ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

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

§ 3300-a. Legislative purposes. The purposes of this article are:

1. to combat illegal use of and trade in controlled substances; and

2. to allow legitimate use of controlled substances in health care, including palliative care; veterinary care; research and other uses authorized by this article or other law; under appropriate regulation and subject to this article, title eight of the education law, and other applicable law.

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

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

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

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

1. "Addict" means a person who habitually uses a controlled substance for a non-legitimate or unlawful use, and who by reason of such use is dependent thereon.

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

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

4. "Concentrated Cannabis" means (a) the separated resin, whether crude or purified, obtained from a plant of the genus Cannabis; or (b) a material, preparation, mixture, compound or other substance which contains more than two and one-half percent by weight of delta-9 tetrahydrocannabinol, or its isomer, delta-8 dibenzopyran numbering system, or delta-1 tetrahydrocannabinol or its isomer, delta 1 (6) monoterpene numbering system.

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

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

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

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

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

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

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

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

13. "Drug" means (a) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; and (c) substances (other than food) intended to affect the structure or a function of the body of man or animal. It does not include devices or their components, parts, or accessories.

14. "Federal agency" means the Drug Enforcement Administration, United States Department of Justice, or its successor agency.

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

16. "Federal registration number" means such number assigned by the Federal agency to any person authorized to manufacture, distribute, sell, dispense or administer controlled substances.

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

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

19. "License" means a written authorization issued by the department or the New York state department of education permitting persons to engage in a specified activity with respect to controlled substances.

20. "Manufacture" means the production, preparation, propagation, compounding, cultivation, conversion or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging or labeling of a controlled substance: (a) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or (b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or (c) by a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.

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

22. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate; (b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (a), but not including the isoquinoline alkaloids of opium; (c) opium poppy and poppy straw.

23. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 3306 of this article, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

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

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

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

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

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

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

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

31. "Prescription" shall mean an official New York state prescription, an electronic prescription, an oral prescription, an out-of-state prescription, or any one.

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

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

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§ 3304. Prohibited acts.

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

2. It shall be unlawful for any person to possess or have under his control an official New York state prescription form except as expressly allowed by this article.

Amended by 547/81 see PBH3304*

§ 3305. Exemptions.

1. The provisions of this article restricting the possession and control of controlled substances and official New York state prescription forms shall not apply:

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

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

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

(d) to a duly authorized agent of an incorporated society for the prevention of cruelty to animals or a municipal animal control facility for the limited purpose of buying, possessing, and dispensing to registered and certified personnel, ketamine hydrochloride to anesthetize animals and/or sodium pentobarbital to euthanize animals, including but not limited to dogs and cats. The department shall, consistent with the public interest, register such duly authorized agent and such agent shall file, on a quarterly basis, a report of purchase, possession, and use of ketamine hydrochloride and/or sodium pentobarbital, which report shall be certified by the society for the prevention of cruelty to animals or municipal animal control facility as to its accuracy and validity. This report shall be in addition to any other record keeping and reporting requirements of state and federal law and regulation. The department shall adopt rules and regulations providing for the registration and certification of any individual who, under the direction of the duly authorized and registered agent of an incorporated society for the prevention of cruelty to animals, or municipal animal control facility, uses ketamine hydrochloride to anesthetize animals and/or sodium pentobarbital to euthanize animals, including but not limited to dogs and cats. The department may also adopt such other rules and regulations as shall provide for the safe and efficient use of ketamine hydrochloride and/or sodium pentobarbital by incorporated societies for the prevention of cruelty to animals and animal control facilities. Nothing in this paragraph shall be deemed to waive any other requirement imposed on incorporated societies for the prevention of cruelty to animals and animal control facilities by state and federal law and regulation.

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

exemption as may be necessary to protect against diversion or misuse of the controlled substance.

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

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

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

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

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

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

Schedule I. (a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Opiates. 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 (for purposes of 3-methylfentanyl only, the term isomer includes the optical and geometric isomers):

(1) Acetyl-alpha-methylfentanyl (N-{1-(-methyl-2-phenethyl) -4-piperidinyl} -N-phenylacetamide.

(2) Acetylmethadol.

(3) Allylprodine.

(4) Alphacetylmethadol (except levo- alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadylacetate or LAAM).

(5) Alphameprodine.

(6) Alphamethadol.

(7) Alpha-methylfentanyl (N-{1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl} propionanilide; 1-(1-methyl-2-phenylethyl) -4-(N-propanilido) piperidine).

(8) Alpha-methylthiofentanyl (N-{1-methyl-2)2-thienyl) ethyl-4-piperidinyl} -N-phenylpropanamide).

(9) Beta-hydroxyfentanyl (N-{1-2 (2-hydroxy-2-phenethyl)- 4-piperidinyl} -N-phenylpropanamide).

(10) Beta-hydroxy-3-methylfentanyl (other name: N-{1-(2-hydroxy-2-phenethyl) -3-methyl -4-piperidinyl} -N-phenylpropanamide.

(11) Benzethidine.

(12) Betacetylmethadol.

(13) Betameprodine.

(14) Betamethadol.

(15) Betaprodine.

(16) Clonitazene.

(17) Dextromoramide.

(18) Diampromide.

(19) Diethylthiambutene.

(20) Difenoxin.

(21) Dimenoxadol.

(22) Dimepheptanol.

(23) Dimethylthiambutene.

(24) Dioxaphetyl butyrate.

(25) Dipipanone.

(26) Ethylmethylthiambutene.
(27) Etonitazene.
(28) Etoxeridine.
(29) Furethidine.
(30) Hydroxypethidine.
(31) Ketobemidone.
(32) Levomoramide.
(33) Levophenacylmorphan.
(34) 3-Methylfentanyl (N-{3-methy1-1- (2- phenylethyl -4-piperidyl} -N-phenylpropanamide).
(35) 3-Methylthiofentanyl (N-{3-methyl-1- (2-thienyl)ethyl -4-piperidinyl} -N-phenylpropanamide).
(36) Morpheridine.
(37) MPPP (1-methyl -4-phenyl -4-propionoxypiperidine).
(38) Noracymethadol.
(39) Norlevorphanol.
(40) Normethadone.
(41) Norpipanone.
(42) Para-fluorofentanyl (N- (4-fluorophenyl) -N-{1- (2-phenethyl) -4-piperidinyl} -propanamide.
(43) PEPAP (1- (-2-phenethyl) -4-phenyl -4-acetoxypiperidine.
(44) Phenadoxone.
(45) Phenampromide.
(46) Phenomorphan.
(47) Phenoperidine.
(48) Piritramide.
(49) Proheptazine.
(50) Properidine.
(51) Propiram.
(52) Racemoramide.
(53) Thiofentanyl (N-phenyl-N-{1- (2-thienyl) ethyl -4- piperidinyl} -propanamide.
(54) Tilidine.
(55) Trimeperidine.

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its 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) Drotebanol.
(10) Etorphine (except hydrochloride salt).
(11) Heroin.
(12) Hydromorphinol.
(13) Methyldesorphine.
(14) Methyldihydromorphine.
(15) Morphine methylbromide.
(16) Morphine methylsulfonate.
(17) Morphine-N-oxide.
(18) Myrophine.
(19) Nicocodeine.
(20) Nicomorphine.
(21) Normorphine.
(22) Pholcodine.
(23) Thebacon.

