reconstruction, resurfacing, relocation or improvement of highways notwithstanding any provisions of law to the contrary.

SECTION 4. Any outdoor advertising, as defined in section one of chapter ninety-three D of the General Laws, inserted by section one of this act, which was lawfully erected and which on the effective date of this act had a permit issued under chapter ninety-three of the General Laws, was in compliance with by-laws and ordinances, and was otherwise lawful in all respects, shall not be required to be removed as a result of any of the provisions of this act until five years after the effective date of this act.

SECTION 5. Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, by-law, regulation or resolution, which are more restrictive than the provisions of this act.

SECTION 6. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction the decision of such court shall not affect or impair any of the remaining provisions. *Approved November 11, 1971.*

EMERGENCY LETTER — November 23, 1971 at 2:22 P.M.

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**Chap. 1071.** AN ACT PROVIDING FOR THE REGULATION OF DRUGS AND CONTROLLED SUBSTANCES.

*Be it enacted, etc., as follows:*

SECTION 1. The General Laws are hereby amended by inserting after chapter 94B the following chapter:—

## CHAPTER 94C.

### Controlled Substances Act.

*Section 1.* As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Administer", 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 by—

(a) a practitioner, or

(b) a registered nurse or licensed practical nurse at the direction of a practitioner in the course of his professional practice, or

(c) an ultimate user or research subject at the direction of a practitioner in the course of his professional practice.

"Agent", an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser; except that such term 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.

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

"Class", the list of controlled substances for the purpose of determining the severity of criminal offenses under this chapter.

"Clinical research", any systematic investigation or study carried out in connection with the good faith professional practice of medicine, dentistry or podiatry for the alleviation of pain and suffering or

for the treatment or alleviation of disease. Such clinical research shall be deemed to be within the meaning of the term "in the course of professional practice" as used in this chapter.

"Commissioner", the commissioner of public health.

"Controlled substance", a drug, substance or immediate precursor in any schedule or class referred to in this chapter.

"Counterfeit substance", a substance which is represented to be a particular controlled drug or substance, but which is in fact not that drug or substance.

"Deliver", to transfer, whether by actual or constructive transfer, a controlled substance from one person to another, whether or not there is an agency relationship.

"Department", the department of public health.

"Depressant or stimulant substance",

(*a*) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid; or any derivative of barbituric acid which the United States Secretary of Health, Education and Welfare has by regulation designated as habit forming; or

(*b*) a drug which contains any quantity of amphetamine or any of its optical isomers; any salt of amphetamine or any salt of an optical isomer of amphetamine; or any substance which the United States Attorney General has by regulation designated as habit forming because of its stimulant effect on the central nervous system; or

(*c*) lysergic acid diethylamide; or

(*d*) any drug except marihuana which contains any quantity of a substance which the United States Attorney General has by regulation designated as having a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

"Dispense", to deliver a controlled substance to an ultimate user or research subject or to the agent of an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary for such delivery.

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

"Drug",

(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;

(c) substances, other than food, intended to affect the structure or any function of the body of man and animals; or

(d) substances intended for use as a component of any article specified in clauses (a), (b) or (c), exclusive of devices or their components, parts or accessories.

"Immediate precursor", a substance which the commissioner has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the

manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

"Isomer", the optical isomer, except that wherever appropriate it shall mean the optical, position or geometric isomer.

"Manufacture", the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, including any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging or labeling of a controlled substance:

(a) by a practitioner as an incident to his administering 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.

"Marihuana", all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; and 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 of the sterilized seed of the plant which is incapable of germination.

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

(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 clause (a), but not including the isoquinoline alkaloids of opium;

(c) Opium poppy and poppy straw;

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

"Opiate", 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 two, the dextrorotatory isomer of 3- methoxy-n-methyl-morphinan and its salts, dextromethorphan. It does include its racemic and levorotatory forms.

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

"Oral prescription", an oral order for medication which is dispensed to or for an ultimate user, but not including an order for medication which is dispensed for immediate administration to the ultimate user by a practitioner, registered nurse, or practical nurse.

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

"Pharmacist", any pharmacist registered in the commonwealth to dispense controlled substances and including any other person authorized to dispense controlled substances under the supervision of a pharmacist registered in the commonwealth.

"Pharmacy", a facility under the direction or supervision of a registered pharmacist which is authorized to dispense controlled substances, including but not limited to "retail drug business" as defined below.

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

"Practical nurse", a nurse who is licensed pursuant to the provisions of section seventy-four A of chapter one hundred and twelve.

"Practitioner",

(a) A physician, dentist, veterinarian, podiatrist, scientific investigator or other person registered to distribute, dispense, conduct research with respect to, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research in the commonwealth;

(b) A pharmacy, hospital or other institution registered to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in the commonwealth.

"Prescription drug", any and all drugs upon which the manufacturer or distributor has, in compliance with federal law and regulations, placed the following: "Caution, Federal law prohibits dispensing without prescription".

"Production", includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

"Registered nurse", a nurse who is registered pursuant to the provisions of section seventy-four of chapter one hundred and twelve.

"Registrant", a person who is registered pursuant to any provision of this chapter.

"Registration", unless the context specifically indicates otherwise, such registration as is required and permitted only pursuant to the provisions of this chapter.

"Retail drug business", a store for the transaction of "drug business" as defined in section thirty-seven of chapter one hundred and twelve.

"Schedule", a list of controlled substances established by the commissioner pursuant to the provisions of section two for purposes of administration and regulation.

"State", when applied to a part of the United States other than Massachusetts includes any state, district, commonwealth, territory, insular possession thereof and any area subject to the legal authority of the United States of America.

"Tetrahydrocannabinol", tetrahydrocannabinol or preparations containing tetrahydrocannabinol excluding marihuana except when it has been established that the concentration of delta-9 tetrahydrocannabinol in said marihuana exceeds two and one half per cent.

"Ultimate user", a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

"Written prescription", a written order for medication which is dispensed to or for an ultimate user, but not including an order for medication which is dispensed for immediate administration to the ultimate user by a practitioner, registered nurse or practical nurse.

*Section 2.* (*a*) For the purpose of administration and regulation of the manufacture, distribution, dispensing and possession of controlled substances by persons authorized under this chapter, the commissioner shall establish by regulations pursuant to the provisions of chapter thirty A five schedules incorporating the five schedules of controlled substances under the "Comprehensive Drug Abuse, Prevention and Control Act of 1970" or any amendment thereof. In addition thereto the commissioner shall by regulation as aforesaid establish a sixth schedule which shall include all prescription drugs not included in the first five schedules.

(*b*) In making any finding under subsection (a) of this section or under subsection (a) of section three, the commissioner shall consider the following factors with respect to each drug or other substance proposed to be controlled or removed from the schedules:

(1) Its actual or relative potential for abuse.

(2) Scientific evidence of its pharmacological effect, if known.

(3) The state of current scientific knowledge regarding the drug or other substance.

(4) Its history and current pattern of abuse.

(5) The scope, duration and significance of abuse.

(6) What, if any, risk there is to the public health.

(7) Its psychological or physiological dependence liability.

(8) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(*c*) The commissioner acting jointly with the board of registration in pharmacy shall by regulation pursuant to the provisions of chapter thirty A exclude any nonnarcotic substance from a schedule if such substance may, under the Federal "Comprehensive Drug Abuse Prevention and Control Act of 1970" and the Food, Drug and Cosmetic Act, be lawfully sold over the counter without a prescription.

(*d*) Authority to control under this section shall not extend to distilled spirits, wine, malt beverages or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954.

*Section 3.* Except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

(1) SCHEDULE I.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) SCHEDULE II.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) SCHEDULE III.—

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) SCHEDULE IV.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) SCHEDULE V.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

(6) SCHEDULE VI.—

(A) The substance is a prescription drug; and

(B) Said prescription drug has not been included in Schedules I through V.

