dispense and administer such substances pursuant to the order of a practitioner.

12. "Distribute" means to deliver a controlled substance other than by administering or dispensing.

13. "Distributor" means a person who distributes a controlled substance.

14. "Diversion" means manufacture, possession, delivery or use of a controlled substance by a person or in a manner not specifically authorized by law.

15. "Drug" means

(a) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; and

(c) substances (other than food) intended to affect the structure or a function of the body of man or animal. It does not include devices or their components, parts, or accessories.

16. "Federal controlled substances act" means the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91-513, and any act or acts amendatory or supplemental thereto or regulations promulgated thereunder.

17. "Habitual user" means any person who is, or by reason of repeated use of any controlled substance is in danger of becoming, dependent upon such substance.

18. "License" means a written authorization issued by the department or the New York state department of education per-

mitting persons to engage in a specified activity with respect to controlled substances.

19. "Manufacture" means the production, preparation, propagation, compounding, cultivation, conversion or processing of a controlled substance, either directly or indirectly or 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, compounding, packaging or labeling of a controlled substance:

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

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

(c) by a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.

20. "Marihuana" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, 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 (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

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

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

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

(c) opium poppy and poppy straw.

22. "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. It does not include, unless specifically designated as controlled under section 3306 of this article, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

* So in original. [Word misspelled.]

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

23. "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

24. "Person" means individual, institution, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

25. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

26. "Pharmacy" means any place registered as such by the New York state board of pharmacy and registered with the Bureau pursuant to the federal controlled substances act.

27. "Pharmacist" means any person licensed by the state department of education to practice pharmacy.

28. "Practitioner" means:

A physician, dentist, podiatrist, veterinarian, scientific investigator, or other person, licensed, or otherwise permitted to dispense, administer or conduct research with respect to a controlled substance in the course of a licensed professional practice or research licensed pursuant to this article. Such person shall be deemed a "practitioner" only as to such substances, or conduct relating to such substances, as is permitted by his license, permit or otherwise permitted by law.

29. "Prescribe" means a direction or authorization, by prescription, permitting an ultimate user lawfully to obtain controlled substances from any person authorized by law to dispense such substances.

30. "Prescription" shall mean an official New York state prescription, a written prescription, an oral prescription, or any one.

31. "Registration number" means such number assigned by the Bureau to any person authorized to manufacture, distribute, sell, dispense or administer controlled substances.

32. "Sell" means to sell, exchange, give or dispose of to another, or offer or agree to do the same.

33. "Ultimate user" means a person who lawfully obtains and possesses a controlled substance for his own use or the use by a member of his household or for an animal owned by him or in his custody. It shall also mean and include a person designated, by a practitioner on a prescription, to obtain such substance on behalf of the patient for whom such substance is intended.

§ 3304. Prohibited acts. It shall be unlawful for any person to manufacture, sell, prescribe, distribute, dispense, administer, possess, have under his control, abandon, or transport a controlled substance except as expressly allowed by this article.

§ 3305. Exemptions. 1. The provisions of this article restricting the possession and control of controlled substances shall not apply:

(a) to common carriers or to warehousemen, while engaged in lawfully transporting or storing such substances, or to any employee of the same acting within the scope of his employment; or

(b) to public officers or their employees in the lawful performance of their official duties requiring possession or control of controlled substances; or

(c) to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession if for the purpose of aiding public officers in performing their official duties.

2. The commissioner may, by regulation, provide for the exemption from all or part of the requirements of this article the possession of substances in schedule III or IV and use thereof as part of an industrial process or manufacture of substances other than drugs. The commissioner may impose such conditions upon the granting of such exemption as may be necessary to protect against diversion or misuse of the controlled substance.

3. The commissioner is hereby authorized and empowered to make any rules, regulations and determinations permitting the following categories of persons to obtain, dispense and administer controlled substances under such conditions and in such manner as he shall prescribe:

(a) a person in the employ of the United States government or of any state, territory, district, county, municipal, or insular government, obtaining, possessing, dispensing and administering controlled substances by reason of his official duties;

(b) a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or to a physician or surgeon duly licensed in any state, territory, or the District of Columbia to practice his profession, or to a retired commissioned medical officer of the United States army, navy, or public health service, employed upon such ship or aircraft, for the actual medical needs of persons on board such ship or aircraft when not in port.

(c) a person in a foreign country in compliance with the provisions of this article.

4. The provisions of this article with respect to the payment of fees and costs shall not apply to the state of New York or any political subdivision thereof or any agency or instrumentality of either.

§ 3306. Schedules of controlled substances. There are hereby established five schedules of controlled substances, to be known as schedule I, II, III, IV and V respectively. Such schedules shall consist of the following substances by whatever name or chemical designation known:

SCHEDULE I

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol.

(2) Allylprodine.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

*(3) Alphacetylmathadol.**
(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.
(42) Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and

* So in original.

salts of isomers whenever the existence of such 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) Methylhydromorphine.
(14) Morphine methylbromide.
(15) Morphine methylsulfonate.
(16) Morphine-N-Oxide.
(17) Myrophine.
(18) Nicocodeine.
(19) Nicomorphine.
(20) Normorphine.
(21) Pholcodine.
(22) Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such 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-dimethoxyamphetamine.
(8) Ibogaine.
(9) Lysergic acid diethylamide.
(10) Concentrated Cannabis.
(11) Mescaline.
(12) Peyote.
(13) N-ethyl-3-piperidyl benzilate.

* So in original.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

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

(15) Psilocybin.

(16) Psilocyn.

(17) Tetrahydrocannabinols, other than marihuana.

(d) Marihuana.

SCHEDULE II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances 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, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(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, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such 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-diphenylpropane-carboxylic acid.

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* So in original.

(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.

(21) Racemorphan.

(c) Unless specifically excepted or 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) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(4) Methylphenidate.

SCHEDULE III

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having 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.

(2) Methyprylon.

(3) Glutethimide.

(4) Lysergic acid.

(5) Lysergic acid amide.

(6) Chlorhexadol.

(7) Phencyclidine.

(8) Sulfondiethylmethane.

(9) Sulfonethylmethane.

(10) Sulfonmethane.

(b) Nalorphine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

SCHEDULE IV

(a) Any material, compound, mixture or preparation which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Barbital.

(2) Methohexital.

(3) Methylphenobarbital.

(4) Phenobarbital.

(b) 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) Chloral betaine.

(2) Chloral hydrate.

(3) Ethchlorvynol.

(4) Ethinamate.
(5) Meprobamate.
(6) Paraldehyde.
(7) Petrichloral.

SCHEDULE V

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more non-narcotic 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 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

§ 3307. Exception from schedules. 1. The commissioner may, by regulation, except any compound, mixture, or preparation containing any depressant substance in paragraph (a) of schedule III or in schedule IV from the application of all or any part of this article if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not haveing a depressant effect on the central nervous system, and (2) such ingredients are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a depressant effect on the central nervous system.*

2. The commissioner may, by regulation, reclassify as a schedule III substance, any compound, mixture or preparation containing any stimulant substance listed in paragraph (c) of schedule II, if

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

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

§ 3308. Powers and duties of the commissioner. 1. The commissioner, and any representative authorized by him, shall have the power to administer oaths, compel the attendance of witnesses and the production of books, papers and records, and to take proof and

*So in original. [Word misspelled.]

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

testimony concerning all matters within the jurisdiction of the department.

2. The commissioner is hereby authorized and empowered to make any rules, regulations and determinations which in his judgment may be necessary or proper to supplement the provisions of this article to effectuate the purposes and intent thereof or to clarify its provisions so as to provide the procedure or details to secure effective and proper enforcement of its provisions.

3. No rule or regulation hereunder shall become effective unless, at least twenty-one days prior to the proposed effective date, persons who have conveyed to the department in writing a request to be notified of proposed changes and additions to the department's rules and regulations under this article have been provided with the text of such proposed rules and regulations and have been given an opportunity to comment in writing thereon.

4. The rules, regulations and determinations, when made and promulgated by the commissioner, shall be the rules, regulations and determinations of the department and, until modified or rescinded, shall have the force and effect of law. It shall be the duty of the department, to enforce all of the provisions of this article and all of the rules, regulations and determinations made thereunder.

TITLE II

MANUFACTURE AND DISTRIBUTION OF CONTROLLED SUBSTANCES

§ 3310. Licenses for manufacture or distribution of controlled substances. 1. No person shall manufacture or distribute a controlled substance in this state without first having obtained a license to do so from the department.