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):
(EXPLANATION--Within the following chemical designations, character symbol substitutions were made from the original text: "@" = Greek alpha, "&" = Greek beta, "'" = prime mark and "**/**" = triangle.)

(1) 4-bromo-2, 5-dimethoxy-amphetamine Some trade or other names: 4-bromo-2, 5-dimethoxy-@-methylphenethylamine; 4-bromo-2, 5-DMA.
(2) 2, 5-dimethoxyamphetamine Some trade or other names: 2, 5-dimethoxy-@-methylphenethylamine; 2, 5-DMA.
(3) 4-methoxyamphetamine Some trade or other names: 4-methoxy-@-methylphenethylamine; paramethoxyamphetamine, PMA.
(4) 5-methoxy-3, 4-methylenedioxy - amphetamine.
(5) 4-methyl-2, 5-dimethoxy-amphetamine Some trade and other names: 4-methyl-2, 5-dimethoxy-@-methylphenethylamine; "DOM"; and "STP".
(6) 3, 4-methylenedioxy amphetamine.
(7) 3, 4, 5-trimethoxy amphetamine.
(8) Bufotenine Some trade and other names: 3-(&-dimethylaminoethyl)-5 hydroxindole; 3-(2-dimethylaminoethyl)- 5-indolol; N, N-dimethylserotonin; -5-hydroxy-N, N-dimethyltryptamine; mappine.
(9) Diethyltryptamine Some trade and other names: N, N-diethyltryptamine; DET.
(10) Dimethyltryptamine Some trade or other names: DMT.
(11) Ibogane Some trade and other names: 7-ethyl-6, 6&, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5h-pyrido {1',2':1,2} azepino {5,4-b} indole: tabernanthe iboga.

(12) Lysergic acid diethylamide.

(13) Marihuana.

(14) Mescaline.

(15) Parahexyl. Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetra hydro-6,6,9-trimethyl-6H-dibenfo{b,d} pyran.

(16) Peyote. Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts.

(17) N-ethyl-3-piperidyl benzilate.

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

(19) Psilocybin.

(20) Psilocyn.

(21) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

Δ1 cis or trans tetrahydrocannabinol, and their optical isomers

Δ6 cis or trans tetrahydrocannabinol, and their optical isomers

Δ3, 4 cis or trans tetrahydrocannabinol, and its optical isomers

(since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).

(22) Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine cyclohexamine, PCE.

(23) Pyrrolidine analog of phencyclidine. Some trade or other names 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy, PHP.

(24) Thiophene analog of phencyclidine. Some trade or other names: 1-{1-(2-thienyl)-cyclohexyl}-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP.

(25) 3,4-methylenedioxymethamphetamine (MDMA).

(26) 3,4-methylendioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA.

(27) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-hydroxy MDA.

(28) 1-{1- (2-thienyl) cyclohexyl} pyrrolidine. Some other names: TCPY.

(29) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; Alpha-ethyl-1H-indole-3-ethanamine; 3- (2-aminobutyl) indole; Alpha-ET or AET.

(30) 2,5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.

(31) 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names:

2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.

(32) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers.

(e) Depressants. 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, including its 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) Mecloqualone.

(2) Methaqualone.

(3) Phencyclidine.

(4) Gamma hydroxybutyric acid, and salt, hydroxybutyric compound, derivative or preparation of gamma hydroxybutyric acid, including any isomers, esters and ethers and salts of isomers, esters and ethers of gamma hydroxybutyric acid, except gamma-butyrolactone, whenever the existence of such isomers, esters and ethers and salts is possible within the specific chemical.

(5) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number (96-48-0) when any such substance is intended for human consumption.

(6) 1,4 butanediol, including butanediol; butane-1,4-diol; 1,4-butylene glyco; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol with Chemical Abstract Service number (110-63-4) when any such substance is intended for human consumption.

(f) Stimulants. 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, including its salts, isomers, and salts of isomers:

(1) Fenethylline.

(2) N-ethylamphetamine.

(3) (+ -)cis-4-methylaminorex ((+ -)cis-4,5-dihydro-4-methyl -5-phenyl -2-oxazolamine).

(4) N,N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha- trimethylphenethylamine).

(5) Methcathinone (some other names: 2-(methylamino) - propiophenone; alpha-(methylamino) propiophenone; 2-(methylamino) -1-phenylpropan-1-one; alpha-N- methylaminopropiophenone; monomethylpropion; ephedrone, N-methylcathinone, methylcathinone; AL-464; AL-422; AL-463 and UR1432), its salts, optical isomers and salts of optical isomers.

(6) Aminorex. Some other names: aminoxaphen; 2-amino-5-phenyl

-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine.

(7) Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

(8) N-benzylpiperazine (some other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers.

Schedule II. (a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Substances, vegetable origin or chemical synthesis. 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, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

1. Raw opium.
2. Opium extracts.
3. Opium fluid.
4. Powdered opium.
5. Granulated opium.
6. Tincture of opium.
7. Codeine.
8. Ethylmorphine.
9. Etorphine hydrochloride.
10. Hydrocodone.
11. Hydromorphone.
12. Metopon.
13. Morphine.
14. Oxycodone.
15. Oxymorphone.
16. Thebaine.
17. Dihydroetorphine.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in this section, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances including cocaine and ecgonine, their salts, isomers, and salts of isomers, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain

cocaine or ecgonine.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

(c) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its 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, dextrorphan and levopropoxyphene excepted:

(1) Alfentanil.
(2) Alphaprodine.
(3) Anileridine.
(4) Bezitramide.
(5) Bulk dextropropoxyphene (non-dosage forms).
(6) Carfentanil.
(7) Dihydrocodeine.
(8) Diphenoxylate.
(9) Fentanyl.
(10) Isomethadone.
(11) Levo-alphacetylmethadol (also known as levo-alpha-acetylmethadol, levomethadylacetate or LAAM).
(12) Levomethorphan.
(13) Levorphanol.
(14) Metazocine.
(15) Methadone.
(16) Methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
(17) Moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic
(18) Pethidine (meperidine).
(19) Pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
(20) Pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
(21) Pethidine-intermediate-C, 1-methyl-4- phenylpiperidine-4-carboxylic acid.
(22) Phenazocine.
(23) Piminodine.
(24) Racemethorphan.
(25) Racemorphan.
(26) Sufentanil.
(27) Remifentanil.

(d) Stimulants. 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) Methamphetamine, its salts, isomers, and salts of its isomers.
(3) Phenmetrazine and its salts.
(4) Methylphenidate.