*Section 4.* The commissioner acting jointly with the board of registration in pharmacy may by regulation pursuant to the provisions of chapter thirty A except any compound, mixture or preparation containing any substances in paragraph (*a*) or (*b*) of Schedule III or in Schedule IV, V or VI established pursuant to the provisions of section two from the application of all or any part of this chapter if

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

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

(3) the compound, mixture or preparation has been similarly excepted under the provisions of the Federal "Comprehensive Drug Abuse, Prevention and Control Act of 1970", or any amendment thereof.

Such regulation shall state the weight of the controlled substance per fluid ounce, or if a solid or semisolid preparation the weight in the avoirdupois amounts, and, if the metric system is used, the weight in grams per hundred cubic centimeters in the case of a fluid or the weight per gram in the case of a solid or semisolid preparation.

The commissioner shall by regulation rescind or revoke an exception whenever it has been modified, revoked or rescinded under the provisions of the Federal "Comprehensive Drug Abuse, Prevention and Control Act of 1970" or any amendment thereof.

*Section 5.* Controlled substances which are excepted pursuant to section four may be dispensed or sold at retail, except that the exception authorized by this section shall be subject to the following conditions:

(1) that such preparation shall be dispensed or sold in good faith as a medicine and not for the purpose of evading the provisions of the controlled substances law; (2) that the purchaser of such preparation identify himself to the satisfaction of the pharmacist; and (3) that of such preparation not more than four ounces are dispensed or sold to a person during any 48 hour period.

The pharmacist dispensing such excepted substances shall keep an accurate record book including the name and address of the purchaser, the name of the preparation, the strength per dosage unit, the quantity dispensed and the date.

*Section 6.* The board of registration in pharmacy in the case of a retail drug business or wholesale druggist and the commissioner in all other cases may promulgate rules and regulations relative to registration and control of the manufacture, distribution, dispensing and possession of controlled substances within the commonwealth.

*Section 7.* (*a*) Every person who manufactures, distributes, dispenses or possesses with intent to manufacture, distribute or dispense any controlled substance within the commonwealth shall in the case of a retail drug business or wholesale druggist register with the board of registration in pharmacy and shall in all other cases register with the commissioner, in accordance with his or its rules, said registration to be effective for one year, except that in the case of a retail drug business said registration shall be effective for two years.

(*b*) Every person who is engaged in the qualitative or quantitative analysis of controlled substances within a scientific laboratory shall obtain a registration issued by the commissioner in accordance with his rules, said registration to be effective for one year from date of issuance.

(*c*) A person registered under this chapter to manufacture, distribute, dispense or possess controlled substances may possess, manufacture, distribute or dispense those substances to the extent authorized by his registration and in conformity with the other provisions of this chapter.

(*d*) The following persons shall not require registration and may lawfully possess controlled substances:

(1) an agent or employee of any manufacturer, distributor or dispenser registered under this chapter, if he is acting in the usual course of his business or employment, except that a salesman, detail man or other field representative of a registered manufacturer, wholesaler, jobber or dealer in controlled substances may not possess any controlled substance in schedule I, II, III, IV, or V of section three for the purpose of demonstrating, displaying, selling or distributing as samples said controlled substances to a practitioner;

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

(3) any public official or law enforcement officer acting in the regular performance of his official duties.

(*e*) An ultimate user or research subject may lawfully possess or administer a controlled substance at the direction of a practitioner in the course of his professional practice.

(*f*) Notwithstanding any other provision of this section, the commissioner shall automatically issue to any physician, dentist, podiatrist or veterinarian who is duly authorized to practice his profession in the commonwealth a registration to dispense, other than for research pursuant to section eight, unless the registration of such physician, dentist, podiatrist or veterinarian has been suspended or revoked pursuant to the provision of section thirteen or fourteen or unless said registration is denied for cause by the commissioner pursuant to the provisions of chapter thirty A. Such registration shall continue in full force and effect unless it is suspended or revoked or unless it is recalled and a new registration issued in accordance with the rules and regulations of the commissioner.

*Section 8.* (a) No person shall carry out any research project or study involving any narcotic drug in Schedule II or the investigational use on human beings of any drug which has not been approved for safety and effectiveness by the Federal Food and Drug Administration for such use on human beings or which is used in such manner or under such condition or in such combination that does not conform to the standards of safety and effectiveness which have been determined for such drug by the Federal Food and Drug Administration for such use on human beings unless he supplies the commissioner and the commissioner of mental health with a protocol describing the research to be undertaken and with satisfactory evidence of compliance with any applicable federal law.

(b) The commissioner shall pursuant to the provisions of chapter thirty A promulgate rules and regulations establishing standards for such protocol and requiring, among such other conditions relating to the protection of the public health that the commissioner may prescribe, the establishment and maintenance of records and the making of reports to the commissioner of data, including but not limited to analytical reports by investigators, obtained as the result of the investigational use of the drug. The commissioner may waive any or all such conditions with respect to a particular research project or study described in this section if he deems it consistent with the public interest.

(c) The commissioner shall, after due notice and opportunity for hearing pursuant to the provisions of chapter thirty A, issue an order

that such research project or study be terminated if the commissioner finds (1) that the drug under investigation is unsafe under the conditions of use; or (2) that the investigators lack the necessary training and experience to conduct such research project or study; or (3) that the research protocol contains any untrue statement of a material fact, provided, that if the commissioner finds that there is an imminent hazard to health he shall order that the research project or study be discontinued upon notice and afford those persons who are undertaking the research the opportunity for an expedited hearing. The commissioner may also, after due notice and opportunity for a hearing pursuant to the provisions of chapter thirty A, order that a research project or study be discontinued if the commissioner finds (1) that the persons who are undertaking the research have failed to establish a system for maintaining required records or have repeatedly or deliberately failed to maintain such records or to make reports which are required by the commissioner or the persons undertaking the research project or study have refused to permit access to or copying or verification of such records; or (2) the methods used in or the facilities and controls used for the research project or study are inadequate to safeguard against unlawful diversion of the drug under investigation.

(d) Every person who is required pursuant to the provisions of this section to maintain records, and every person in charge or custody thereof, shall, upon request of an officer or employee designated by the commissioner, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

(e) No person who undertakes research pursuant to the provisions of this section shall use as a subject for such research any human being unless such subject or his legal representative has given in writing his informed consent based upon information about the nature, duration and purpose of the investigation; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon the subject's health or person which may reasonably be expected to come from his participation.

(f) A person who is conducting research pursuant to the provisions of this section may to the extent authorized by the commissioner and in conformity with the provisions of this section dispense any drug for investigational use without an oral or written prescription.

(g) Notwithstanding any other provision of this section, the administering or dispensing directly or prescribing of narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence upon such drugs in the course of conducting an authorized clinical investigation pursuant to a narcotic addict rehabilitation program shall be deemed to be within the meaning of the term "in the course of professional practice" as used in this chapter, provided, that federal approval, if such approval is required by federal law, is obtained prior to the initiation of such a program, and satisfactory evidence of such approval is submitted to the commissioner.

*Section 9.* (a) A physician, dentist, podiatrist or veterinarian, when duly registered pursuant to the provisions of section seven and when acting conformably with the provisions of the Federal "Com-

prehensive Drug Abuse Prevention and Control Act of 1970" or any amendment thereof, the Federal Food, Drug and Cosmetic Act, and any provision of this chapter which is consistent with federal laws, in good faith and in the course of his professional practice for the alleviation of pain and suffering or for the treatment or alleviation of disease, may possess such controlled substances as he may reasonably require for the purpose of patient treatment and may administer controlled substances, or he may cause the same to be administered under his direction by a registered nurse or licensed practical nurse.