2. A license issued under this section shall be valid for two years from the date of issue, except that in order to facilitate the renewals of such licenses, the commissioner may upon the initial application for a license, issue some licenses which may remain valid for a period of time greater than two years but not exceeding an additional eleven months.

3. The fee for a license under this section shall be five hundred dollars; provided however, if the license is issued for a period greater than two years the fee shall be increased, pro rata, for each additional month of validity.

4. Licenses issued under this section shall be effective only for and shall specify:

(a) the name and address of the licensee;

(b) the nature of the controlled substances, either by name or schedule, or both, which may be manufactured or distributed;

(c) whether manufacture or distribution or both such activities are permitted by the license.

5. Upon application of a licensee, a license may be amended to allow the licensee to add a manufacturing or distributing activity

or to add further substances or schedules to the manufacturing or distribution activity permitted thereunder. The fee for such amendment shall be one hundred dollars.

§ 3311. Authority to issue initial licenses, amended licenses, and to renew licenses. 1. Subject to the provisions of this article the commissioner is authorized to issue licenses authorizing the manufacture or distribution of controlled substances.

2. An application for a license, amendment of a license, or renewal of a license which, if granted, would authorize the manufacture or distribution of a controlled substance which the applicant is not then authorized to manufacture or distribute shall, with respect to any such additional authoriazion, be treated as an application for an initial license.*

3. An application for a license which, if granted, would authorize a licensee to continue to manufacture or distribute a controlled substance shall, with respect to such continued manufacture or distribution only, be treated as an application for renewal of a license.

4. A late-filed application for the renewal of a license may, in the discretion of the commissioner, be treated as an application for an initial license.

§ 3312. Application for initial license. 1. An applicant for an initial license to manufacture or distribute controlled substances shall furnish to the department such information as it shall require and evidence that the applicant:

(a) and its managing officers are of good moral character;

(b) possesses sufficient land, buildings and equipment to properly carry on the activity described in the application;

(c) is able to maintain effective control against diversion of the controlled substances for which the license is sought;

(d) is able to comply with all applicable state and federal laws and regulations relating to the manufacture or distribution of the controlled substances for which the license is sought.

2. The application shall include the name, residence address and title of each of the officers and directors and the name and residence address of any person having a ten percentum or greater proprietary, beneficial, equitable or credit interest in the applicant. Each such person, if an individual, or lawful representative if a legal entity, shall submit an affidavit with the application setting forth:

(a) any position of management or ownership during the preceding ten years of a ten percentum or greater interest in any other business, located in or outside this state, manufacturing or distributing drugs; and

(b) whether such person or any such business has been convicted, fined, censured or had a license suspended or revoked in any administrative or judicial proceeding relating to or arising out of the manufacture or distribution of drugs. .

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* So in original. [Word misspelled.]

EXPLANATION -- Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

(c) such other information as the commisisoner may require.*

3. The applicant shall be under a continuing duty to report to the department any change in facts or circumstances reflected in the application on any newly discovered or occurring fact or circumstance which is required to be included in the application.

§ 3313. Granting of initial license. 1. The commisisoner shall grant an initial license or amendment to a license as to one or more of the substances or activities enumerated in the application if he is satisfied that:*

(a) the applicant will be able to maintain effective control against diversion of controlled substances;

(b) the applicant will be able to comply with all applicable state and federal laws;

(c) the applicant and its officers are ready, willing and able to properly carry on the manufacturing or distributing activity for which a license is sought;

(d) the applicant possesses sufficient land, buildings and equipment to properly carry on the activity described in the application;

(e) it is in the public interest that such license be granted; and

(f) the applicant and its managing officers are of good moral character.

2. If the commissioner is not satisfied that the applicant should be issued an initial license, he shall notify the applicant in writing of those factors upon which further evidence is required. Within thirty days of the receipt of such notification, the applicant may submit additional material to the commissioner or demand a hearing or both.

§ 3315. Applications for renewal of licenses to manufacture or distribute controlled substances. 1. An application for the renewal of any license issued pursuant to this title shall be filed with the department not more than six months nor less than four months prior to the expiration thereof.

2. The application for renewal shall include such information prepared in such manner and detail as the commissioner may require, including but not limited to:

(a) any material change in the circumstances or factors listed in section thirty-three hundred twelve of this article;

(b) every known charge or investigation, pending or concluded during the period of the license, by any governmental agency with respect to:

(i) each incident or alleged incident involving the theft, loss, or possible diversion of controlled substances manufactured or distributed by the applicant; and

(ii) compliance by the applicant with the requirements of the federal controlled substances act, or the laws of any state with respect to any substance listed in section thirty-three hundred and six of this article.

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* So in original. [Word misspelled.]

3. An applicant for renewal shall be under a continuing duty to report to the department any change in facts or circumstances reflected in the application or any newly discovered or occurring fact or circumstance which is required to be included in the application.

4. If the commissioner is not satisfied that the applicant is entitled to a renewal of such license, he shall within forty-five days after the filing of the application serve upon the applicant or his attorney of record in person or by registered or certified mail an order directing the applicant to show cause why his application for renewal should not be denied. Such order shall specify in detail the respects in which the applicant has not satisfied the commissioner that the license should be renewed.

5. Within thirty days of service of such order, the applicant may either submit additional material to the commissioner or demand a hearing or both. If a hearing is demanded the commissioner shall fix a date for hearing not sooner than fifteen days nor later than thirty days after receipt of the demand, unless such time limitation is waived by the applicant.

§ 3316. Granting of renewal of licenses. 1. The commissioner shall renew a license unless he determines and finds that the applicant:

(a) is unlikely to maintain or be able to maintain effective control against diversion; or

(b) is unlikely to comply with all federal and state laws applicable to the manufacture or distribution of the controlled substance or substances for which the license is sought.

2. For purposes of this section, proof that a licensee, during the period of his license, has failed to maintain effective control against diversion or has knowingly or negligently failed to comply with applicable federal or state laws relating to the manufacture or distribution of controlled substances, shall constitute substantial evidence that the applicant will be unlikely to maintain effective control against diversion or be unlikely to comply with the applicable federal or state statutes during the period of proposed renewal.

§ 3318. Identification of controlled substances. 1. No controlled substance may be manufactured or delivered within this state in solid or capsule form unless it has clearly marked or imprinted upon each such capsule or solid:

(a) an individual symbol or number assigned to the person who manufactured the controlled substance in such form, and

(b) a code number or symbol assigned by the commissioner identifying such substance or combination of substances.

2. No controlled substance contained within a bottle, vial, carton or other container, or in any way affixed or appended to or enclosed within a package of any kind, and designed or intended for delivery in such container or package to an ultimate consumer, shall be manufactured or distributed within this state unless such container

or package has clearly and permanently marked or imprinted upon it:

(a) an individual symbol or number assigned to the person who packaged the controlled substance in such form; and

(b) a code number or symbol assigned by the commissioner identifying such substance or combination of substances.

3. The commissioner shall assign a code number or symbol to each controlled substance, and in his discretion for combinations of substances, so as to provide ready identification of such substance. Upon application by a manufacturer or controlled substances, the commissioner shall assign to such manufacturer an identifying number or symbol. Wherever possible and practical, the commissioner shall assign code numbers which conform to the national drug code system.*

§ 3319. Distribution of free samples. It shall be unlawful to distribute free samples of controlled substances, except to persons licensed pursuant to title III of this article.

§ 3320. Authorized distribution. 1. Controlled substances may be lawfully distributed within this state only to licensed distributors or manufacturers, practitioners, pharmacists, pharmacies, institutional dispensers, and laboratory, research or instructional facilities authorized by law to possess the particular substance distributed.

2. A person authorized to obtain a controlled substance by distribution may lawfully receive such substance only from a distributor licensed pursuant to this article.

§ 3321. Exempt distribution. 1. The commissioner by regulation or ruling may exempt from the licensing requirements of this title:

(a) the return of controlled substances to a manufacturer or distributor by a practitioner or pharmacy;

(b) the sale of controlled substances by a pharmacy or practitioner to a pharmacy or practitioner for the immediate needs of the pharmacy or practitioner receiving such substances.

(c) the disposition of controlled substances by a person in lawful possession thereof who, not in the ordinary course of business, wishes to discontinue such possession.