(e) Depressants. 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, including its 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) Amobarbital.
(2) Glutethimide.
(3) Pentobarbital.
(4) Secobarbital.
(f) Hallucinogenic substances.
Nabilone: Another name for nabilone: (+,-)-trans -3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo{b,d}pyran-9-one.
(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances:
(1) Immediate precursor to amphetamine and methamphetamine:
(i) Phenylacetone Some trade or other names: pheny1-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;
(2) Immediate precursors to phencyclidine (PCP):
(i) 1-phenylcyclohexylamine;
(ii) 1-piperidinocyclohexanecarbonitrile (PCC).
(h) Anabolic steroids. Unless specifically excepted or unless listed in another schedule, "anabolic steroid" shall mean any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins and corticosteroids) that promotes muscle growth, any drug or hormonal substance that stimulates the endogenous production of steroids in the human body which acts in the same manner, or any material, compound, mixture, or preparation which contains any amount of the following substances:
(1) Boldenone.
(2) Clostebol.
(3) Dehydrochlormethyltestosterone.
(4) Drostanolone.
(5) Ethylestrenol.
(6) Fluoxymesterone.
(7) Formebulone (formebolone).
(8) Mesterolene.
(9) Methandriol.
(10) Methandrostenolone.
(11) Methenolone.
(12) Methyltestosterone.
(13) Mibolerone.

(14) Nandrolone.
(15) Norethandrolone.
(16) Oxandrolone.
(17) Oxymesterone.
(18) Oxymetholone.
(19) Stanolone.
(20) Stanozolol.
(21) Testosterone.
(22) Trenbolone.
(23) Any salt, ester or isomer of a drug or substance described or listed in this subdivision, if such salt, ester or isomer promotes muscle growth.
(24) Chlorotestosterone (4-chlorotestosterone).
(25) Dihydrotestosterone (4-dihydrotestosterone).
(26) Methandienone.
(27) Methandranone.
(28) Testolactone.

(i) Subdivision (h) of this section shall not include any substance containing anabolic steroids expressly intended for administration through implants to cattle or other nonhuman species and that are approved by the federal food and drug administration solely for such use. Any individual who knowingly and willfully administers to himself or another person, prescribes, dispenses or distributes such substances for other than implantation to cattle or nonhuman species shall be subject to the same penalties as a practitioner who violates the provisions of this section or any other penalties prescribed by law.

Schedule III. (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Stimulants. 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, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on August twenty-five, nineteen hundred seventy-one, as excepted compounds under title twenty-one, section 308.32 of the code of federal regulations and any other drug of the quantitive composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.
(2) Benzphetamine.
(3) Chlorphentermine.
(4) Clortermine.

(6) Phendimetrazine.

(c) Depressants. 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 compound, mixture or preparation containing:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital;

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital;

or any salt of any of these drugs and approved by the federal food and drug administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.

(4) Chlorhexadol.

(5) Lysergic acid.

(6) Lysergic acid amide.

(7) Methyprylon.

(8) Sulfondiethylmethane.

(9) Sulfonethylmethane.

(10) Sulfonmethane.

(11) Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino) -2-(2-thienyl) -cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl) -6,8-dihydro -1, 3, 8i-trimethylpyrazolo-{3,4-e} {1,4} -diazepin-7(1H)-one, flupyrazapon.

(12) Gamma hydroxybutyric acid, and salt, hydroxybutyric compound, derivative or preparation of gamma hydroxybutyric acid, including any isomers, esters and ethers and salts of isomers, esters and ethers of gamma hydroxybutyric acid, contained in a drug product for which an application has been approved under section 505 of the federal food, drug and cosmetic act.

(13) Ketamine, its salts, isomers and salts of isomers (some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone).

(d) Nalorphine.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

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

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

(3) Not more than three hundred milligrams of dihydrocodeinone (hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than three hundred milligrams of dihydrocodeinone (hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

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

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

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

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

(9) Buprenorphine in any quantities.

(f) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo{b,d} pyran-1-o1, or (-) delta-9-(trans) - tetrahydrocannabinol.

(g) Chorionic gonadotropin. Unless specifically excepted or unless listed in another schedule any material, compound, mixture, or preparation which contains any amount of chorionic gonadotropin.

Schedule IV. (a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than one milligram of difenoxin and not less than

twenty-five micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its 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) Alprazolam.
(2) Barbital.
(3) Bromazepam.
(4) Camazepam.
(5) Chloral betaine.
(6) Chloral hydrate.
(7) Chlordiazepoxide.
(8) Clobazam.
(9) Clonazepam.
(10) Clorazepate.
(11) Clotiazepam.
(12) Cloxazolam.
(13) Delorazepam.
(14) Diazepam.
(15) Estazolam.
(16) Ethchlorvynol.
(17) Ethinamate.
(18) Ethyl Loflazepate.
(19) Fludiazepam.
(20) Flunitrazepam.
(21) Flurazepam.
(22) Halazepam.
(23) Haloxazolam.
(24) Ketazolam.
(25) Loprazolam.
(26) Lorazepam.
(27) Lormetazepam.
(28) Mebutamate.
(29) Medazepam.
(30) Meprobamate.
(31) Methohexital.
(32) Methylphenobarbital (mephobarbital).
(33) Nimetazepam.
(34) Nitrazepam.
(35) Nordiazepam.
(36) Oxazepam.
(37) Oxazolam.
(38) Paraldehyde.

(39) Petrichoral.
(40) Phenobarbital.
(41) Pinazepam.
(42) Prazepam.
(43) Temazepam.
(44) Tetrazepam.
(45) Triazolam.
(46) Midazolam.
(47) Quazepam.
(48) Zolpidem.
(49) Dichloralphenazone.
(50) Zaleplon.
(51) Zopiclone (eszopiclone).

* (d) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers and salts of isomers is possible:

(1) Fenfluramine.

* NB Repealed upon the removal of fenfluramine and its salts and isomers from Schedule IV of the federal Controlled Substances Act

(e) Stimulants. 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, including its salts, isomers, and salts of such isomers:

(1) Cathine ((+) - norpseudoephedrine).
(2) Diethylpropion.
(3) Fencamfamin.
(4) Fenproporex.
(5) Mazindol.
(6) Mefenorex.
(7) Pemoline (including organometallic complexes and chelates thereof).
(8) Phentermine.
(9) Pipradrol.
(10) SPA((-))-1-dimethylamino-1, 2-diphenylethane).
(11) Modafanil.
(12) Sibutramine.

(f) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Pentazocine.
(2) Butorphanol (including its optical isomers).

Schedule V. (a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualitites other than those possessed by narcotic drugs alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams.

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

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

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

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

(6) Not more than 0.5 milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(c) Stimulants. Unless specifically exempted or excluded 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, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

§ 3307. Exception from schedules.

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

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

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

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

3. The commissioner may, by regulation, except any compound, mixture or preparation containing a narcotic antagonist substance from the application of all or any part of this article if (1) such compound, mixture or preparation has no potential for abuse, and (2) such compound, mixture or preparation has been excepted or exempted from control under the Federal Controlled Substances Act.

4. The commissioner may by regulation exempt or reclassify any compound, mixture or preparation containing any substance listed in subdivision (h) or (j) of Schedule II of section three thousand three hundred six of this article as a Schedule III, IV or V substance if (a) the compound, mixture or preparation contains one or more active medicinal ingredients not found in subdivision (h) or (j) of Schedule II of section three thousand three hundred six of this article; and (b) such ingredients are included therein in such combinations, quantity, proportion or concentration as to substantially reduce the potential for abuse.

§ 3308. Powers and duties of the commissioner.

1. The commissioner, and any representative authorized by him, shall have the power to administer oaths, compel the attendance of witnesses and the production of books, papers and records and to take proof and testimony concerning all matters within the jurisdiction of the department.