(b) Notwithstanding the provisions of section seventeen, a physician, dentist, podiatrist or veterinarian who is duly registered pursuant to the provisions of section seven, when acting in good faith and in the legitimate practice of medicine, dentistry, podiatry or veterinary medicine, or a registered nurse or licensed practical nurse when authorized by a physician, dentist, podiatrist or veterinarian in the course of said nurse's professional practice, may dispense by delivering to an ultimate user a controlled substance in a single dose or in such quantity as is in the opinion of the physician, dentist, podiatrist or veterinarian essential for the proper treatment of the patient; provided, that such amount or quantity of said controlled substance shall not exceed that needed for the immediate treatment of the patient and that all further such controlled substances required by the person as part of his treatment shall be dispensed by prescription to the ultimate user in accordance with the provisions of this chapter.

For purposes of this subsection the words "immediate treatment" shall mean that quantity of a controlled substance which is necessary for the proper treatment of the patient until it is possible for him to have a prescription filled by a pharmacy.

(c) A registered nurse or licensed practical nurse who has obtained from a physician, dentist, podiatrist or veterinarian a controlled substance for dispensing to an ultimate user pursuant to the provisions of subsection (b) of this section or for administration to a patient pursuant to the provisions of subsection (a) of this section during the absence of such physician, dentist, podiatrist or veterinarian shall return to such physician, dentist, podiatrist or veterinarian any unused portion of such substance which is no longer required by the patient.

(d) Every physician, dentist, podiatrist or veterinarian shall in the course of his professional practice keep and maintain records, open to inspection by the commissioner during reasonable business hours, which shall contain the names and quantities of any controlled substance in Schedule I, II or III received by the practitioner; the name and address of the patient for whom the controlled substance is administered or dispensed; the name, dosage and strength per dosage unit of such controlled substance; and the date of administration or dispensing.

*Section 10.* A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes or dispenses controlled substances.

*Section 11.* The board of registration in pharmacy in the case of a pharmacy and the commissioner in any case may inspect in accor-

dance with his or its rules and regulations the establishment of a registrant or applicant for registration pursuant to the provisions of this chapter.

*Section 12.* (*a*) The board of registration in pharmacy in the case of a retail drug business or wholesale druggist and the commissioner in all other cases shall register an applicant to manufacture or distribute controlled substances included in the schedules established pursuant to section two unless he determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board of registration in pharmacy in the case of a retail drug store or a wholesale druggist and the commissioner in all other cases shall consider the following factors:

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

(2) compliance with applicable federal, state and local law;

(3) any conviction of the applicant under any federal and state law relating to any controlled substance;

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

(5) furnishing by the applicant of false or fraudulent material in any application filed under the provisions of this chapter;

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

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

(*b*) Registration under subsection (*a*) of this section shall not entitle a registrant to manufacture or distribute controlled substances in Schedules I or II established pursuant to the provisions of section two except to the extent specified in the registration.

*Section 13.* (*a*) The board of registration in pharmacy in the case of a retail drug business or wholesale druggist and the commissioner in all other cases may suspend or revoke a registration to manufacture, distribute, dispense or possess a controlled substance, after a hearing pursuant to the provisions of chapter thirty A upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed under the provisions of this chapter;

(2) has been convicted of any criminal violation under any state or federal law relating to his fitness to be registered under this chapter;

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

(4) is, upon good cause, found to be unfit or unqualified to manufacture, distribute, dispense or possess any controlled substance.

(*b*) The board of registration in pharmacy in the case of a retail drug business or wholesale druggist and the commissioner in all other cases may pursuant to the provisions of this section or section fourteen suspend or revoke any registration issued by him or it for violation of any provision of this chapter.

(c) Whenever the commissioner, the board of registration in pharmacy or the commissioner of mental health has substantial reason to believe that a registrant has committed a criminal violation of any provision of this chapter, he or it shall promptly report all pertinent facts to the district attorney in the county where the violation is believed to have occurred, or to the attorney general.

(d) The board of registration in pharmacy in the case of a retail drug business or wholesale druggist and the commissioner in all other cases may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exists.

(e) If the board of registration in pharmacy in the case of a retail drug business or wholesale druggist or the commissioner in all other cases suspends or revokes a registration, all controlled substances which are affected by such suspension or revocation order at the time of suspension or the effective date of the revocation order shall be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the commonwealth under the provisions of section forty-seven.

(f) The board of registration in pharmacy in the case of a retail drug business or wholesale druggist and the commissioner in all other cases shall promptly notify the bureau of all orders suspending or revoking a registration and all forfeitures of controlled substances.

*Section 14.* The board of registration in pharmacy in the case of a retail drug business or wholesale druggist or the commissioner in all other cases may without hearing suspend or refuse to renew any registration if he finds that there is an imminent danger to the public health or safety which warrants this action, provided he promptly affords the registrant an opportunity for a hearing under chapter thirty A. The suspension shall continue in effect until the conclusion of the proceedings including judicial review thereof, unless sooner dissolved by a court of competent jurisdiction, or withdrawn by the board of registration in pharmacy in the case of a retail drug business or wholesale druggist, or withdrawn by the commissioner in any other case.

*Section 15.* Persons registered to manufacture, distribute, dispense or possess controlled substances shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of the Federal "Comprehensive Drug Prevention and Control Act of 1970" or any amendment thereof and the Federal Food, Drug and Cosmetic Act, and with any additional rules or regulations promulgated by the board of registration in pharmacy in the case of a retail drug business or wholesale druggist or by the commissioner in all other cases.

*Section 16.* Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to such order form as may be required by the Federal "Comprehensive Drug

Abuse Prevention and Control Act of 1970" or any amendment thereof and the Federal Food, Drug and Cosmetic Act.

*Section 17.* (a) No controlled substance in Schedule II may be dispensed without the written prescription of a practitioner, except that—

(b) In emergency situations, as defined by rule or regulation of the commissioner acting jointly with the board of registration in pharmacy, drugs in said Schedule II may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy, pursuant to the provisions of subsection (a) of section twenty.

(c) A controlled substance included in Schedule III, IV, V or VI shall not be dispensed without a written or oral prescription of a practitioner.

*Section 18.* (a) A prescription for a controlled substance may be issued only by a practitioner who is;

(1) authorized to prescribe controlled substances; and

(2) registered pursuant to the provisions of this chapter.

(b) An oral prescription issued by a practitioner may be communicated to a pharmacist by an employee or agent of the practitioner.

*Section 19.* (a) A prescription for a controlled substance to be valid shall be issued for a legitimate medical purpose by a practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances shall be upon the prescribing practitioner, but a corresponding responsibility shall rest with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section one and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided by section thirty-two.

(b) No prescription shall be issued in order for a practitioner to obtain controlled substances for supplying the practitioner for the purpose of general dispensing to patients.

(c) Unless permitted by federal law, a prescription shall not be issued for the dispensing of narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence upon such drugs, in the course of conducting an authorized clinical investigation pursuant to a narcotic addict rehabilitation program.

*Section 20.* (a) Upon receiving an oral prescription for a controlled substance from an authorized practitioner, the pharmacist shall immediately reduce the prescription to writing on a prescription form and shall record the name, address and registration number of the practitioner and the name of any expressly authorized representative, the date of the prescription, the name, dosage and strength per dosage unit of the controlled substance, the serial number assigned to the prescription by the dispensing pharmacy, the name of said pharmacy, the name and address of the patient unless it is a veterinary prescrip-

tion, the directions for use and any cautionary statements required and a statement indicating the number of times to be refilled.

(b) If the prescribing practitioner is not known to the pharmacist, he shall make a reasonable effort to determine that the oral authorization came from a registered practitioner.