2. Records of such transactions shall be prepared and maintained and reports filed in such manner as the commissioner shall require.

§ 3322. Reports and records. 1. Persons licensed under this title shall maintain records of all controlled substances manufactured, received, disposed of or distributed by them. The record shall show the date of receipt or delivery, the name and address, and registration number of the person from whom received or to whom distributed, the kind and quantity of substance received and distributed, the kind and quantity of substance produced or removed from the process of manufacture and the date thereof.

* So in original.

3. Any person licensed under this title shall file with the department a biennial report setting forth the current inventory of controlled substances, the quantities of controlled substances manufactured or distributed within the state during the period covered by the report and such other information as the commissioner shall by regulation prescribe.

3. Any person licensed under this title shall forthwith notify the department of any incident involving the theft, loss or possible diversion of controlled substances manufactured or distributed by the licensee.

4. The records and reports required by this section shall be prepared, preserved, or filed in such manner and detail as the commissioner shall by regulation prescribe.

TITLE III

RESEARCH, INSTRUCTIONAL ACTIVITIES, AND CHEMICAL ANALYSIS RELATING TO CONTROLLED SUBSTANCES

§ 3324. Licenses to engage in research, instructional activities, and chemical analysis relating to controlled substances. 1. No person shall manufacture, obtain, possess, administer or dispense a controlled substance for purposes of scientific research, instruction or chemical analysis without having first obtained a license to do so from the department.

2. A license issued under this title shall be valid for two years from the date of issue.

3. The fee for a license under this title shall be ten dollars.

4. Licenses issued under this title shall be effective only for and shall specify:

(a) the name and address of the licensee;

(b) the nature of the project or projects permitted by the license;

(c) the nature of the controlled substance or substances to be used in the project, by name if in schedule I, and by name or schedule or both if in any other schedule;

(d) whether dispensing to human subjects is permitted by the license.

5. Upon application of a person licensed pursuant to this title, a license may be amended to add a further activity or to add further substances or schedules to the project permitted thereunder. The fee for such amendment shall be five dollars.

§ 3325. Authority to issue licenses; applications. 1. Subject to the provisions of this title, the commissioner is authorized to license a person to manufacture, obtain and possess, dispense, and administer controlled substances for purposes of scientific research, chemical analysis or instruction.

2. A license or amendment of a license shall be issued by the department unless the applicant therefor has failed to furnish a

satisfactory protocol pursuant to subdivision three of this section, or a satisfactory statement pursuant to section 3326, and proof that the applicant:

(a) and its managing officers are of good moral character;

(b) possesses or is capable of acquiring facilities, staff and equipment sufficient to carry on properly the proposed project detailed in the protocol or statement accompanying the application;

(c) is able to maintain effective control against diversion of the controlled substances for which the license is sought;

(d) is able to comply with all applicable state and federal laws and regulations relating to the controlled substances for which the license is sought.

3. An application for a license or for an amendment to a license shall be accompanied by a detailed protocol setting forth:

(a) the nature of the proposed project;

(b) the proposed quantity or quantities of each controlled substance involved;

(c) the qualifications and competence of the applicant to engage in such project;

(d) specific provisions for the safe administration or dispensing of controlled substances to humans, if such is contemplated, and the proposed method of selecting humans;

(e) such other additional information as the commissioner may require.

4. The application for a license pursuant to this title shall include copies of all papers filed with the Bureau, the Federal Food and Drug Administration and any other governmental agency, whether state or federal, in connection with the applicant's proposed project.

§ 3326. Institutional research licenses. 1. Subject to the provisions of this title, the commissioner is authorized to license an institution, which regularly engages in research, to approve specific projects conducted under its immediate auspices.

2. An institution seeking a license pursuant to this section shall make application in the same manner as an applicant for a license pursuant to section 3325. However, such institution shall submit, in lieu of a detailed protocol of a specific project, a statement including:

(a) the qualifications and such other data as the commissioner may require regarding each member of the committee within the institution which will approve specific projects;

(b) a description of the system within the institution for approving, supervising and evaluating such projects.

3. Upon approval of each specific project, such institution shall forward to the commissioner a description of the project, the names and qualifications of the individuals working thereon and of those individuals designated to supervise the project. If administration or dispensing to human subjects is contemplated, there shall also

be included a description of the provisions for safe administration or dispensing.

4. Such institution shall forward to the commissioner periodic progress reports and evaluations of, as well as amendments to each project, in such manner and in such detail as the commissioner may prescribe

§ 3327. Procedure. 1. A license or amendment to a license shall be issued or refused by the department within ninety days from the date of filing of a completed application.

2. Within thirty days of notification of such refusal, the applicant may either submit additional material to the commissioner or demand a hearing or both. If a hearing is demanded the commissioner shall fix a date for hearing not sooner than fifteen days nor later than thirty days after receipt of the demand, unless such time limitation is waived by the applicant.

§ 3328. Exemptions from title. The following persons engaging in the following activities shall be exempt from the provisions of this title:

1. A practitioner lawfully administering, dispensing, or prescribing a controlled substance in the course of his professional practice to an ultimate user for a recognized medical purpose;

2. A licensed manufacturer engaged in research upon non-human subjects or chemical analysis conducted on the premises specified in the manufacturer's license;

3. A licensed distributor engaged in quality control analysis at the premises specified in his license

§ 3329. Reports and records. 1. Persons licensed under this title shall keep records showing the receipt, administration, dispensing, or destruction of all controlled substances and maintain the records in such manner and detail as the commissioner, by regulation, shall require.

2. Persons licensed under this title shall submit reports to the department summarizing the activity conducted under the license. Included in such report shall be a detailed inventory of controlled substances, and an accounting for all such substances received or disposed of during the period covered by the report and such other information as the commissioner shall, by regulation, require. Such reports shall be filed with the department at such times as the commissioner may require

TITLE IV

DISPENSING TO ULTIMATE USERS

§ 3330. Schedule I substances. No prescription may be made or filled for any controlled substance in schedule I nor may such substance be possessed, distributed, dispensed or administered except pursuant to title III of this article.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted

§ 3331. Scheduled substances administering and dispensing by practitioners. 1. Except as provided in titles III or V of this article, no substance in schedules II, III, IV, or V may be prescribed for or dispensed or administered to an addict or habitual user.

2. A practitioner, in good faith, and in the course of his professional practice only, may prescribe, administer and dispense substances listed in schedules II, III, IV, and V, or he may cause the same to be administered by a designated agent under his direction and supervision.

3. A veterinarian, in good faith, and in the course of the practice of veterinary medicine only, may prescribe, administer and dispense substances listed in schedules II, III, IV, and V or he may cause them to be administered by a designated agent under his direction and supervision.

4. No such substance may be dispensed unless it is enclosed within a suitable and durable container upon which is indelibly typed, printed or otherwise legibly written upon an orange label affixed to such container in a manner which will not hinder removal, the following:

(a) the name and address of the ultimate user for whom the substance is intended, or, if intended for use upon an animal, the species of such animal and the name and address of the owner or person in custody of* such animal*;*

(b) the name, address, and telephone number of the dispensing practitioner;

(c) specific directions for use, including but not limited to the dosage and frequency of dosage, and the maximum daily dosage;

(d) the legend, prominently marked or printed in either boldface or upper case lettering: "CONTROLLED SUBSTANCE, DANGEROUS UNLESS USED AS DIRECTED";

(e) the date of dispensing;

(f) either the name of the substance or such code number assigned by the department for the particular substance pursuant to section thirty three hundred eighteen of this article.

5. No more than a thirty day supply of a schedule II, III or IV substance, as determined by the directed dosage and frequency of dosage, may be dispensed by an authorized practitioner at one time.

6. A practitioner dispensing a substance which may be prescribed only upon an official New York state prescription must at the time of such dispensing prepare an official New York prescription in the manner set forth in subdivision two of section thirty-three hundred thirty-two of this article. The practitioner shall retain the original for a period of five years and shall file the two copies with the department by not later than the fifteenth day of the next month following the month in which the substance was delivered. This requirement shall not apply to the dispensing by a practi-

* [Matter between stars, so in original.]

tioner pursuant to section thirty-three hundred fifty-two of this article.

§ 3332. Making of official New York state prescriptions for scheduled substances. 1. No substance for which an official New York state prescription is required may be prescribed by a practitioner except on an official New York state prescription, and in good faith and in the course of his professional practice only.