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

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

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

5. Notwithstanding any inconsistent provision of this article, the commissioner in consultation with the commissioner of education is hereby authorized to promulgate regulations regarding the prescribing, dispensing, use and transmission of electronic prescriptions, which may be prescribed and dispensed in lieu of an official New York state prescription.

6. The commissioner in consultation with the commissioner of education is hereby authorized to promulgate regulations regarding the dispensing of out-of-state prescriptions.

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

*** § 3309. Opioid overdose prevention.**

1. The commissioner is authorized to establish standards for approval of any opioid overdose prevention program which may include, but not be limited to, standards for program directors, appropriate clinical oversight, training, record keeping and reporting.

2. Notwithstanding any inconsistent provisions of section sixty-five hundred twelve of the education law or any other law, the purchase, acquisition, possession or use of an opioid antagonist pursuant to this section shall not constitute the unlawful practice of a profession or other violation under title eight of the education law or this article.

3. Use of an opioid antagonist pursuant to this section shall be considered first aid or emergency treatment for the purpose of any statute relating to liability.

4. The commissioner shall publish findings on statewide opioid overdose data that reviews overdose death rates and other information to ascertain changes in the cause and rates of fatal opioid overdoses. The report may be part of existing state mortality reports issued by the department, and shall be submitted annually for three years and as deemed necessary by the commissioner thereafter, to the governor, the temporary president of the senate and the speaker of the assembly. The report shall include, at a minimum, the following information: (a) information on opioid overdose deaths, including age, gender, ethnicity, and geographic location; (b) data on emergency room utilization for the treatment of opioid overdose; (c) data on utilization of pre-hospital services; (d) suggested improvements in data collection. * NB Effective April 1, 2006

§ 3310. Licenses for manufacture or distribution of controlled substances.

1. No person shall manufacture or distribute a controlled substance in this state without first having obtained a license to do so from the department.

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

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

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

(a) the name and address of the licensee;

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

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

5. Upon application of a licensee, a license may be amended to allow the licensee to relocate within the state or to add a manufacturing or distributing activity or to add further substances or schedules to the manufacturing or distribution activity permitted thereunder. The fee for such amendment shall be two hundred fifty dollars.

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

§ 3311. Authority to issue initial licenses, amended licenses, and to renew licenses.

1. Subject to the provisions of this article the commissioner is authorized to issue licenses authorizing the manufacture or distribution of controlled substances.

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

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

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

§ 3312. Application for initial license.

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

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

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

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

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

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

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

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

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

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

§ 3313. Granting of initial license.

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

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

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

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

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

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

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

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

NO 3314

§ 3315. Applications for renewal of licenses to manufacture or distribute controlled substances.

1. An application for the renewal of any license issued pursuant to this title shall be filed with the department not more than six months nor less than four months prior to the expiration thereof.

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

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

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

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

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

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

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

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

§ 3316. Granting of renewal of licenses.

1. The commissioner shall renew a license unless he determines and finds that the applicant:

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

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

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

NO 3317

§ 3318. Identification of controlled substances.

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

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

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

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

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

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

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

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

§ 3320. Authorized distribution.

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

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

§ 3321. Exempt distribution.

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

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

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

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

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

§ 3322. Reports and records.

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

2. Any person licensed under this title shall prepare and maintain a biennial report setting forth the current inventory of controlled substances, the quantities of controlled substances manufactured or distributed within the state during the period covered by the report and such other information as the commissioner shall be regulation prescribe. Maintaining for inspection a biennial inventory of controlled substances prepared and maintained in compliance with federal statutes and regulations shall be deemed in compliance with this section.

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

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

NO 3323

§ 3324. Licenses to engage in research, instructional activities, and chemical analysis relating to controlled substances.

1. No person within this state shall manufacture, obtain, possess, administer or dispense a controlled substance for purposes of scientific research, instruction or chemical analysis without having first obtained a license to do so from the department.

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

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

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

(a) the name and address of the licensee;

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

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

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

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

§ 3325. Authority to issue licenses; applications.

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

2. A license or amendment of a license shall be issued by the department unless the applicant therefor has failed to furnish a satisfactory protocol pursuant to subdivision three of this section, or a satisfactory statement pursuant to section 3326, and proof that the applicant:

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

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

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

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

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

(a) the nature of the proposed project;

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

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

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

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

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

§ 3326. Institutional research licenses.

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

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

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

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

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

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

§ 3327. Procedure.

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

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

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

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

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

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

4. A practitioner or patient participating in a clinical research program on the therapeutic use of marijuana or tetrahydrocannabinols.

(a) Each such clinical research program shall have received protocol approval from the United States Food and Drug Administration, shall possess an effective investigational new drug application and shall have been registered by the Drug Enforcement Administration, United States Department of Justice.

(b) Each such clinical research program authorized under the provisions of article thirty-three-A of this chapter.

§ 3329. Reports and records.

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

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

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

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

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

§ 3331. Scheduled substances administering and dispensing by practitioners.

1. Except as provided in titles III or V of this article, no substance in schedules II, III, IV, or V may be prescribed for or dispensed or administered to an addict or habitual user.

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

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

4. No such substance may be dispensed unless it is enclosed within a suitable and durable container, and: (a) Affixed to such container is a label upon which is indelibly typed, printed or otherwise legibly written the following: (i) the name and address of the ultimate user for whom the substance is intended, or, if intended for use upon an animal, the species of such animal and the name and address of the owner or person in custody of such animal; (ii) the name, address, and telephone number of the dispensing practitioner; (iii) specific directions for use, including but not limited to the dosage and frequency of dosage, and the maximum daily dosage; (iv) the legend, prominently marked or printed in either boldface or upper case lettering: "CONTROLLED SUBSTANCE, DANGEROUS UNLESS USED AS DIRECTED"; (v) the date of dispensing; (vi) either the name of the substance or such code number assigned by the department for the particular substance pursuant to section thirty-three hundred eighteen of this article; (b) Such container shall be identified as a controlled substance by either: (i) an orange label; (ii) a label of another color over which is superimposed an orange transparent adhesive tape; or (iii) an auxiliary orange label affixed to the front of such container and bearing the legend, prominently marked or printed "Controlled Substance, Dangerous Unless Used As Directed"; (c) Any label, transparency, or auxiliary label shall be applied in a manner which would inhibit its removal.

5. No more than a thirty day supply or, pursuant to regulations of the commissioner enumerating conditions warranting specified greater supplies, no more than a three month supply of a schedule II, III or IV substance, as determined by the directed dosage and frequency of dosage, may be dispensed by an authorized practitioner at one time.

6. A practitioner dispensing a controlled substance shall file information pursuant to such dispensing with the department by electronic means in such a manner and detail as the commissioner shall, by regulation, require. Such information shall be filed by not later than the fifteenth day of the next month following the month in which the controlled substance was delivered. This requirement shall not apply to the dispensing by a practitioner pursuant to subdivision five of section thirty-three hundred fifty-one of this article.

7. A practitioner may not administer, prescribe or dispense any substance referred to in subdivision (h) or subdivision (j) of Schedule
II of section three thousand three hundred six of this article for other than therapeutic purposes. A practitioner may not administer, prescribe or dispense any such substance to any individual without first obtaining the informed consent of such individual, or where the individual lacks capacity to give such consent, a person legally authorized to consent on his or her behalf.