(c) Whenever a practitioner dispenses a controlled substance by oral prescription, such practitioner shall, within a period of not more than seven days or such shorter period that is required by federal law, cause a written prescription for the prescribed controlled substance to be delivered to the dispensing pharmacy. The prescription may be delivered to the pharmacy in person or by mail, but if delivered by mail the envelope shall be postmarked within the seven-day period or such shorter period that is required by federal law. Upon receipt, the dispensing pharmacy shall attach said prescription to the oral prescription which the pharmacy has reduced to writing. Persons charged with the enforcement of this chapter shall report violations of this subsection to the board of registration in medicine, the board of registration in dentistry, the board of registration in podiatry or the board of registration in veterinary medicine, whichever is applicable, and to the commissioner or board of registration in pharmacy, whichever is applicable.

*Section 21.* (a) The pharmacist filling a written or oral prescription for a controlled substance shall package the controlled substance in a container, affixing to the container a label showing the date of filling, the pharmacy name and address, the serial number of the prescription, the name of the patient, unless it is a veterinary prescription, the name of the prescribing practitioner, the name of the controlled substance and directions for use and cautionary statements, if any, contained in such prescription or required by law.

*Section 22.* (a) A practitioner who dispenses a controlled substance by issuing a written prescription shall state on the prescription the name, address and registration number of the practitioner, the date of delivery of the prescription, the name, dosage and strength per dosage unit of the controlled substance, the name and address of the patient unless it is a veterinary prescription, the directions for use and any cautionary statements required and a statement indicating the number of times to be refilled.

(b) A practitioner who dispenses by delivering to an ultimate user a controlled substance which is not for immediate administration shall package the controlled substance in a container, affixing to the container a label bearing the practitioner's name and address, the date of dispensing, the name of the patient unless it is a veterinary prescription, the name of the controlled substance, directions for use and any necessary cautionary statements.

*Section 23.* (*a*) A written prescription for a controlled substance in Schedule II shall become invalid five days after the date of issuance.

(*b*) A written prescription for a controlled substance in Schedule II shall not be refilled and shall be kept in a separate file.

(*c*) The pharmacist filling a written prescription for a controlled substance in Schedule II shall endorse his own signature on the face thereof.

(*d*) In regard to a controlled substance in Schedule II or III, no prescription shall be written or filled which calls for more than a thirty day supply of such substance upon any single filling.

(*e*) All prescriptions for controlled substances shall be kept for two years by the pharmacy and shall be subject to inspection pursuant to the provisions of this chapter.

(*f*) No prescription for a controlled substance shall be refilled unless the original prescription provides for such refilling and unless the number of refills has been specified in said prescription.

(*g*) A prescription shall be written in ink, indelible pencil or typewriter; and a written prescription shall be signed by the prescriber with his usual signature.

*Section 24.* (*a*) A practitioner who dispenses a controlled substance in Schedule I, II or III in the course of research conducted pursuant to the provisions of section eight or for the purpose of treating for his drug dependency a drug dependent person as defined in section thirty-eight of chapter one hundred and twenty-three shall report to the commissioner of mental health or his designee identifying information and the address of each research subject or patient to whom such controlled substance is dispensed and the name, dosage and strength per dosage unit of the substance so dispensed. Said commissioner shall maintain records of each such report.

(*b*) Such records maintained by the commissioner of mental health shall be closed to the public and shall not be available to any law enforcement officer for any purpose, nor shall they be used in the criminal prosecution of such research subject or patient pursuant to any provision of this chapter, nor shall they be admissible in evidence against such research subject or patient in any criminal proceeding.

(*c*) If the commissioner of mental health determines that the research subject or patient is receiving any controlled substance from more than one source and in quantities which he determines to be harmful to the health of the research subject or patient, said commissioner shall so notify the practitioners who have dispensed the controlled substance.

(*d*) The commissioner of mental health shall report to the commissioner any failure of a practitioner to report the information required by the provisions of this section. The failure of a practitioner to report as aforesaid shall constitute sufficient grounds for the termination of the research project or study pursuant to the provisions of subsection (*c*) of section eight or the revocation, suspension or modification of the practitioner's registration, or both.

(*e*) In order to prevent the dispensing of controlled substances to the same individual from multiple sources or the unlawful diversion of controlled substances, the commissioner of mental health shall pursuant to the provisions of chapter thirty A adopt rules and regulations for carrying out the provisions of this section.

*Section 25.* No person—

(1) who is subject to the requirements of sections six and seven and twelve to seventeen, inclusive, shall dispense a controlled substance in violation of said section seventeen;

(2) shall distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized per-

son or manufacturer a controlled substance not authorized by his registration;

(3) who is a registrant shall distribute a controlled substance in violation of section sixteen;

(4) shall remove, alter or obliterate a symbol or label required by federal law and the laws of the commonwealth;

(5) shall refuse or fail to make, keep or furnish any record, report, notification, declaration, order or order form, statement, invoice or information required under this chapter;

(6) shall refuse any entry into any premises or inspection authorized by this chapter;

(7) shall remove, break, injure or deface a seal placed upon controlled substances pursuant to this chapter or remove or dispose of substances so placed under seal;

(8) shall use, to his own advantage, or reveal, other than to duly authorized officers or employees of the United States or of the commonwealth or to the courts when relevant in any judicial proceeding under this chapter, any information acquired in the course of an inspection authorized by this chapter concerning any method or process which is a trade secret.

No person who is a registrant shall manufacture a controlled substance in Schedule I or II which is not expressly authorized by his registration.

*Section 26.* No person who is a registrant shall knowingly or intentionally;

(1) distribute a controlled substance classified in Schedule I or II in the course of his legitimate business, except pursuant to an order or an order form as required by section sixteen; or

(2) furnish false or fraudulent material information in, or omit any material information from, any application, report, record or other document required to be made, kept or filed pursuant to the provisions of this chapter.

*Section 27.* (*a*) No person, not being a physician, dentist, nurse or veterinarian registered under the laws of this commonwealth, or of the state where he resides, or a registered embalmer, manufacturer of or dealer in embalming supplies, pharmacist, wholesale druggist, manufacturing pharmacist, manufacturer of or dealer in surgical supplies, official of any government having possession of the articles hereinafter mentioned by reason of his official duties, nurse acting under the direction of a physician or dentist, employee of a hospital acting under the direction of its superintendent or officer in immediate charge, or a carrier or messenger engaged in the transportation of such articles, or a person who has received a written prescription issued under subsection (*c*), or a podiatrist who has received a certificate from the board of registration in podiatry stating that upon examination by said board he has been determined to be competent to use hypodermic needles or a scientific investigator registered pursuant to the provisions of section seven, or a person licensed under subsection (*e*), shall have in his possession a hypodermic syringe, hypodermic needle or any instrument adapted for the administration of controlled substances by injection.

(*b*) No such syringe, needle or instrument shall be delivered or sold to, or exchanged with, any person except a pharmacist, dentist, physician, veterinarian, registered embalmer, manufacturer of or dealer in embalming supplies, scientific investigator registered pursuant to the provisions of section seven, wholesale druggist, manufacturing pharmacist, manufacturer of or dealer in surgical supplies, an official of any government agency requiring the use of such syringe, needle or instrument by reason of his official duties, a nurse upon the written order of a physician or dentist, or a person who has received a written prescription issued under subsection (*c*), a podiatrist certified as aforesaid, or an employee of a hospital or scientific institution upon the written order of its superintendent or officer in immediate charge of a person licensed under subsection (*e*).