2. Such prescription shall be prepared in triplicate, written with ink, indelible pencil or, apart from the practitioner's signature, typewriter. The original and both copies must contain the following:

(a) the name, address, and age of the ultimate user for whom the substance is intended, or, if the ultimate user is an animal, the species of such animal and the name and address of the owner or person in custody of such animal*;*

(b) the name, address, registration number, telephone number, and handwritten signature of the prescribing practitioner;

(c) specific directions for use, including but not limited to the dosage and frequency of dosage and the maximum daily dosage;

(d) the date upon which such prescription was actually signed by the prescribing practitioner.

3. No such prescription shall be made for a quantity of substances which would exceed a thirty day supply if the substance were used in accordance with the directions for use.

4. The practitioner shall retain one copy of such prescription for five years and shall deliver the original and one copy to the ultimate user.

§ 3333. Dispensing upon official New York state prescription. 1. A licensed pharmacist may, in good faith, and in the course of his professional practice, sell and dispense to an ultimate user controlled substances for which an official New York state prescription is required only upon the delivery to such pharmacist, within thirty days of the date such prescription was signed by an authorized practitioner, of the original and one copy of such official New York state prescription.

2. No such substance may be so dispensed or sold unless it is enclosed within a suitable and durable container and affixed to such container in a manner which would inhibit its removal is an orange label upon which is indelibly typed, printed, or otherwise legibly written:

(a) the name and address of the ultimate user for whom the substance is intended, or if intended for use upon an animal, the species of such animal and the name and address of the owner or person in custody of such animal*;*

(b) the name, address, and telephone number of the pharmacy from which such substance is dispensed;

(c) specific directions for use as stated on the prescription;

(d) the name of the prescribing practitioner;

* [Matter between stars, so in original.]

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted

(e) the legend, prominently marked or printed in either boldface or upper case lettering: "CONTROLLED SUBSTANCE, DANGEROUS UNLESS USED AS DIRECTED";

(f) the number of the prescription under which it is recorded in the pharmacist's prescription file;

(g) the date of filling; and

(h) such code number assigned by the department for the particular substance pursuant to section thirty-three hundred eighteen of this article, or when requested by the practitioner, the name of such substance.

3. The pharmacist filling the prescription shall endorse upon the original and copy thereof the date of delivery, his signature, and the registration number of the pharmacy.

4. The endorsed original prescription shall be retained by the proprietor of the pharmacy for a period of five years. The endorsed copy of such prescription shall be filed with the department by not later than the fifteenth day of the next month following the month in which the substance was delivered.

§ 3334. Emergency oral prescriptions for schedule II drugs. 1. In an emergency situation, as defined by rule or regulation of the department, a practitioner may orally prescribe and a pharmacist may dispense to an ultimate user controlled substances in schedule II; provided however the pharmacist shall:

(a) contemporaneously reduce such prescription to writing;

(b) dispense the substance in conformity with the labeling requirements applicable to the type of prescription which would be required but for the emergency; and

(c) make a good faith effort to verify the practitioner's identity, if the practitioner is unknown to the pharmacist.

2. No oral prescription shall be filled for a quantity of controlled substances which would exceed a five day supply if the substance were used in accordance with the directions for use.

3. Within seventy-two hours after authorizing an emergency oral prescription, the prescribing practitioner shall cause to be delivered to the pharmacist the original and one copy of an official New York state prescription. Such prescription shall, in addition to the information otherwise required, also have written or typed upon its face the words: "Authorization for emergency dispensing." If the pharmacist fails to receive such prescription he shall notify the department in writing within seven days from the date of dispensing the substance.

4. Such official New York state prescription shall be endorsed, retained and filed in the same manner as is otherwise required for such prescriptions.

§ 3335. Making of written prescriptions for controlled substances. 1. Except as provided in section thirty-three hundred thirty-seven, substances in schedules III, IV and V for which an official New

York state prescription is not required, may be prescribed by a practitioner only on a written prescription made in good faith and in the course of his professional practice.

2. Such written prescription shall be prepared in the same manner and contain the same information as is required by subsection two of section thirty-three hundred thirty-two of this article, except that an official New York state prescription need not be used and the practitioner need not prepare, deliver or retain copies of the prescription.

3. No such prescription shall be made for a quantity of substances which would exceed a thirty day supply if the substance were used in accordance with the directions for use.

§ 3336. Dispensing upon written prescription. 1. A licensed pharmacist may, in good faith and in the course of his professional practice, dispense to an ultimate user controlled substances in schedules III, IV, or V for which an official New York state prescription is not required, upon delivery to such pharmacist of a written prescription within thirty days of the date such prescription was signed by an authorized practitioner.

2. Such substance may be dispensed only if packaged and labeled in conformity with the provisions of subsection two of section thirty-three hundred thirty-three of this article.

3. The pharmacist filling the written prescription shall endorse his signature and the date of delivery to the ultimate user. Such endorsed prescription shall be retained by the proprietor of the pharmacy for a period of five years.

§ 3337. Oral prescriptions schedule III, IV and V substances. 1. A practitioner may orally prescribe and a pharmacist may dispense to an ultimate user controlled substances in schedules III, IV or V for which an official New York state prescription is not required; provided however the pharmacist shall:

(a) contemporaneously reduce such prescription to writing;

(b) dispense the substance in conformity with the labeling requirements applicable to a written prescription; and

(c) make a good faith effort to verify the practitioner's identity, if the practitioner is unknown to the pharmacist.

2. No oral prescription shall be filled for a quantity of controlled substances which would exceed a five day supply if the substance were used in accordance with the directions for use.

3. Within seventy-two hours after authorizing such an oral prescription, the prescribing practitioner shall cause to be delivered to the pharmacist a written prescription. If the pharmacist fails to receive such prescription he shall notify the department in writing within seven days from the date of dispensing the substance.

4. Such written prescription shall be endorsed, retained and filed in the same manner as is otherwise required for such prescriptions.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

§ 3338. Official New York state prescription forms. 1. Official New York state prescription forms shall be prepared and issued by the department in groups of one hundred forms, each form in triplicate and serially numbered. Such forms shall be furnished at a cost of ten dollars per group of one hundred forms to practitioners authorized to write such prescriptions and to institutional dispensers. Such prescription blanks shall not be transferable.

2. Except as expressly authorized by section thirty-three hundred thirty-four, substances listed in schedule II may be prescribed or dispensed only upon an official New York state prescription.

3. The commissioner may, by rule or regulation, require that a particular substance in schedule III or schedule IV, or particular preparations containing such substance, be prescribed or dispensed upon an official New York state prescription.

4. The commissioner is hereby authorized and empowered to make rules and regulations, not inconsistent with this article, with respect to the retention or filing of such forms, the maximum number of forms which may be issued at any one time, the period of time after issuance by the department that such form shall remain valid for use, and the manner in which practitioners associated with institutional dispensers may use such forms, or any other matter of procedure or detail necessary to effectuate or clarify the provisions of this section and to secure proper and effective enforcement of the provisions of this article.

5. Upon a finding by the commissioner that a person has wilfully failed to comply with the provisions of this article, the commissioner may revoke, cancel or withhold official New York state prescription forms which have been issued or for which application has been made.

§ 3339. Refilling of prescriptions for controlled substances. 1. An official New York state prescription may not be refilled.

2. A written prescription may be refilled not more than the number of times specifically authorized by the prescriber upon the prescription, provided however no such authorization shall be effective for a period greater than six months from the date the prescription is signed.

3. Unless an earlier refilling is authorized by the prescriber, no written prescription may be refilled earlier than seven days prior to the date the previously dispensed supply would be exhausted if used in conformity with the directions for use.

§ 3341. Institutional dispensers certificates of approval. 1. No institutional dispenser as herein before defined, shall receive, possess or cause controlled substances to be administered or dispensed without first having been issued a certificate of approval authorizing such activity by the commissioner.

2. Upon application of an institutional dispenser for a certificate of approval, the commissioner shall issue such certificate if he is satisfied that:

(a) the applicant and its managing officers are of good moral character;

(b) the applicant possesses the necessary land, building, paraphernalia and staff to properly carry on the activities described in the application;

(c) the applicant will be able to maintain effective control against diversion of controlled substances; and

(d) the applicant will be able to comply with all applicable state and federal laws.

3. Institutional dispensers to whom such certificates have been issued shall thereafter register biennially with the department. The fee for such certificate and for each biennial registration shall be twenty-five dollars.