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

§ 3332. Making of official New York state prescriptions for scheduled substances.

1. No controlled substance may be prescribed by a practitioner except on an official New York state prescription, and in good faith and in the course of his or her professional practice only.

2. Such prescription shall be prepared on an official New York state prescription form, written with ink, indelible pencil or, apart from the practitioner's signature, typewriter or electronic printer. The original must contain the following: (a) the name, address, and age of the ultimate user for whom the substance is intended, or, if the ultimate user is an animal, the species of such animal and the name and address of the owner or person having custody of such animal; (b) the name, address, Federal registration number, telephone number, and handwritten signature of the prescribing practitioner; (c) specific directions for use, including but not limited to the dosage and frequency of dosage and the maximum daily dosage; (d) the date upon which such prescription was actually signed by the prescribing practitioner.

3. No such prescription shall be made for a quantity of controlled substances which would exceed a thirty day supply if the controlled substance were used in accordance with the directions for use specified on the prescription. A practitioner may, however, issue a prescription for up to a three month supply of a controlled substance provided that the controlled substance has been prescribed to treat one of the conditions that have been enumerated by the commissioner pursuant to regulations as warranting the prescribing of greater than a thirty day supply of a controlled substance and that the practitioner specifies the condition on the face of the prescription. No additional prescriptions for a controlled substance may be issued by a practitioner to an ultimate user within thirty days of the date of any prescription previously issued unless and until the ultimate user has exhausted all but a seven day supply of the controlled substance provided by any previously issued prescription. A practitioner may, however, issue a prescription for up to a six month supply of any substance listed in subdivision (h) of Schedule II of section three thousand three hundred six of this article provided that such substance has been prescribed to treat one of the conditions that have been enumerated by the commissioner pursuant to regulations as warranting the prescribing of a six month supply and that the practitioner specifies the condition on the face of the prescription.

4. The practitioner shall deliver the original to the ultimate user.

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§ 3333. Dispensing upon official New York state prescription.

1. A licensed pharmacist may, in good faith and in the course of his or her professional practice, sell and dispense to an ultimate user controlled substances only upon the delivery of an official New York state prescription to such pharmacist, within thirty days of the date such prescription was signed by an authorized practitioner; provided, however, a pharmacist may dispense a part or portion of such prescription in accordance with regulations of the commissioner in consultation with the commissioner of education. No pharmacy or pharmacist may sell or dispense greater than a thirty day supply of a controlled substance to an ultimate user unless and until the ultimate user has exhausted all but a seven day supply of the controlled substance provided pursuant to any previously issued prescription, except that a pharmacy or pharmacist may sell or dispense up to a three month supply of a controlled substance if there appears, on the face of the official New York state prescription, a statement that the controlled substance has been prescribed to treat one of the conditions that have been enumerated by the regulations of the commissioner as warranting the prescribing of greater than a thirty day supply of a controlled substance. A pharmacy or pharmacist may sell or dispense up to a six month supply of any substance listed in subdivision (h) of Schedule II of section three thousand three hundred six of this article if there appears, on the face of the official New York state prescription, a statement that the substance has been prescribed to treat one of the conditions that have been enumerated by the regulations of the commissioner as warranting the prescribing of a specified greater supply.

2. No controlled substance may be so dispensed or sold unless it is enclosed within a suitable container, and: (a) Affixed to such container is a label upon which is indelibly typed, printed, or otherwise legibly written the following: (i) the name and address of the ultimate user for whom the substance is intended, or if intended for use upon an animal, the species of such animal and the name and address of the owner or person in custody of such animal; (ii) the name, address, and telephone number of the pharmacy from which such substance is dispensed; (iii) specific directions for use as stated on the prescription; (iv) the name of the prescribing practitioner; (v) the legend, prominently marked or printed in either boldface or upper case lettering: "CONTROLLED SUBSTANCE, DANGEROUS UNLESS USED AS DIRECTED"; (vi) the number of the prescription under which it is recorded in the pharmacist's prescription file; (vii) such code number assigned by the department for the particular substance pursuant to section thirty-three hundred eighteen of this article, or when requested by the practitioner, the name of such substance; (b) Such container shall be identified as a controlled substance by either: (i) an orange label; (ii) a label of another color over which is superimposed an orange transparent adhesive tape; or (iii) an auxiliary orange label affixed to the front of such container and bearing the legend, prominently marked or printed "Controlled Substance, Dangerous Unless Used As Directed"; (c) Any label, transparency, or auxiliary label shall be applied in a manner which would inhibit its removal.

3. The pharmacist filling the controlled substance prescription shall endorse upon the original the date of delivery and his or her signature. 4. The endorsed original prescription shall be retained by the proprietor of the pharmacy for a period of five years. The proprietor of the pharmacy shall file such prescription information with the department by electronic means in such manner and detail as the commissioner in consultation with the commissioner of education shall, by regulation, require. Such prescription information shall be filed by not later than the fifteenth day of the next month following the month in which the substance was delivered. 5. When filing prescription information electronically pursuant to subdivision four of this section, the

proprietor of the pharmacy shall dispose of any electronically recorded prescription information in such manner as the commissioner shall by regulation require.

§ 3334. Emergency oral prescriptions for schedule II drugs and certain other controlled substances.

1. In an emergency situation, as defined by rule or regulation of the department, a practitioner may orally prescribe and a pharmacist may dispense to an ultimate user controlled substances in schedule II and those schedule III or schedule IV controlled substances as the commissioner may, by regulation, require; provided however the pharmacist shall: (a) contemporaneously reduce such prescription to writing; (b) dispense the substance in conformity with the labeling requirements applicable to the type of prescription which would be required but for the emergency; and (c) make a good faith effort to verify the practitioner's identity, if the practitioner is unknown to the pharmacist.

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

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

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

Note: no sections 3335 3336

§ 3337. Oral prescriptions schedule III, IV and V substances.

1. Except as provided in section thirty-three hundred thirty-four of this article, a practitioner may orally prescribe and a pharmacist may dispense to an ultimate user controlled substances in schedules III, IV or V provided however the pharmacist shall: (a) contemporaneously reduce such prescription to writing; (b) dispense the substance in conformity with the labeling requirements applicable to a prescription; and (c) make a good faith effort to verify the practitioner's identity, if the practitioner is unknown to the pharmacist.

2. No oral prescription shall be filled for a quantity of controlled substances which would exceed a five day supply if the controlled substance were used in accordance with the directions for use, except that with respect to a schedule IV substance such prescription shall not exceed a thirty-day supply or one hundred dosage units, whichever is less; provided, however, that this provision shall not apply to any schedule IV controlled substance limited to a five day supply by section thirty-three hundred thirty-four of this article.

3. Within seventy-two hours after authorizing such an oral prescription, the prescribing practitioner shall cause to be delivered to the pharmacist an official New York state prescription. If the pharmacist fails to receive such prescription he shall make a record of such fact in such manner and detail as the commissioner in consultation with the commissioner of education, by regulation, shall require.

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

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

§ 3338. Official New York state prescription forms.