(*c*) A physician may issue to a patient under his immediate charge a written prescription to purchase, from a pharmacist only, any of the instruments specified in subsection (*a*). Such prescription shall contain the name and address of the patient, the description of the instrument prescribed and the number of instruments prescribed. The pharmacist filling the prescription shall record upon the fact of said prescription, over the signature of the pharmacist making the sale, the date of such sale. Such prescription may be renewed or refilled for one year unless the physician indicates otherwise on the prescription, and each refilling shall be noted upon the prescription. No prescription for such instruments shall be refilled after one year from date of issue. The pharmacist filling the prescription shall dispense any such instrument in a sanitary container which shall completely enclose such instrument and shall affix to said container a label bearing (1) the name and address of the pharmacy, and, if said pharmacy is in a hospital, the name and address of said hospital, (2) the name and address of the patient, (3) the file number of the prescription and (4) the name of the physician prescribing the same. The person to whom the prescription is issued shall keep such instrument in said container at all times, except when such instrument is in actual use or is in the process of being cleaned.

(*d*) A record shall be kept by the person selling such syringes, needles or instruments, which shall give the date of the sale, the name and address of the purchaser and a description of the instrument. This record shall be open to inspection pursuant to a judicial warrant or to the provisions of section thirty.

(*e*) No person, except a person registered under chapter one hundred and twelve and listed under subsection (*a*), shall sell, offer for sale, deliver or have in possession with intent to sell hypodermic syringes, hypodermic needles or any instrument adapted for the administration of controlled substances by injection, unless licensed so to do by the department. Such license shall be valid for a period of one year. The fee for such license shall be ten dollars. A license issued to a company or corporation which has more than one branch or department shall include any and all branches and departments or sections of said company or corporation.

No person except a person listed in subsections (*b*) or (*c*) shall obtain, receive or purchase a hypodermic syringe, hypodermic needle

or any instrument adapted for the administration of controlled substances by injection, unless licensed so to do by the department, or by a local board of health. A license to obtain, receive or purchase any such instrument, which license shall be valid throughout the commonwealth, may be obtained from the department upon payment of a fee of five dollars, and a license to obtain, receive or purchase any such instrument, which license shall be valid only in a particular city or town of the commonwealth, may be obtained from the local board of health upon payment of a fee of fifty cents. Said license shall be valid for one year.

*Section 28.* Upon petition of the board of registration in pharmacy or the commissioner in the case of a pharmacy, or upon petition of the commissioner in any case, the superior court shall have jurisdiction to restrain or enjoin a violation of this chapter.

*Section 29.* (a) The commissioner of mental health in cooperation with the commissioner of education shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs he shall:

(1) promote better recognition of the problem of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist the attorney general in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The commissioner of mental health shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this chapter, he shall:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and

(3) enter into contracts with public agencies, institutions of higher education and private organizations or individuals for the purpose of

conducting research, demonstrations or special projects which bear directly on misuse and abuse of controlled substances.

(c) The commissioner of mental health may enter into contracts for educational and research activities.

*Section 30.* (*a*) Administrative inspection warrants shall issue for the inspection of controlled premises in accordance with the provisions of this section. As used in this section "administrative inspection warrants" are warrants for the purpose of inspecting, copying and verifying the correctness of records, reports or other documents required to be kept by a registrant on controlled premises and for the seizure of property appropriate to such inspection. For the purposes of this section "controlled premises" means any place or area, including but not limited to any building, conveyance, warehouse, factory or establishment, in which persons registered under the provisions of this chapter or required thereunder to keep records, are permitted to hold, manufacture, compound, process, distribute, deliver, dispense or administer any controlled substance or in which such persons make or maintain records pertaining thereto.

(*b*) A district court or justice or superior court justice may, upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder and seizures of property if appropriate to the inspections. For the purposes of the issuance of administrative inspection warrants, probable cause exists upon a showing of a reasonable and valid public interest in the effective enforcement of this chapter or rules or regulations hereunder under a general plan sufficient to justify administrative inspection of an area, premises, buildings or conveyances in the circumstances specified in the application or such warrant.

(*c*) An administrative inspection warrant shall issue only upon affidavit sworn to before the court or justice establishing the grounds for issuing the warrant. If the court or justice is satisfied that grounds for the issuance of such warrant exists or that there is probable cause to believe they exist, he shall issue such warrant identifying the area, premises, buildings or conveyances to be inspected, the purpose of the inspection and, if appropriate, the type of property to be inspected, if any. Such warrant shall:

(1) be directed to the commissioner or his designee, except in the case of a pharmacy to the commissioner or to the designee of the board of registration in pharmacy or to a police officer;

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

(3) describe the item or types of property to be inspected or seized, if any;

(4) direct that it be served during normal business hours.

(*d*) An administrative inspection warrant issued and executed pursuant to the provisions of this section shall be returned to the issuing court, except if said warrant is issued by the superior court it shall be returned to any court named in such warrant, within ten days of the date of issuance thereof unless, upon a showing of a need for

additional time, the court or justice orders otherwise. If property is seized pursuant to such warrant, a copy of the inventory shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The inventory shall be made in the presence of the person executing such warrant and of the person from whose possession or premises the property was taken, if present. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for such warrant at the time it is returned to a court.

(*e*) When authorized by an administrative inspection warrant issued pursuant to this section a person designated by the commissioner, except in the case of a pharmacy by the commissioner or by the board of registration in pharmacy, upon showing such warrant to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(*f*) A person executing an administrative inspection warrant may:

(1) use reasonable force and means to execute the warrant;

(2) inspect and copy records required by this chapter to be kept;

(3) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and except as provided in subsection (h), all other things therein, including records, files, papers, processes, controls and facilities bearing on violation of this chapter; and

(4) inventory any stock of any controlled substance therein and obtain samples thereof.

(*g*) This section shall not prevent entries and administrative inspections, including seizures of property, without a warrant:

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

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

(3) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(4) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(5) in all other situations in which a warrant is not required by the laws and constitution of the commonwealth or of the United States.

(*h*) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

*Section 31.* For the purposes of establishing criminal penalties for violation of a provision of this chapter, there are established the following five classes of controlled substances:

CLASS 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
(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) Dioxaphetylbutyrate
(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 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

CLASS B

(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 paragraph (1) except that these substances shall not include the isequinoline 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 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 morpholine-1, 1-diphenyl-propane carboxylic acid
(14) Pethidine
(15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine
(16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate
(17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid
(18) Phenazocine
(19) Piminodine
(20) Racemethorphan
(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 stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers and salts of its optical isomers.

(2) Any substance which contains any quantity of methamphetamine, including its salts, isomers and salts of isomers.

(3) Phenmetrazine and its salts.

(4) Methylphenidate.

(d) 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.

## CLASS C

(a) Unless specifically excepted or unless listed in another schedule, any material compound, mixture or preparation which contains any quantity of the following subtances having a depressant effect on the central nervous system:

(1) Chorhexadol
(2) Glutethimide
(3) Lysergic acid
(4) Lysergic acid amide
(5) Methyprylon
(6) Phencyclidine
(7) Sulfondiethylmethane
(8) Sulfonethylmethane

(9) 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 of 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.
(e) Unless specifically excepted or 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, -dimethazyamphetamine
(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

CLASS D

(a)
(1) Barbital
(2) Chloral betaine
(3) Chloral hydrate
(4) Ethchlorvynol
(5) Ethinamate
(6) Methohexital
(7) Meprobamate
(8) Methylphenobarbital
(9) Paraldehyde
(10) Petrichloral
(11) Phenobarbital

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following 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) Marihuana

CLASS E

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

(1) Not more than 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.

(b) Prescription drugs other than those included in Classes A, B, C, D and subsection (a) of this Class.

*Section 32.* Except as authorized by this chapter, no person shall knowingly or intentionally manufacture, distribute, dispense or possess with intent to manufacture, distribute or dispense a controlled substance; or create, distribute, dispense or possess with intent to distribute or dispense a counterfeit subtance.