4. Certificates and registrations issued under this section shall be effective only for and shall specify:

(a) the name and address of the institutional dispenser;

(b) the nature of the controlled substance, or substances, either by name or schedule, or both, for which the certificate or registration is issued.

§ 3342. Dispensing and administering by institutional dispensers. 1. An institutional dispenser may cause controlled substances to be administered or dispensed for use on its premises only pursuant to a written order by a practitioner for medication. Such orders shall be made and preserved in the manner and form as the commissioner shall, by regulation, prescribe.

2. An institutional dispenser may dispense controlled substances for use off its premises only pursuant to a prescription, prepared and filed in conformity with this title.

§ 3343. Reports and records. 1. Prescriptions and copies of prescriptions shall be preserved in the following manner:

(a) prescribing practitioners and dispensing practitioners shall preserve the retained copy of an official New York state prescription in a separate file maintained exclusively for such records;

(b) pharmacists dispensing controlled substances upon prescription shall preserve such prescriptions in such manner as the commissioner shall, by regulation, require.

2. Practitioners and pharmacies shall maintain records of all controlled substances received and dispensed in such manner as the commissioner shall, by regulation, require.

§ 3345. Possession of controlled substances by ultimate users original container. Except for the purpose of current use by the person or animal for whom such substance was prescribed or dispensed, it shall be unlawful for an ultimate user of controlled substances to possess such substance outside of the original container in which it was dispensed.

Violation of this provision shall be an offense punishable by a fine of not more than fifty dollars.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

TITLE V

DISPENSING TO ADDICTS AND HABITUAL USERS

§ 3350. Dispensing prohibition. Controlled substances may not be prescribed for, or administered or dispensed to addicts or habitual users of controlled substances, except as provided by this title or title III.

§ 3351. Dispensing for medical use. 1. Controlled substances may be prescribed for, or administered or dispensed to an addict or habitual user:

(a) during emergency medical treatment unrelated to abuse of controlled substances;

(b) who is a bona fide patient suffering from an incurable and fatal disease such as cancer or advanced tuberculosis;

(c) who is aged, infirm, or suffering from serious injury or illness and the withdrawal from controlled substances would endanger the life or impede or inhibit the recovery of such person.

2. Controlled substances may be ordered for use by an addict or habitual user by a practitioner and administered by a practitioner or registered nurse to relieve acute withdrawal symptoms.

3. Methadone, or such other controlled substance designated by the commissioner as appropriate for such use, may be ordered for use of an addict by a practitioner and dispensed or administered by a practitioner or his designated agent as interim treatment for an addict on a waiting list for admission to an authorized maintenance program.

4. Methadone, or such other controlled substance designated by the commissioner as appropriate for such use, may be administered to an addict by a practitioner or by his designated agent acting under the direction and supervision of a practitioner, as part of a regime designed and intended to withdraw a patient from addiction to controlled substances.

§ 3352. Treatment for addiction maintenance. 1. Methadone, or such other controlled substance designated by the commissioner as appropriate for such use, and to the extent permitted by Federal law or regulation, may be prescribed for, or dispensed or administered for maintenance purposes to an addict only and as part of a maintenance program conducted by a physician, group of physicians, or public or private medical facility certified by the commissioner and authorized by federal law to conduct such program.

2. Except as provided in subsection three of this section, such substances shall be prescribed or dispensed in conformity with the prescription and labeling requirements of title IV of this article.

3. No more than a seven day supply of such substance may be dispensed to or prescribed for an ultimate user as part of a maintenance program during any five day period; provided however the commissioner, by regulation, may specify a lesser maximum supply

during the initial period of maintenance and may specify a greater maximum supply in such special circumstances as he shall, by regulation, enumerate.

§ 3353. Certification of maintenance programs. 1. Subject to the provisions of the title, the commissioner may certify individual physicians, groups of physicians, and public or private medical facilities as authorized to prescribe for and administer and dispense controlled substances to addicts as part of a maintenance program.

2. Such certification shall be granted by the commissioner unless the applicant therefor has failed to furnish a satisfactory protocol pursuant to subdivision three of this section and proof that:

(a) the applicant is ready, willing, and able to properly carry on a maintenance program;

(b) the applicant will be able to maintain effective control against diversion of controlled substances;

(c) it is in the public interest that such certification shall be granted;

(d) the applicant and staff, if any, are of good moral character;

(e) the applicant is able to comply with all applicable state and federal laws.

3. The application for certification shall include:

(a) copies of all papers filed with any federal agency whose approval is required;

(b) a detailed protocol setting forth the qualifications of the applicant, the nature and objectives of the proposed program, the number of addicts to be treated, the admission criteria, the availability of facilities for evaluation and rehabilitation of addicts in the program, and such other information as the commissioner may require.

4. Any certification under this section shall be temporary and it shall be the continuing duty of the applicant to amend the application to reflect any proposed material change in the program.

§ 3354. Maintenance programs admission to publicly supported facilities. 1. For purposes of this section any medical facility certified by the commissioner to conduct a maintenance program which receives any monies from the state of New York, any political subdivision thereof, or any agency or instrumentality of either, shall, as to such program, and for purposes of this section, be deemed a public maintenance facility.

2. All such public facilities shall maintain waiting lists of applicants to such facilities, and shall list the applicant by name, sex, age, address and date of application.

3. Admission to maintenance treatment programs in such public facilities shall, except as otherwise herein provided, be in the order in which application was made.

4. The commissioner shall, by regulation, specify such circumstances as would authorize a public facility to advance applicants

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

on the waiting list. Such circumstances shall include the transfer of patients from one program to another; the complication of the applicant's addiction by severe medical problems; the pregnancy of the applicant; or such other problem or condition as would justify the granting of a preference.

5. Nothing contained herein shall require a public facility to accept an applicant who fails to meet the criteria for acceptance as set forth in the application for certification.

§ 3355. Reports by persons conducting maintenance programs. By the tenth day of each month, a person certified to conduct a maintenance program shall file with the department a report summarizing its activity in the preceding month. Such report shall include:

1. an inventory of the quantity of controlled substance on hand at the commencement and at the conclusion of such month's activity;

2. the total quantity of controlled substance received, the distributor from whom each order was received, and the form or dosage unit in which such substance was received;

3. the total quantity of controlled substance prescribed, dispensed, and administered to each individual patient during such month, and the dates of each such prescribing, dispensing, and administration;

4. the name and address of each applicant awaiting admission to such program and each applicant who has been admitted to the program;

5. each incident or alleged incident involving the theft, loss or possible diversion of controlled substances.

§ 3356. Central registry confidentiality. 1. The department shall establish a central registry as part of which the following information shall be assembled:

(a) the name and other identifying data relating to each reported addict;

(b) the status of each addict awaiting admission to an approved program or programs;

(c) the status of each addict in an approved program.

2. Identifying data in such registry with respect to an individual addict shall be available only to a practitioner attempting to ascertain the status of an addict seeking treatment with him or admission to a program with which he is associated.

TITLE VI

RECORDS AND REPORTS

§ 3370. Preserving and inspection of records. 1. Any record, including prescriptions, required to be kept or maintained by this article shall be preserved for a period of at least five years following the date of the event or transaction recorded, unless a shorter period of time is specifically provided.

2. Such records shall be made available for inspection and copying by any officer or employee of the department who is charged with the enforcement of this article and to any officer or employee of this state charged with the duty of regulating or licensing of any person who by virtue of such license is authorized to obtain, distribute, dispense or administer controlled substances.

§ 3371. Confidentiality of certain records, reports, and information. 1. No person, who has knowledge by virtue of his office of the identity of a particular patient or research subject, a manufacturing process, a trade secret or a formula shall disclose such knowledge, or any report or record thereof, except:

(a) to another person who by virtue of his office is entitled to obtain such information; or

(b) pursuant to judicial subpoena or court order in a criminal investigation or proceeding; or

(c) to an agency, department of government, or official board authorized to regulate, license or otherwise supervise a person who is authorized by this article to deal in controlled substances, or in the course of any investigation or proceeding by or before such agency, department or board.

2. In the course of any proceeding where such information is disclosed, except when necessary to effectuate the rights of a party to the proceeding, the court or presiding officer shall take such action as is necessary to insure that such information, or record or report of such information is not made public.