1. Official New York state prescription forms shall be prepared and issued by the department in the manner and detail as the commissioner in consultation with the commissioner of education may, by regulation, require, and, each form shall be serialized. Such forms shall be furnished to practitioners authorized to write such prescriptions and to institutional dispensers. Such prescription blanks shall not be transferable.

2. Except as expressly authorized by section thirty-three hundred thirty-four or thirty-three hundred thirty-seven of this article, controlled substances may be prescribed or dispensed only upon an official New York state prescription or, pursuant to regulations, an electronic prescription or out-of-state prescription.

3. The commissioner in consultation with the commissioner of education is hereby authorized and empowered to make rules and regulations, not inconsistent with this article, with respect to the retention or filing of such official New York state prescription forms, electronic prescriptions and out-of-state prescriptions, including information required to be filed with the department, the maximum number of official prescription forms which may be issued at any one time, the manner in which such forms shall be issued, the period of time after issuance by the department that such form shall remain valid for use, and the manner in which practitioners associated with institutional dispensers may use such forms, or any other matter of procedure or detail necessary to effectuate or clarify the provisions of this section and to secure proper and effective enforcement of the provisions of this article.

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

§ 3339. Refilling of prescriptions for controlled substances.

1. Prescriptions for a schedule II controlled substance and those schedule III or schedule IV controlled substances which the commissioner may require by regulation may not be refilled.

2. A prescription, except for a schedule II controlled substance or those schedule III or schedule IV controlled substances which the commissioner may require by regulation may be refilled not more than the number of times specifically authorized by the prescriber upon the prescription, provided however no such authorization shall be effective for a period greater than six months from the date the prescription is signed. In the event that the prescription authorizes the dispensing of more than a thirty day supply of schedule III, schedule IV or schedule V substances pursuant to regulations of the commissioner enumerating conditions warranting specified greater supplies, the prescription may be refilled only once.

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

NO 3340

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

§ 3341. Institutional dispensers certificates of approval.

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

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

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

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

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

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

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

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

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

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

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

§ 3342. Dispensing and administering by institutional dispensers.

1. An institutional dispenser may cause controlled substances to be administered or dispensed for use on its premises or for the immediate care or treatment of a patient lawfully being transferred in an emergency situation, as defined by rule or regulation of the commissioner, to an alternative medical facility only pursuant to a written order by a practitioner for medication. Such orders shall be made and preserved in the manner and form as the commissioner shall, by regulation, prescribe.

2. An institutional dispenser may dispense controlled substances for use off its premises only pursuant to a prescription, prepared and filed in conformity with this title, provided, however, that, in an emergency situation as defined by rule or regulation of the department, a practitioner in a hospital without a full-time pharmacy may dispense controlled substances to a patient in a hospital emergency room for use off the premises of the institutional dispenser for a period not to exceed twenty-four hours.

3. An institutional dispenser shall maintain records of all controlled substances dispensed and administered in such manner as the commissioner shall, by regulation, require.

§ 3343. Reports and records.

1. Prescriptions and copies of prescriptions shall be preserved in the following manner: (a) dispensing practitioners filing information electronically pursuant to subdivision six of section thirty-three hundred thirty-one of this article, shall dispose of any electronically recorded information in such manner as the commissioner in consultation with the commissioner of education shall by regulation require; (b) pharmacists dispensing controlled substances upon prescription shall preserve such prescriptions in such manner as the commissioner in consultation with the commissioner of education shall, by regulation, require.

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

NO 3344

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

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

NO 3346, 3347, 3348, 3349

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

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

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

§ 3351. Dispensing for medical use.

1. Controlled substances may be prescribed for, or administered or dispensed to an addict or habitual user:

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

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

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

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

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

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

5. Methadone, or such other controlled substance designated by the commissioner as appropriate for such use, may be administered to an addict by a practitioner or by his designated agent acting under the direction and supervision of a practitioner, as part of a substance abuse or chemical dependence program approved pursuant to article twenty-three or thirty-two of the mental hygiene law.

§ 3352. Reports and records.

1. Persons certified pursuant to article twenty-three or thirty-two of the mental hygiene law to operate methadone maintenance treatment programs shall keep records showing the receipt, administration, dispensing, or destruction of all controlled substances and maintain the records in such manner and detail as the commissioner, by regulation, shall require.

2. By the tenth day of each month, a person certified to conduct a maintenance program shall file with the department a report summarizing its activity in the preceding month. Such report shall include:

(a) an inventory of the quantity of controlled substance on hand at the commencement and at the conclusion of such month's activity;

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

(c) the total quantity of controlled substance prescribed, dispensed, and administered during such month;

(d) each incident or alleged incident involving the theft, loss or possible diversion of controlled substances.

NO 3352-3369

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

§ 3370. Preserving and inspection of records.

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

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

3. Every record, including prescriptions, required to be kept under this article shall be maintained at the premises where the licensed activity is conducted.

3. The department shall cause to be expunged or otherwise destroyed, within five years from the date of receipt thereof, any record of the name of any patient received by it pursuant to the filing requirements of subdivision six of section thirty-three hundred thirty-one, subdivision four of section thirty-three hundred thirty-three, and subdivision four of section thirty-three hundred thirty-four of this article.

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

§ 3371. Confidentiality of certain records, reports, and information.

1. No person, who has knowledge by virtue of his office of the identity of a particular patient or research subject, a manufacturing process, a trade secret or a formula shall disclose such knowledge, or any report or record thereof, except: (a) to another person employed by the department, for purposes of executing provisions of this article; or (b) pursuant to judicial subpoena or court order in a criminal investigation or proceeding; or (c) to an agency, department of government, or official board authorized to regulate, license or otherwise supervise a person who is authorized by this article to deal in controlled substances, or in the course of any investigation or proceeding by or before such agency, department or board. (d) to a central registry established pursuant to this article. (e) to a practitioner to inform him or her that a person under his or her treatment with a controlled substance also may be under treatment with a controlled substance by another practitioner.

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

§ 3372. Practitioner patient reporting. It shall be the duty of every attending practitioner and every consulting practitioner to report promptly to the commissioner, or his duly designated agent, the name and, if possible, the address of, and such other data as may be required by the commissioner with respect to, any person under treatment if he finds that such person is an addict or a habitual user of any narcotic drug. Such report shall be kept confidential and may be utilized only for statistical, epidemiological or research purposes, except that those reports which originate in the course of a criminal proceeding other than under section 81.25 of the mental hygiene law shall be subject only to the confidentiality requirements of section thirty-three hundred seventy-one of this article.

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

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

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

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

NO 3375-3379

§ 3380. Inhalation of certain toxic vapors or fumes, and certain hazardous inhalants; sale of glue and hazardous inhalants in certain cases.

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

(b) As used in this section hazardous inhalants shall mean and include any of the preparations of compounds containing one or more of the chemical compounds; amyl nitrite, isoamyl nitrite, butyl nitrite, isobutyl nitrite, pentyl nitrite or any other akyl nitrite compound that is either designed to be used, or commonly used, as an inhalant.

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

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

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

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

(b) unless there has been added to such glue a sufficient quantity of an additive, approved by the commission, which shall act as a deterrent to inhalation, and not be harmful or toxic to the human body. This provision shall not apply to hazardous inhalants or glue manufactured and sold for industrial use.