Whoever violates any provision of this section relative to a controlled substance in Class A or B of section thirty-one shall be punished by imprisonment in the state prison for not more than ten years or in a jail or house of correction for not more than two and one half years or by a fine of not more than twenty thousand dollars, or both such fine and imprisonment. Whoever violates any provision of this section after one or more prior convictions of a felony under any provision of this chapter, or under a corresponding provision of prior law relating to the sale or manufacture of a narcotic drug as defined in said earlier law, shall be punished by imprisonment in the state prison for not less than five years and not more than fifteen years and by a fine of not more than thirty thousand dollars; except that if a person has a prior conviction of any offense involving the manufacture, distribution or dispensing of heroin or the possession with intent to manufacture, distribute or dispense heroin, such person shall be punished by imprisonment in the state prison for not less than ten years nor more than twenty-five years and by a fine of not more than thirty thousand dollars.

Whoever violates any provision of this section relative to a controlled substance in Class C of section thirty-one shall be punished by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one half years, or by a fine of not more than ten thousand dollars, or by both such fine and imprisonment. Whoever violates any provision of this section after one or more prior convictions of a felony under any provision of this chapter, or under a corresponding provision of prior law relating to the sale or manufacture of a narcotic drug as defined in said earlier law, shall be punished by imprisonment in the state prison for not less than three years nor more than ten years and by a fine of not more than twenty thousand dollars.

Whoever violates any provision of this section relative to controlled substances in Class D of section thirty-one shall be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than five thousand dollars, or both. Whoever violates any provision of this paragraph after one or more prior convictions of an offense under any provision of this section, or of a felony under any provision of this chapter, or under a provision of prior law relative to the sale or manufacture of a narcotic drug or a harmful drug as defined in said earlier law shall be punished by imprisonment in the state prison for not less than two years nor more than five years and by a fine of not more than ten thousand dollars.

Whoever violates any provision of this section relative to Schedule E of section thirty-one shall be punished by imprisonment for not more than one year or by a fine of not more than twenty-five hundred dollars, or both. Whoever violates any provision of this paragraph after one or more prior convictions of an offense under any provision of this section, or of a felony under any provision of this chapter, or under a provision of prior law relative to the sale or manufacture of a narcotic drug or a harmful drug as defined in said earlier law, shall be punished by imprisonment for not less than one year nor more than two years and by a fine of not more than five thousand dollars

*Section 33.* (*a*) No person shall knowingly or intentionally use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person.

(*b*) No person shall knowingly or intentionally acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge, including but not limited to the forgery or falsification of a prescription or the nondisclosure of a material fact in order to obtain a controlled substance from a practitioner.

(*c*) Whoever violates any provision of this section shall be punished by imprisonment in the state prison for not more than four years or in a house of correction for not more than two and one half years or by a fine of not more than twenty thousand dollars, or by both such fine and imprisonment. Whoever violates any provision of this section after one or more prior convictions of a violation of this section, or of a felony under any other provision of this chapter, or under a provision of prior law relative to the sale or manufacture of a narcotic drug or a harmful drug as defined in said earlier law shall be punished by imprisonment in the state prison for not more than eight years or in a jail or house of correction for not more than two and one half years, or by a fine of not more than thirty thousand dollars or by both such fine and imprisonment.

*Section 34.* No person knowingly or intentionally shall possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the provisions of this chapter. Except as hereinafter provided, any person who violates this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. Any person who violates this section by possessing heroin shall be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both. Any person who violates this section by possession of marihuana or a controlled substance in Class E of section thirty-one shall be punished by imprisonment in a house of correction for not more than six months or a fine of five hundred dollars, or both. Except for an offense involving a controlled substance in Class E of section thirty-one, whoever violates the provisions of this section after one or more convictions of a violation of this section or of a felony under any other provisions of this chapter, or of a corresponding provision of earlier law relating to the sale or manufacure of a narcotic drug as defined in said earlier law, shall be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both.

If any person who is charged with a violation of this section has not previously been convicted of a violation of any provision of this chapter or other provision of prior law relative to narcotic drugs or harmful drugs as defined in said prior law, or of a felony under the laws of any state or of the United States relating to such drugs, has had his case continued without a finding to a certain date, or has

been convicted and placed on probation and if, during the period of said continuance or of said probation, such person does not violate any of the conditions of said continuance or said probation, then upon the expiration of such period the court may, in the manner provided by law, dismiss the proceedings against him and may order expunged all official records relating to his arrest, indictment, conviction, probation, continuance or discharge pursuant to this section; provided, however, that departmental records which are not public records, maintained by police and other law enforcement agencies shall not be so expunged; and provided further that such a record shall be maintained in a separate file by the department of probation solely for the purpose of use by the courts in determining whether or not in subsequent proceedings such person qualifies under this section. The record maintained by the department of probation shall contain only identifying information concerning the person and a statement that he has had his record expunged pursuant to the provisions of this section. Any conviction, the record of which has been expunged under this section, shall not be deemed a conviction for purposes of any disqualification or for any other purpose. No person as to whom such expungement has been ordered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, indictment, conviction, dismissal, continuance, expungement, or any other related court proceeding, in response to any inquiry made of him for any purpose.

Notwithstanding any other penalty provision of this section, any person who is convicted for the first time under this section for the possession of marihuana and who has not previously been convicted of any offense pursuant to the provisions of this chapter or any provision of prior law relating to narcotic drugs or harmful drugs as defined in said prior law shall be placed on probation unless such person does not consent thereto or unless the court files a written memorandum stating the reasons for not so doing. Upon successful completion of said probation, the case shall be dismissed and records shall be expunged.

*Section 35.* Any person who is knowingly present at a place where heroin is kept or deposited in violation of the provisions of this chapter, or any person who is in the company of a person, knowing that said person is in possession of heroin in violation of the provisions of this chapter shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or both; provided, however, that the provisions of section thirty-four relative to probation and repeated violations shall apply to him.

*Section 36.* If a police officer finds a child present where said officer finds a substance which he reasonably believes to be a controlled substance listed in Class A, B or C of section thirty-one kept or possessed in violation of any provision of this chapter, and if the police officer reasonably believes that the child has not reached his seventeenth birthday and that the child knew of the presence of such controlled substance, the police officer may lawfully take such child into protective custody for a period not to exceed four hours. Persons

having custody of a child under this section shall make reasonable efforts to notify the child's parent or guardian or other person having lawful custody. Such persons shall be considered to be acting in the conduct of their official duties and shall not be held criminally or civilly liable for such acts. A child detained pursuant to the provisions of this section shall not be considered to have been arrested or to have a criminal record for any purpose; however, only a departmental record of custody shall be made by the officer indicating the circumstances of custody. The procedures and processes provided by this section for the care, protection and custody of children are not exclusive but are in addition to all others provided by law.

*Section 37.* Whoever steals a controlled substance from a registered manufacturer, wholesale druggist, pharmacy or other person authorized to dispense or possess any controlled substance shall be punished by imprisonment in the state prison for not more than ten years or in a jail or house of correction for not more than two and one half years or by a fine of not more than five hundred dollars.

*Section 38.* Any person who violates any provision of subsection (a) of section twenty-four or of section twenty-five, twenty-six or twenty-seven shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or both. Whoever violates any of the provisions of any of said sections after one or more prior convictions of a violation of any provision of this chapter or of a provision of prior law relating to the sale or manufacture of narcotic drugs or harmful drugs as defined in said prior law shall be punished by imprisonment for not more than two years or by a fine of not more than two thousand dollars, or both.