§ 3372. Practitioner patient reporting. It shall be the duty of every attending practitioner and every consulting practitioner to report promptly to the commissioner, or his duly designated agent, the name and, if possible, the address of, and such other data as may be required by the commissioner with respect to, any person under treatment if he finds that such person is an addict or a habitual user of any narcotic drug. Such report shall be kept confidential and may be utilized only for statistical, epidemiological or research purposes, except that those reports which originate in the course of a criminal proceeding other than under section two hundred ten of the mental hygiene law shall be subject only to the confidentiality requirements of section thirty-three hundred seventy-one of this article.

§ 3373. Confidential communications. For the purposes of duties arising out of this article, no communication made to a practitioner shall be deemed confidential within the meaning of the civil practice law and rules relating to confidential communications between such practitioner and patient.

§ 3374. Notification by licensee. Persons licensed or certified pursuant to this article shall be under a continuing duty to promptly notify the department of:

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

1. Each incident or alleged incident of theft, loss or possible diversion of controlled substances manufactured, ordered, distributed or possessed by such person;

2. Any charge or proceeding brought in any court or before any governmental agency, state or federal, in which it is alleged that the licensee, its employees, subsidiaries, managing officers, or directors has failed to comply with the provisions of the federal controlled substances act or the laws of any state relating to controlled substances.

TITLE VII

OFFENSES, VIOLATIONS AND ENFORCEMENT

§ 3380. Inhalation of certain toxic vapors or fumes; sale of glue in certain cases. 1. As used in this section the phrase "glue containing a solvent having the property of releasing toxic vapors or fumes" shall mean and include any glue, cement, or other adhesive containing one or more of the following chemical compounds: acetone, cellulose acetate, benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, ethylene trichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether, toluene or such other similar material as the commissioner shall by regulation prescribe.

2. No person shall, for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain or nervous system, intentionally smell or inhale the fumes from any glue containing a solvent having the property of releasing toxic vapors or fumes; provided, that nothing in this section shall be interpreted as applying to the inhalation of any anesthesia for medical or dental purposes.

3. No person shall, for the purpose of violating subdivision two, use, or possess for the purpose of so using, any glue containing a solvent having the property of releasing toxic vapors or fumes.

4. No person shall sell, or offer to sell, to any other person any tube or other container of glue containing a solvent having the property of releasing toxic vapors or fumes:

(a) if he has knowledge that the product sold, or offered for sale, will be used for the purpose set forth in subdivision two of this section; or

(b) unless there has been added to such glue a sufficient quantity of an additive, approved by the commission, which shall act as a deterrent to inhalation, and not be harmful or toxic to the human body. This provision shall not apply to glue manufactured prior to the effective date of the article nor shall it apply to glue manufactured and sold for industrial use.

5. (a) Any person who violates any provision of subdivisions two or three of this section shall be guilty of an offense and upon conviction thereof shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than five days, or by both such fine and imprisonment.

(b) Any person who violates any provision of subdivision four of this section shall be guilty of a class A misdemeanor.

§ 3381. Sale and possession of hypodermic syringes and hypodermic needles. 1. It shall be unlawful for any person to sell or furnish to another person or persons, a hypodermic syringe or hypodermic needle except:

(a) pursuant to a written prescription of a practitioner; or

(b) to persons who have been authorized by the commissioner to obtain and possess such instruments.

2. It shall be unlawful for any person to obtain or possess a hypodermic syringe or hypodermic needle unless such possession has been authorized by the commissioner or is pursuant to a written prescription.

3. Any person selling or furnishing a hypodermic syringe or hypodermic needle pursuant to prescription, shall record upon the face of the prescription, over his signature, the date of the sale or furnishing of the hypodermic syringe or hypodermic needle. Such prescription shall be retained on file for a period of five years and be readily accessible for inspection by any public officer or employee engaged in the enforcement of this section. Such prescription may be refilled not more than the number of times specifically authorized by the prescriber upon the prescription, provided however no such authorization shall be effective for a period greater than two years from the date the prescription is signed.*

4. The commissioner shall designate persons, or by regulation, classes of persons who may obtain hypodermic syringes and hypodermic needles without prescription and the manner in which such transactions may take place and the records thereof which shall be maintained.

§ 3382. Growing of the plant known as Cannabis by unlicensed persons. A person who, without being licensed so to do under this article, grows the plant of the genus Cannabis or knowingly allows it to grow on his land without destroying the same, shall be guilty of a class A misdemeanor.

§ 3385. Enforcement. 1. The department and its representatives shall have access at all times to all orders, prescriptions or records required to be kept under this article.

2. For the purposes of this article, each employee of the department designated by the commissioner shall possess all of the powers of a peace officer.

§ 3387. Seizure and forfeiture of controlled substances; disposition. 1. Any controlled substance which has been manufactured, distributed, dispensed or acquired in violation of this article, or the lawful possession of which cannot be ascertained, is hereby declared to be a public nuisance and may be seized by a peace officer and shall be forfeited, and disposed of as follows:

*So in original. [Word misspelled.]

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

(a) except as in this section otherwise provided, the commissioner, the court or magistrate having jurisdiction shall order such controlled substance forfeited or destroyed. A record of the quantity and nature of the substance, of the place where said substance was seized, and of the time, place and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the person ordering such destruction by the officer who detroys them;*

(b) upon written application by the commissioner, the court or magistrate by whom the forfeiture of controlled substances has been decreed may order the delivery of any of them, except substances listed in schedule I of section thirty-three hundred six, to such commissioner for distribution or destruction, as hereinafter provided;

(c) upon application by any hospital within this state, not operated for private gain, the commissioner may in his discretion deliver any controlled substance that has come into his custody by authority of this section to the applicants for medicinal use;

(d) the commissioner may from time to time deliver excess stocks of controlled substances to the Bureau or shall destroy the same:

(e) controlled substances which are excess or undesired by persons lawfully possessing the same may be disposed of by express prepaid shipment to the "State Department of Health, Narcotic Control Bureau, Albany, New York," or by delivery to an authorized narcotic control representative of the department.

2. The commissioner shall keep a full and complete record of all controlled substances received and of all controlled substances disposed of, showing the exact kinds, quantities and forms of such substances; the persons from whom received and to whom delivered; by whose authority received, delivered and destroyed; and the dates of the receipt, disposal or destruction. This record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state laws relating to controlled substances.

3. Any raw material product, container or equipment of any kind which is used, or intended for use, in manufacturing, distributing, dispensing or administering a controlled substance in violation of this article shall be seized by any peace officer and forfeited in the same manner as property subject to seizure and forfeiture pursuant to section thirty-three hundred eighty-eight of this article, except that such property shall not be retained for use by any official.

§ 3388. Seizure and forfeiture of vehicles, vessels or aircraft unlawfully used to conceal, convey or transport controlled substances. 1. Except as authorized in this article, it shall be unlawful to:

(a) transport, carry, or convey any controlled substance in, upon, or by means of any vehicle, vessel or aircraft; or

* So in original. [Word misspelled.]

(b) conceal or possess any controlled substance in or upon any vehicle, vessel or aircraft, or upon the person of anyone in or upon any vehicle, vessel or aircraft; or

(c) use any vehicle, vessel or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, or sale of any controlled substance.

2. Any vehicle, vessel or aircraft which has been or is being used in violation of subdivision one, except a vehicle, vessel or aircraft used by any person as a common carrier in the transaction of business as such common carrier shall be seized by any peace officer, and forfeited as hereinafter in this section provided. A vehicle, vessel or aircraft is not subject to forfeiture unless used in connection with acts or conduct which would constitute a felony under article 220 of the penal law.

3. The seized property shall be delivered by the peace officer having made the seizure to the custody of the district attorney of the county wherein the seizure was made, except that in the cities of New York and Buffalo the seized property shall be delivered to the custody of the police department of such cities and such property seized by a member or members of the state police shall be delivered to the custody of the superintendent of state police, together with a report of all the facts and circumstances of the seizure. When such property is seized by state police such report shall also be made to the district attorney aforesaid.

4. It shall be the duty of the district attorney of the county wherein the seizure is made, if elsewhere than in the cities of New York or Buffalo, and where the seizure is made in either such city it shall be the duty of the corporation counsel of the city, to inquire into the facts of the seizure so reported to him and if it appears probable that a forfeiture has been incurred by reason of a violation of this section, for the determination of which the institution of proceedings in the supreme court is necessary, to cause the proper proceedings to be commenced and prosecuted, not later than ten days after demand by a person claiming ownership thereof, to declare such forfeiture, unless, upon inquiry and examination, such district attorney or corporation counsel decides that such proceedings cannot probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case, the district attorney or corporation counsel shall cause such seized property to be returned to the owner thereof. The procedure for proceedings instituted under this section shall conform as much as possible to the procedure for attachment.