5. (a) No person shall use nitrous oxide for purposes of causing intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system of himself or another.

(b) No person shall sell any canister or other container of nitrous oxide unless granted an exemption pursuant to this subdivision. In no event shall any canister or other container of nitrous oxide be sold to a person under the age of twenty-one years.

(c) This subdivision shall not apply to the use of nitrous oxide in

industrial, medical or dental applications, or to specific products which must use nitrous oxide as a propellant provided such products shall in no event be sold at retail to the public, as shall be determined by the commissioner pursuant to paragraph (d) of this subdivision.

(d) The commissioner is directed to promulgate regulations to exempt specific products which must use nitrous oxide, or a mixture of nitrous oxide with other gases, as a propellant from the provisions of this chapter provided such regulations shall prohibit the sale of such products at retail to the public.

(e) The provisions of this section shall not be deemed to prohibit the sale of food products containing nitrous oxide provided such products comply with the provisions of section sixteen-a of the agriculture and markets law.

(f) The commissioner may, upon the application of a manufacturer or seller of a product containing nitrous oxide and intended for sale at retail, authorize the sale of such a product if there is no evidence of substantial misuse of the product as defined by this subdivision and if the manufacturer or seller takes the following steps to:

(i) clearly indicate the legitimate purpose or use of the product on the package;

(ii) display prominently on the package in heavy type print language which warns of health dangers resulting from the misuse of nitrous oxide;

(iii) demonstrate that the product bears a distinctive feature or features enabling it to be clearly distinguished from the nitrous oxide products of other manufacturers;

(iv) educate wholesale and retail businesses which sell the product of the dangers of nitrous oxide and the need to monitor its sale; and

(v) prevent their sale of the product to any person, firm or corporation who or which sells drug-related paraphernalia as such term is defined by subdivision two of section eight hundred fifty of the general business law.

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

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

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

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

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

(c) by a pharmacy licensed under article one hundred thirty-seven of the education law, health care facility licensed under article twenty-eight of this chapter or a health care practitioner who is otherwise authorized to prescribe the use of hypodermic needles or syringes within his or her scope of practice; provided, however, that such sale or furnishing: (i) shall only be to a person eighteen years of age or older; (ii) shall be limited to a quantity of ten or less hypodermic needles or syringes; and (iii) shall be in accordance with subdivision five of this section.

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

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

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

5. (a) A person eighteen years of age or older may obtain and possess a hypodermic syringe or hypodermic needle pursuant to paragraph (c) of subdivision one of this section.

(b) Subject to regulations of the commissioner, a pharmacy licensed under article one hundred thirty-seven of the education law, a health care facility licensed under article twenty-eight of this chapter or a health care practitioner who is otherwise authorized to prescribe the use of hypodermic needles or syringes within his or her scope of practice, may obtain and possess hypodermic needles or syringes for the purpose of selling or furnishing them pursuant to paragraph (c) of

subdivision one of this section or for the purpose of disposing of them, provided that such pharmacy, health care facility or health care practitioner has registered with the department.

(c) Sale or furnishing of hypodermic syringes or hypodermic needles to direct consumers pursuant to this subdivision by a pharmacy, health care facility, or health care practitioner shall be accompanied by a safety insert. Such safety insert shall be developed or approved by the commissioner and shall include, but not be limited to, (i) information on the proper use of hypodermic syringes and hypodermic needles; (ii) the risk of blood borne diseases that may result from the use of hypodermic syringes and hypodermic needles; (iii) methods for preventing the transmission or contraction of blood borne diseases; (iv) proper hypodermic syringe and hypodermic needle disposal practices; (v) information on the dangers of injection drug use, and how to access drug treatment; (vi) a toll-free phone number for information on the human immunodeficiency virus; and (vii) information on the safe disposal of hypodermic syringes and hypodermic needles including the relevant provisions of the environmental conservation law relating to the unlawful release of regulated medical waste. The safety insert shall be attached to or included in the hypodermic syringe and hypodermic needle packaging, or shall be given to the purchaser at the point of sale or furnishing in brochure form.

(d) In addition to the requirements of paragraph (c) of subdivision one of this section, a pharmacy licensed under article one hundred thirty-seven of the education law may sell or furnish hypodermic needles or syringes only if such pharmacy: (i) does not advertise to the public the availability for retail sale or furnishing of hypodermic needles or syringes without a prescription; and (ii) at any location where hypodermic needles or syringes are kept for retail sale or furnishing, stores such needles and syringes in a manner that makes them available only to authorized personnel and not openly available to customers.

(e) The commissioner shall promulgate rules and regulations necessary to implement the provisions of this subdivision which shall include a requirement that such pharmacies, health care facilities and health care practitioners cooperate in a safe disposal of used hypodermic needles or syringes.

(f) The commissioner may, upon the finding of a violation of this section, suspend for a determinate period of time the sale or furnishing of syringes by a specific entity.

6. The provisions of this section shall not apply to farmers engaged in livestock production or to those persons supplying farmers engaged in livestock production, provided that:

(a) Hypodermic syringes and needles shall be stored in a secure, locked storage container.

(b) At any time the department may request a document outlining:

(i) the number of hypodermic needles and syringes purchased over the past calendar year;

(ii) a record of all hypodermic needles used over the past calendar year; and

(iii) a record of all hypodermic needles and syringes destroyed over the past calendar year.

(c) Hypodermic needles and syringes shall be destroyed in a manner consistent with the provisions set forth in section thirty-three hundred eighty-one-a of this article.

* NB Effective until September 1, 2011

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

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

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

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

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

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

5. (a) The commissioner, in consultation with the commissioner of alcoholism and substance abuse services, the commissioner of the department of correctional services, the commissioner of the division of criminal justice services, the commissioner of office of general services, the commissioner of the office of mental health, the commissioner of the office of mental retardation and developmental disabilities and the director of the division for youth shall develop a limited number of cooperative pilot projects to test the practicality and effectiveness of the distribution of syringes for human injection which are intended for single use and which are non-reusable. Such pilot projects shall be demonstrated throughout the state in high risk clinical settings of state operated facilities such as prisons, hospitals, youth detention facilities, developmental centers and other state operated facilities as the commissioner, in consultation with the

above listed commissioners and directors determine appropriate.

(b) On or before June thirtieth, nineteen hundred ninety-eight, the commissioner and the commissioners and directors listed in paragraph (a) of this subdivision shall evaluate the pilot projects established pursuant to this subdivision, and shall submit a report of his or her evaluation to the governor, the temporary president of the senate, and the speaker of the assembly.

* NB Effective September 1, 2011

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

§ 3381-a. Destruction of hypodermic syringes and needles. All hypodermic syringes, needles and disposable hypodermic units which are no longer usable or required shall be crushed, broken or otherwise rendered inoperable in the process of disposal.

The department may specify procedures for disposal of such hypodermic syringes, needles and disposable units as may be necessary to protect public health including, but not limited to, placement of such syringes, needles and units in a leak-proof, puncture resistant container prior to disposal.

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

§ 3382. Growing of the plant known as Cannabis by unlicensed persons.

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

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

§ 3383. Imitation controlled substances.