*Section 39.* Any person who violates any provision of section twenty-one or twenty-two shall be punished by imprisonment for not more than six months or by a fine of not more than fifteen hundred dollars, or by both. Whoever violates any of the provisions of said sections after one or more prior convictions of a violation of any provision of this chapter or of a provision of prior law relating to narcotic drugs or harmful drugs as defined in said prior law shall be punished by imprisonment for not more than two years or by a fine of not more than two thousand dollars, or both.

*Section 40.* Whoever conspires with another person to violate any provision of this chapter shall be punished by imprisonment or fine, or both, which punishment shall not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the conspiracy.

*Section 41.* A police officer shall have the authority to arrest without a warrant:

(a) any person committing in his presence any offense set forth in this chapter;

(b) any person who he has probable cause to believe has committed or is committing a felony set forth under the provisions of this chapter; or

(c) any person who he has probable cause to believe has committed or is committing a violation of the provisions of sections twenty-seven, thirty-two, thirty-three, thirty-four, thirty-five, thirty-seven and forty-one.

*Section 42.* The commissioner and the attorney general shall cooperate with federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end they may:

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

(2) Coordinate and cooperate in training programs concerning the enforcement of laws governing controlled substances at local and state levels;

(3) Cooperate with the bureau by establishing a centralized unit to accept, catalog, file and collect statistics including statistics regarding drug dependent persons and controlled substance law offenders within the commonwealth and make the information available for federal, state and local law enforcement purposes, provided that they shall not furnish the name or identity of a patient or research subject; and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

*Section 43.* Notwithstanding any other provisions of this chapter, no practitioner shall dispense, distribute, administer or possess any controlled substance except in conformity with the provisions of the Federal "Comprehensive Drug Abuse Prevention and Control Act of 1970" or any amendment thereof and the Federal Food, Drug and Cosmetic Act.

*Section 44.* If any person is found not guilty of the violation of any provision of section thirty-four or if a complaint against him is dismissed or an indictment nol prossed for a violation of said section, the court shall order all official records relating to his arrest, indictment, conviction, continuance or discharge to be expunged; provided, however, that departmental records maintained by police and other law enforcement agencies which are not public records shall not be expunged.

No person as to whom such expungement has been ordered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise making a false statement by reason of his failure to recite or acknowledge such arrest, indictment, disposition, expungement or any other related court proceeding, in response to any inquiry made of him for any purpose.

*Section 45.* Any person arrested for or charged with the criminal violation of any provision of this chapter which constitutes a felony may at the time of arrest or as soon thereafter as is practicable be photographed and fingerprinted according to the system of the state bureau of identification and upon conviction any such fingerprints and photographs shall be made a part of permanent records of the police department of the municipality where the arrest took place, and without delay two copies of the fingerprints and photographs shall be forwarded, with such other description as may be required and a written history of the offense, to the state bureau of identification.

*Section 46.* No practitioner except a facility which is licensed by the commissioner of mental health pursuant to the provisions of

chapter one hundred and twenty-three for the treatment of drug dependent persons as defined in said chapter shall solicit by public advertisement or otherwise the application to him for prescriptions for, or sales of, controlled substances nor publicly advertise any treatment the principal element of which consists in the administering, dispensing or delivering of a controlled substance, except that a wholesale druggist or manufacturing pharmacist may advertise in journals and publications intended for circulation among the medical profession and drug trade generally.

*Section 47.* (*a*) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(1) All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(2) All materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing or exporting any controlled substance in violation of this chapter.

(3) All conveyances, including aircraft, vehicles or vessels which are used, or are intended for use, to transport, conceal or otherwise to facilitate the manufacture, dispensing or distribution of or possession with intent to manufacture, dispense or distribute a controlled substance in violation of the provisions of section thirty-two.

(4) All books, records and research, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this chapter.

(*b*) Property subject to forfeiture under subparagraphs (1), (2) and (4) of subsection (a) of this section shall be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Property subject to forfeiture under subparagraph (1) of subsection (a) of this section shall be destroyed, regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise.

(c) The court shall order forfeiture of all conveyances subject to the provisions of subparagraph (3) of subsection (a) of this section, except as follows:

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party of privy to a violation of this chapter.

(2) No conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of the commonwealth, or of any state.

(3) No conveyance shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance was used in and for the business of unlawfully manufacturing, dispensing or

distributing controlled substances. Proof that the conveyance was used to facilitate the unlawful dispensing, manufacturing or distribution of, or possession with intent unlawfully to manufacture, dispense or distribute, controlled substances on three or more different dates shall be prima facie evidence that the conveyance was used in and for the business of unlawfully manufacturing, dispensing or distributing controlled substances.

(4) No conveyance used to facilitate the unlawful manufacturing, dispensing, or distribution of, or the possession with intent unlawfully to manufacture, dispense or distribute, a substance, not itself a controlled substance, containing any marihuana shall be forfeited if the net weight of the substance so manufactured, dispensed, or distributed or possessed with intent to manufacture, dispense or distribute, is less than ten pounds in the aggregate.

(*d*) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance subject to forfeiture under the provisions of subparagraph (3) of subsection (a) of this section. Such petition shall be filed in the court having jurisdiction over said conveyance or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Such proceeding shall be deemed a civil suit in equity, in which the commonwealth shall have the burden of proving all material facts by a preponderance of the evidence, and the owner of said conveyance or other person claiming thereunder shall have such burden as to all exceptions set forth in subsection (c) of this section. The court shall order the commonwealth to give notice by certified or registered mail to the owner of said conveyance and to such other person as appear to have an interest therein and shall promptly, but not less than two weeks after notice, hold a hearing on the petition. At such hearing the court shall hear evidence and make findings of fact and enter conclusions of law, and shall thereupon issue a final order, from which the parties shall have such right of appeal as from a decree in equity. Such final order shall provide for disposition of said conveyance by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance, if any, shall be deposited in the treasury of the commonwealth.

(*e*) Any officer, department or agency having custody of said property or having disposed of said property shall keep and maintain full and complete records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state drug control laws. Persons making final disposition or destruction of said property under court order shall report, under oath,

to the court the exact circumstances of said disposition or destruction.

(*f*) During the pendency of the proceedings the court may issue at the request of the commonwealth *ex parte* any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody. Process for seizure of said property shall issue only upon a showing of probable cause, and the application therefor and the issuance, execution and return thereof shall be subject to the provisions of chapter two hundred and seventy-six, so far as applicable.

(*g*) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths may be seized by any police officer and summarily forfeited to the commonwealth.

(*h*) The failure, upon demand by a police officer of the person in occupancy or in control of land or premises upon which the species of plants are growing to produce an appropriate registration, or proof that he is a holder thereof, constitutes authority for the seizure and forfeiture of the plants.

*Section 48.* If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

SECTION 2. Sections one hundred and eighty-seven A, one hundred and eighty-seven B, one hundred and eighty-seven C, one hundred and eighty-seven E, one hundred and eighty-seven F, one hundred and eighty-seven G, one hundred and eighty-seven H, one hundred and ninety-seven, one hundred and ninety-eight, one hundred and ninety-eight A, one hundred and ninety-eight B, one hundred and ninety-nine, one hundred and ninety-nine A, one hundred and ninety-nine B, one hundred and ninety-nine C, one hundred and ninety-nine D, one hundred and ninety-nine E, one hundred and ninety-nine F, one hundred and ninety-nine G, two hundred, two hundred A, two hundred and one, two hundred and two, two hundred and three, two hundred and four, two hundred and five, two hundred and six, two hundred and seven, two hundred and eight, two hundred and nine, two hundred and ten, two hundred and ten A, two hundred and eleven, two hundred and eleven A, two hundred and twelve, two hundred and twelve A, two hundred and twelve B, two hundred and thirteen, two hundred and thirteen A, two hundred and fourteen, two hundred and fifteen, two hundred and sixteen, two hundred and seventeen, two hundred and seventeen A, two hundred and seventeen B, two hundred and seventeen C, two hundred and seventeen D, two hundred and seventeen E of chapter ninety-four of the General Laws are hereby repealed.