5. Notice of the institution of the forfeiture proceeding shall be served either:

(a) personally on the owners of the seized property; or

(b) by registered mail to the owners' last known address and by publication of the notice once a week for two successive weeks in a newspaper published or circulated in the county wherein the seizure was made.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

6. Forfeiture shall not be adjudged where the owners establish by preponderance of the evidence that:

(a) the use of such seized property, in violation of subdivision one of this section, was not intentional on the part of any owner; or

(b) said seized property was used in violation of subdivision one of this section by any person other than an owner thereof, while such seized property was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States, or of any state.

7. The district attorney, the superintendent of state police or the police department having custody of the seized property, after such judicial determination of forfeiture, shall, at their discretion, either retain such seized property for the official use of their office, division or department, or, by a public notice of at least five days, sell such forfeited property at public sale. The net proceeds of any such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the county wherein the seizure was made except that the net proceeds of the sale of property seized in the cities of New York and Buffalo shall be paid into the respective general funds of such cities, and of the sale of property seized by the state police into the general fund of the state.

8. Whenever any person interested in any property which is seized and declared forfeited under the provisions of this section files with a justice of the supreme court a petition for the recovery of such forfeited property, the justice of the supreme court may restore said forfeited property upon such terms and conditions as he deems reasonable and just, if the petitioner establishes either of the affirmative defenses set forth in subdivision six of this section and that the petitioner was without personal or actual knowledge of the forfeiture proceeding. If the petition be filed after the sale of the forfeited property, any judgment in favor of the petitioner shall be limited to the net proceeds of such sale, after deduction of the lawful expenses and costs incurred by the district attorney, police department or corporation counsel.

9. No suit or action under this section for wrongful seizure shall be instituted unless such suit or action is commenced within two years after the time when the property was seized.

§ 3390. Revocation of licenses and certificates of approval. Any license or certificate of approval granted pursuant to this article may be revoked by the commissioner in whole or in part upon a finding that the licensee or certificate holder has:

1. falsified any application, report, or record required by this article;

2. wilfully failed to furnish the department with timely reports or information required to be filed with the department;

3. been convicted of an offense in any jurisdiction relating to any substance listed in this article as a controlled substance;

4. wilfully or negligently failed to comply with any of the provisions of the federal controlled substances act, this article, or the regulations promulgated thereunder;

5. failed to maintain effective control against diversion of controlled substances; or

6. wilfully and unreasonably refused to permit an inspection authorized by this article.

§ 3391. Revocation and suspension of license or certificate of approval procedure. 1. A proceeding to revoke a license or certificate of approval shall be commenced by a notice served personally or by registered or certified mail upon the licensee or holder of a certificate of approval directing him to show cause why his license or certificate should not be revoked. Such notice shall set forth in detail the grounds for the proposed revocation and shall fix a date for hearing not less than fifteen nor more than thirty days from the date of such notice.

2. Simultaneous with the commencement of a proceeding to revoke a license or certificate or during the course of such proceeding, the commissioner may in the case of a clear and imminent danger to the public health or safety forthwith suspend without prior notice any license or certificate theretofore issued.

3. If the commissioner suspends or revokes a license or certificate, all controlled substances owned or possessed by the licensee or holder of a certificate of approval and in the state of New York at the time of the suspension or the effective date of the revocation and which such licensee or holder of a certificate of approval is no longer authorized to possess, shall be seized or placed under seal in the manner provided in this article.

4. In lieu of revocation of a license or certificate, the commissioner may impose a civil penalty not in excess of ten thousand dollars. Such penalty may be imposed in lieu of revocation only if the commissioner is satisfied that the imposition and payment of such penalty will serve as a sufficient deterrent to future violations.

§ 3393. Formal hearings procedure. 1. The commissioner or any person designated by him for this purpose, shall have the power to administer oaths, compel the attendance of witnesses and the production of books, records and documents and to take proof and testimony concerning all matters within the jurisdiction of the department.

2. Notice of hearing shall be served at least fifteen days prior to the date of the hearing, provided, however, whenever the commissioner has made a preliminary order suspending a license or directing the cessation of any activity pending the hearing, the commissioner shall provide the person affected thereby with an opportunity to be heard within five days.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

3. At a hearing any person who is a party thereto may appear personally, shall have the right of counsel, and may cross-examine witnesses and produce evidence and witnesses in his own behalf.

4. Following a hearing, the commissioner shall make appropriate findings of fact and determinations and shall issue an order in accordance therewith.

5. The person conducting the hearing shall not be bound by the rules of evidence but any determination must be founded upon sufficient legal evidence to sustain it.

6. The commissioner may adopt such rules and regulations governing the procedures to be followed with respect to the hearings as may be consistent with the fair and effective administration of this article.

7. Any notice, application, order or other paper required to be served upon any party to a proceeding hereunder may be served in person, by registered mail or by certified mail upon either the party or an attorney who has appeared on his behalf.

§ 3394. Judicial review. 1. All orders or determinations hereunder shall be subject to judicial review as provided in article seventy-eight of the civil practice law and rules. In any such proceeding findings of fact made by the commissioner, if supported by substantial evidence, shall be conclusive.

2. Application for such review must be made within sixty days after service of the order or determination upon the person whose license, certificate, right or privilege is affected thereby or upon the attorney of record for such person.

3. An order, or the enforcement of an order revoking or suspending a license or revoking or cancelling official forms issued by the department, if accompanied by a finding of a clear and imminent danger to the public health or safety, may not be temporarily stayed or restrained prior to a determination on the merits of the application for judicial review.

§ 3396. Violations; penalties. 1. In any civil, criminal or administrative action or proceeding brought for the enforcement of any provision of this article, it shall not be necessary to negate or disapprove any exception, excuse, proviso or exemption contained in this article, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the person claiming its benefit.

2. Violation of any provision of this article for which a penalty is specifically provided herein shall be punishable as provided herein. Violation of any provision of this article for which no penalty is provided herein, shall be punishable as provided in section twelve-b of this chapter or in the penal law.

3. No person shall be prosecuted for a violation of any provision of this article if such person has been acquitted or convicted under the federal controlled substances act, of the same act or omission which, it is alleged, constitutes a violation of this article.

4. Upon the conviction of any person for violating any provision of this article, a copy of the judgment and sentence, and of the opinion of the court or judge, if any opinion be filed, shall be sent by the clerk of the court, or by the judge, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession, or to carry on his business.

5. Upon the imposition of any penalty, warning, reprimand or other sanction against any person for violating any provision of this article, a copy of the order, finding or opinion, if any is made or rendered, shall be sent by the person authorized by law to make such determination, to the board or officer by whom the respondent is licensed or registered to practice a profession or to carry on a business.

§ 3. Section 220.00 of the penal law is hereby repealed, and such law is hereby amended by inserting therein, in lieu thereof, a new section to be section 220.00, to read as follows:

§ 220.00 *Dangerous Drug Offenses, Definition of Terms.*

The following definitions are applicable to this article:

1. "Sell" means to sell, exchange, give or dispose of to another, or to offer or agree to do the same.

2. "Unlawfully" means in violation of article thirty-three of the public health law.

3. "Ounce" means an avoirdupois ounce as applied to solids or semi-solids, and a fluid ounce as applied to liquids.

4. "Narcotic drug" means any substance listed in schedule I(a), I(b), I(d), II(a), II(b), III(b), or III(c) of section 220.02 of this article.

5. "Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, 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 (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

6. "Dangerous drug" means any substance listed in schedules I through V of section 220.02; provided however that the term shall not include any compound, mixture, or preparation of a substance listed in schedules III or IV which has been excepted from the provisions of article thirty-three of the public health law pursuant to rule or regulation of the commissioner of health.

§ 4. Such law is hereby amended by adding thereto a new section, to be section 220.02, to read as follows:

§ 220.02 *Schedule of dangerous drugs.*

The following substances are found and declared to be dangerous drugs:

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

SCHEDULE I

(a) Unless specifically accepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such 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.