1. For purposes of this section, the following terms shall have the following meanings:

a. "Manufacture" means the production, preparation, compounding, tableting, processing, encapsulating, packaging, repackaging, labeling or relabeling of an imitation controlled substance.

b. "Markings" means a simulated trademark, trade name, imprinting or other mark, or likeness thereof, of the manufacturer, distributor or dispenser of a controlled substance or a simulated code number or symbol or likeness thereof identifying a controlled substance or combination of such substances.

c. "Imitation controlled substance" means a substance, other than a drug for which a prescription is required pursuant to article one hundred thirty-seven of the education law, that is not a controlled substance, which by dosage unit appearance, including color, shape and size and by a representation is represented to be a controlled substance, as defined in the penal law. Evidence of representations that the substance is a controlled substance may include but is not limited to oral or written representations by the manufacturer or seller, as the case may be, about the substance with regard to:

(i) its price, nature, use or effect as a controlled substance; or

(ii) its packaging in a manner normally used for illicit controlled substances; or

(iii) markings on the substance.

2. It shall be unlawful for any person to manufacture, sell or possess with the intent to sell, an imitation controlled substance.

3. It shall be unlawful for any person to possess or use any punch, die, plate, stone or any other equipment in order to print, imprint, or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any substance or container or labeling thereof with intent to manufacture an imitation controlled substance.

4. No liability shall be imposed by virtue of this section on any person licensed pursuant to article one hundred thirty-one of the education law or licensed under this article who manufactures, distributed, sells, prescribes, dispenses or possesses an imitation controlled substance for use as a placebo or for use in clinical research conducted pursuant to the federal food, drug and cosmetic act.

5. Nothing in this section shall apply to a noncontrolled substance that was initially introduced into commerce prior to the initial introduction into commerce of the controlled substance which it is alleged to imitate.

6. In any prosecution under this section it shall be necessary to prove that the imitation controlled substance was represented to be a controlled substance; however, it shall not be a defense to a prosecution under this section that the accused believed the imitation controlled substance to be a controlled substance.

7. A violation of subdivision two or three of this section shall be a class A misdemeanor. A violation of subdivision two or three of this section by a person previously convicted of a violation of this section within the preceding five years shall be a class E felony.

8. If any provision or part of this section or application thereof is held invalid, the invalidity shall not affect other provisions, parts or applications of this section which can be given effect without the invalid provisions or application, and to this end the provisions of this section are severable.

§ 3384. Information program for retailers.

Information program for retailers. The department shall develop and maintain a program to inform retailers about the methamphetamine problem in New York state.

§ 3385. Enforcement.

1. (a) The department and its representatives shall have access during business hours to all orders, prescriptions or records required to be kept under this article.

(b) Orders, prescriptions and records required to be kept under this article shall be maintained at the premises where the licensed activity is conducted.

2. For the purposes of enforcing the provisions of this article, each employee of the department designated by the commissioner shall possess all of the powers of a peace officer as set forth in section 2.20 of the criminal procedure law.

NO 3386

§ 3387. Seizure and forfeiture of controlled substances, imitation controlled substances and official New York state prescription forms; disposition.

1. Any controlled substance or imitation controlled substance which has been manufactured, distributed, dispensed or acquired in violation of this article, or the lawful possession of which cannot be immediately ascertained, and any official New York state prescription form which has been printed, distributed or acquired in violation of this article or the lawful possession of which cannot be immediately ascertained are hereby declared to be public nuisances and may be seized by a peace officer, acting pursuant to his special duties, or a police officer and shall be forfeited, and disposed of as follows:

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

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

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

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

(e) controlled substances or imitation controlled substances which are excess or undesired by persons lawfully possessing the same may be disposed of in such manner as the commissioner shall by regulation require;

(f) official New York state prescription forms which have been seized as provided by this section shall be disposed of by express prepaid shipment to the "State Department of Health, Bureau of Prescription Analysis, Albany, New York," or by delivery to an authorized narcotic control representative of the department.

2. The commissioner shall keep a full and complete record of all controlled substances or imitation controlled substances received and of all controlled substances or imitation controlled substances disposed

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

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

ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT

§ 3388. Seizure and forfeiture of vehicles, vessels or aircraft unlawfully used to conceal, convey or transport controlled substances.

1. Except as authorized in this article, it shall be unlawful to:

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

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

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

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

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

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

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

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

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

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

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

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

7. The district attorney, the superintendent of state police or the police department having custody of the seized property, after such judicial determination of forfeiture, shall, at their discretion, either retain such seized property for the official use of their office, division or department, or, by a public notice of at least five days, sell such forfeited property at public sale; provided, however, that where such property is subject to a perfected lien such property may not be retained for their official use unless all such liens on the property to be retained have been or will be satisfied. The net proceeds of any such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the county wherein the seizure was made except that the net proceeds of the sale of property seized in the cities of New York, Yonkers, Rochester and Buffalo shall be paid into the respective general funds of such cities, and of the sale of property seized by the state police into the general fund of the state.

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

9. No suit or action under this section for wrongful seizure shall be instituted unless such suit or action is commenced within two years after the time when the property was seized. NO 3389

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

1. falsified any application, report, or record required by this article;
2. wilfully failed to furnish the department with timely reports or information required to be filed with the department;
3. been convicted of an offense in any jurisdiction relating to any substance listed in this article as a controlled substance;
4. wilfully or negligently failed to comply with any of the provisions of the federal controlled substances act, this article, or the regulations promulgated thereunder;
5. failed to maintain effective control against diversion of controlled substances; or
6. wilfully and unreasonably refused to permit an inspection authorized by this article.

§ 3391. Revocation and suspension of license or certificate of approval procedure.

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

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

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

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

NO 3392

§ 3393. Formal hearings procedure.

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

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

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

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

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

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

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

§ 3394. Judicial review.

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

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

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

NO 3395

§ 3396. Violations; penalties.

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

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

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

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

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

§ 3397. Fraud and deceit.

1. No person shall:

(a) obtain or attempt to obtain a controlled substance, a prescription for a controlled substance or an official New York State prescription form,

(i) by fraud, deceit, misrepresentation or subterfuge; or

(ii) by the concealment of a material fact; or

(iii) by the use of a false name or the giving of a false address;

(b) wilfully make a false statement in any prescription, order, application, report or record required by this article;

(c) falsely assume the title of, or represent himself to be a licensed manufacturer, distributor, pharmacy, pharmacist, practitioner, researcher, approved institutional dispenser, or other authorized person, for the purpose of obtaining a controlled substance;

(d) make or utter any false or forged prescription or false or forged written order;

(e) affix any false or forged label to a package or receptacle containing controlled substances; or

(f) imprint on or affix to any controlled substance a false or forged code number or symbol.

2. Possession of a false or forged prescription for a controlled substance by any person other than a pharmacist in the lawful pursuance of his profession shall be presumptive evidence of his intent to use the same for the purpose of illegally obtaining a controlled substance.

3. Possession of a blank official New York state prescription form by any person to whom it was not lawfully issued shall be presumptive evidence of such person's intent to use same for the purpose of illegally obtaining a controlled substance.

4. Any person who, in the course of treatment, is supplied with a controlled substance or a prescription therefor by one practitioner and who, without disclosing the fact, is supplied during such treatment with a controlled substance or a prescription therefor by another practitioner shall be guilty of a violation of this article.