SECTION 3. Section 21 of chapter 90 of the General Laws is hereby further amended by striking out the last sentence, as appearing in chapter 332 of the acts of 1963, and inserting in place thereof the following sentence:—An investigator or examiner appointed under section twenty-nine may arrest without warrant, keep in custody for a

like period, bring before a magistrate and proceed against in like manner any person operating a motor vehicle while under the influence of intoxicating liquor or marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, irrespective of his possession of such license.

SECTION 4. Paragraph (a) of subdivision (1) of section 24 of said chapter 90 is hereby amended by striking out the first sentence, as most recently amended by section 2 of chapter 369 of the acts of 1963, and inserting in place thereof the following sentence:—Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle while under the influence of intoxicating liquor, or of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue, shall be punished by a fine of not less than thirty-five nor more than one thousand dollars, or by imprisonment for not less than two weeks nor more than two years, or both such fine and imprisonment.

SECTION 5. Chapter 94 of the General Laws is hereby amended by striking out section 187D, as most recently amended by section 8 of chapter 443 of the acts of 1970, and inserting in place thereof the following section:—

*Section 187D.* Whoever for the purpose of evading or assisting in the evasion of any provision of sections one hundred and eighty-six, one hundred and eighty-seven, one hundred and eighty-eight to one hundred and ninety-five, inclusive, falsely represents that he is a physician, dentist, podiatrist or veterinarian, or that he is a manufacturer or jobber in drugs, or a licensed wholesale druggist, or that he is a pharmacist actively engaged in the business as such, or that he is a superintendent or official in immediate charge of an incorporated hospital, college or scientific institution shall be punished by a fine of not more than one thousand dollars or by imprisonment in a jail or house of correction for not more than two years or both.

SECTION 6. Chapter 123 of the General Laws is hereby amended by striking out section 38, inserted by section 4 of chapter 888 of the acts of 1970, and inserting in place thereof the following section:—

*Section 38.* The following words as used in this section and sections thirty-nine to fifty-five, inclusive, shall, unless the context requires otherwise, have the following meanings:—

"Administrator", the person in charge of the operation of a facility or a penal facility, or his designee.

"Advisory board", the drug rehabilitation advisory board.

"Dependency related drug", a narcotic or harmful drug or a controlled substance as defined in section one of chapter ninety-four C.

"Director", the assistant commissioner of mental health for drug rehabilitation.

"Division", the division of drug rehabilitation.

"Drug addict", a drug dependent person who, due to the use of a dependency related drug, has developed a tolerance thereto such that abrupt termination of use thereof produces or would produce withdrawal symptoms.

"Drug dependent person", a person who is unable to function effectively and whose inability to do so causes or results from the use of a dependency related drug.

"Drug offense", an act or omission relating to a dependency related drug which constitutes an offense pursuant to section twenty-one or subdivision (1) of section twenty-four of chapter ninety, section eight of chapter ninety B, chapter ninety-four C or section sixty-two of chapter one hundred and thirty-one.

"Facility", any public or private place, or portion thereof, which is not part of or located at a penal institution and which is not operated by the federal government, providing services especially designed for the treatment of drug dependent persons or persons in need of immediate assistance due to the use of a dependency related drug.

"Independent psychiatrist", a psychiatrist, other than one holding an office or appointment in any department, board or agency of the commonwealth, or in any public facility or penal facility.

"Independent physician", a physician, other than one holding an office or appointment, in any department, board or agency of the commonwealth, or in any public facility or penal facility.

"Patient", a person admitted to any facility for treatment.

"Penal facility", an institution, or any part thereof, other than an institution, or any part thereof operated by the federal government, for the detention or confinement of persons accused or convicted of crime, including, but not limited to, jails, prisons, houses of correction and correctional institutions, providing services especially designed for the treatment of drug dependent persons.

"Physician", a physician registered in accordance with chapter one hundred and twelve.

"Private facility", a facility, other than one operated by the federal government, the commonwealth or any political subdivision thereof.

"Psychiatrist", a physician who has board certification or board eligibility in psychiatry.

"Public facility", a facility operated by the commonwealth or any political subdivision thereof.

"Sale", includes but is not limited to any dispensing or distribution which constitutes an offense pursuant to the provisions of chapter ninety-four C.

"Tolerance", a state in which increased dosage of a dependency related drug is required to produce the physiological and psychological effects of prior dosages.

"Treatment", services and programs for the care and rehabilitation of drug dependent persons or persons in need of immediate assistance due to the use of a dependency related drug, including, but not limited to, medical, psychiatric, psychological, vocational, educational and recreational services and programs.

"Withdrawal", the involuntary physical and psychological reaction or illness which occurs when the intake of a dependency related drug to which the user has developed a tolerance is abruptly terminated.

SECTION 7. Chapter 276 is hereby amended by striking out section 3, as most recently amended by section 12 of chapter 347 of the acts of 1967, and inserting in place thereof the following section:—

*Section 3.* If an officer in the execution of a search warrant finds property or articles therein described, he shall seize and safely keep

them, under the direction of the court or justice, so long as necessary to permit them to be produced or used as evidence in any trial. As soon as may be, thereafter, all property seized under clause First of section one shall be restored to the owners thereof; and all other property seized in execution of a search warrant shall be disposed of as the court or justice orders and may be forfeited and either sold or destroyed, as the public interest requires, in the discretion of the court or justice, except:

(a) Diseased animals or carcasses thereof, or any tainted, diseased, corrupt, decayed or unwholesome meat, fish, vegetables, produce, fruit or provisions of any kind, or the meat of any calf killed when less than two weeks old, or any product thereof kept or concealed with intent to kill, sell or offer the same for sale for food, shall be destroyed or disposed of in accordance with section one hundred and forty-six of chapter ninety-four by the board of health or by an officer designated by the court or justice; and diseased animals found to have been kept or concealed in a particular building, place or enclosure shall be destroyed or disposed of by the division of animal health and department of agriculture without compensation to the owners thereof.

(b) Rifles, shotguns, pistols, knives or other dangerous weapons which have been found to have been kept, concealed or used unlawfully or for an unlawful purpose shall be forfeited to the commonwealth and delivered forthwith to the commissioner of public safety for destruction or preservation in the discretion of the commissioner of public safety.

(c) Money seized under clause Third of section one shall be forfeited and paid over to the state treasurer.

(d) Any property the forfeiture and disposition of which is specified in any general or special law shall be disposed of in accordance therewith.

SECTION 8. Chapter 277 of the General Laws is hereby amended by striking out section 38, as amended by section 5 of chapter 660 of the acts of 1957, and inserting in place thereof the following section:—

*Section 38.* In a prosecution under any provision of chapter ninety-four C, for unlawfully manufacturing, dispensing or distributing a controlled substance in violation of any provision of said chapter, it shall be sufficient to allege that the defendant did unlawfully manufacture, dispense or distribute, as the case may be, such alleged substance, without any further allegations, without naming the person to whom it dispensed or distributed, or quantity of the substance; but the defendant shall be entitled to a bill of particulars under section forty. In such a prosecution, a defendant relying upon a prescription, written order, receipt, registration, appointment or authority or exemption as a defense or justification shall prove the same, and until he has proved it the presumption shall be that he is not so justified or authorized.

SECTION 9. Chapter ninety-four C of the General Laws, inserted by section one of this act, shall take effect on July the first, nineteen hundred and seventy-two and any registration or license issued under chapter ninety-four of the General Laws prior to said effective date shall terminate on said date. *Approved November 11, 1971.*