* So in original. [Evidently should read "excepted."]
† So in original

(38) Piritramide.
(39) Proheptazine.
(40) Properidine.
(41) Racemoramide.
(42) Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such 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) Methylhydromorphine
(14) Morphine methylbromide.
(15) Morphine methylsulfonate.
(16) Morphine-N-Oxide.
(17) Myrophine.
(18) Nicocodeine.
(19) Nicomorphine.
(20) Normorphine.
(21) Pholcodeine.
(22) Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such 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.

EXPLANATION — Matter in italics is new; matter in brackets [ ] is old law to be omitted.

(7) 4-methyl-2, 5-dimethoxyamphetamine.
(8) Ibogaine.
(9) Lysergic acid diethylamide.
(10) Mescaline.
(11) Peyote.
(12) N-ethyl-3-piperidyl benzilate.
(13) N-methyl-3-piperidyl benzilate.
(14) Psilocybin.
(15) Psilocyn.
(16) Tetrahydrocannabinols, other than Cannabis.

(d) Cannabis.

SCHEDULE II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances 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, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(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, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such 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.**

* So in original.

(10) Metazocine.

(11) Methadone.

(12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.

(13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-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.

(21) Racemorphan.

(c) Unless specifically excepted or 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) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(4) Methylphenidate.

SCHEDULE III

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having 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.

(2) Methyprylon.

(3) Glutethimide.

(4) Lysergic acid.

(5) Lysergic acid amide.

(6) Chlorhexadol.

(7) Phencyclidine.

(8) Sulfondiethylmethane.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

(9) Sulfoncthylmethane.

(10) Sulfonmethane.

(b) Nalorphine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

SCHEDULE IV

(a) Any material, compound, mixture or preparation which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Barbital.

(2) Methohexital.

(3) Methylphenobarbital.

(4) Phenobarbital.

(b) 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) Chloral betaine.
(2) Chloral hydrate.
(3) Ethchlorvynol.
(4) Ethinamate.
(5) Meprobamate.
(6) Paraldehyde.
(7) Petrichloral.

SCHEDULE V

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more non-narcotic 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 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

§ 5. Any license, certificate, renewal or registration issued by the department, pursuant to any law repealed by section one of this act, which authorizes the manufacture, distribution, dispensing or scientific research relating to substances listed as controlled substances in section two of this act and which was legally valid and effective immediately prior to the effective date of this act, shall continue to remain legally valid and effective in accordance with its terms and limitations. Such license, certificate, renewal or registration shall, for purposes of section two of this act and as to substances actually manufactured, delivered or possessed thereunder be treated as a license or certificate granted pursuant to section two of this act.

§ 6. In order to facilitate the orderly consideration of applications for initial licenses or certificates or for the renewal of any license, registration or certificate issued by the department pursuant to any law repealed by section one of this act, the commissioner may issue temporary licenses or certificates or extensions of an existing

license, registration or certificate. No such licenses, certificate or extension shall be valid for a period greater than eleven months nor shall it confer upon the person issued such temporary license or certificate or extension any right to renewal or issuance of a license or certificate. The fee for a temporary license, certificate or extension issued pursuant to this section shall be equal to the pro rata share of the amount of the comparable fee charged pursuant to section two of this act.

§ 7. This act shall take effect on the first day of April next succeeding the date upon which it shall have become a law. The department of health may, prior to such date, hire personnel, issue forms, make determinations, promulgate rules and regulations and take such other steps as may be necessary or appropriate to permit this act to become effective and operative on its effective date.

DERIVATION TABLE

CONTROLLED SUBSTANCES ACT

The left column of this table lists each section of the Controlled Substances Act. The right column shows the corresponding section of Articles 33, 33-A and 33-B from which the Controlled Substances Act section is specifically or generally derived.

The word "New" indicates that there is no counterpart in the Articles.

Proposed Section	Existing Section
3300	3300
	3370
3301	New
3302	3301
	3371
3304	3305
	3373
3305.1	3232
	3387
3305.1 (c)	3386.3
3305.2	New
3305.3	3330.3
	3385.3
3305.4	3310.1 (e)
	3311.2 (d)
	3375.1 (e)
	3376.2 (d)
3306	New
3307	3374
3308.1	3304.1
3308.2	3302.1
	3372
3308.3	New
3308.4	3302.2
3310	3310
	3375
3311	New
3312	3312
	3377
3313	3314
3315	3310.1 (b)
	3376.1 (b)

Proposed Section	Existing Section
3316	New
3318	New
3319	New
3320	3310.2
	3375.2
3321	3322.3
	3381.2
3322	3333.2
	3388.2
3325	3311
	3376
3326	3312
	3314
	3377
3327	New
3328	New
3329	3333.5
	3388.5
3330	New
3331	3330
	3385
3331.4	3325.3
	3383.3
3332	New
3333.1	New
3333.2	3325.2
	3383.2
3333.4	3333.3
	3388.3
3334	3371.19
	3381
3335	3330
	3385
3336	3322
	3381
3337	3371.19
	3381
3338	New
3339	3322.1 (d)
3341	3311
	3314
	3376
3342.1	3333.4
	3333.6
	3333.7
	3388.4
	3388.6
3342.2	New
3343	3333.1
	3388.1
3345	3331.1
	3386.1
3350*	New
3351	New
3352	New
3353	New
3354	New
3355	New
3356	New
3370	3333.8
	3333.9

* Re: Proposed Title V, cf. Part 80 NYCRR

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

Proposed Section	Existing Section
	3388.7
3370.2	3334.1
	3389.1
3371	3334
	3389.2
3372	3344
3373	3304.2
	3334.3
	3389.3
3374	New
3380	3396
3381	3395
3382	3315
3385	3350
	3390
3387	3352
	3392
3388	3353
3390	3313
	3378
3391	New
3393	New (see §12-a P.H.L.)
3394	New
3396	3354
	3393

DISTRIBUTION TABLE

PUBLIC HEALTH LAW—ARTICLES 33, 33-A, 33-B

The left column of this table lists each section of the article; the right column shows the disposition of each such section. The numbers in the right column refer to the appropriate section of the Controlled Substances Act which specifically or generally covers the same or approximately the same subject matter.

The word "Omitted" indicates that the section has not been included in the revision because it has no further utility or because it duplicates a provision in another body of law.

Existing Section	Proposed Section
3300	3300
3301	3302
3302.1	3308.2
3302 2	3308.4
3303	Omitted
3304.1	3308.1
3304.2	3373
3305	3304
3306	Omitted
3310	3310
3310.1(e)	3305.4
3311	3325
	3341
3311.2(d)	3305.4
3312	3312
	3326
3313	3390
3314	3313
	3326

Existing Section	Proposed Section
	3341
3315	3382
3320	Omitted
3321	Omitted
3322	3336
3322.1 (d)	3339
3322.3	3321
3323	Omitted
3324	Omitted
3325.1	Omitted
3325.2	3333.2
3325.3	3331.4
3325.4	Omitted
3330.3	33.05.3†
3331.1	3345
3331.2	3380
3331.3	3305.1 (c)
3332	3305.1
3333.1	3345
3333.2	3322
3333.3	3333.4
3333.4	3342
3333.5	3329
3333.6	3342
3333.7	3342
3333.8	3370.1
3333.9	3370.1
3334.1	3370.2
3334.2	3371.1
3334.3	3373
6340	Omitted*
3342	Omitted
3343	Omitted
3344	3372
3350	3385
3351	Omitted
3352	3387
3353	3388
3354	3396
Article 33-A	
3370	3300
3371	3302
3371.19	3334
	3337
3372	3308.2
3373	3304
3374	3307
3375	3310
3375.1 (b)	3315
3375.1 (e)	3305.4
3375.2	3320
3376	3325
	3341
3376.2 (d)	3305.4
3377	3312
	3326
3378	3390
3380	Omitted
3381	3333
	3336
3381.2	3321

† So in original.
* cf. Title V of Proposed Bill

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

Existing Section	Proposed Section
3383.1	Omitted
3383.2	3333.2
3383.3	3331.4
3385	3331
3385.3	3305.3
3386.1	3345
3386.2	3380
3386.3	3305.1 (c)
3387	3305.1
3388.1	3343
3388.2	3322
3388.3	3333.4
3388.4	3342.1
3388.5	3329
3388.6	3342.1
3388.7	3370
3389.1	3370.2
3389.2	3371
3389.3	3373
3390	3385
3391	Omitted
3392	3387
3393	3396
Article 33-B	
3395	3381
3396	3380