

CHAPTER 30

Criminal Offenses

Art.

31. Controlled Substances, 30-31-1 to 30-31-41.

ARTICLE 31

Controlled Substances

Sec.

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30-31-1. Short title.

Chapter 30, Article 31 NMSA 1978 may be cited as the "Controlled Substances Act".

30-31-2. Definitions.

As used in the Controlled Substances Act [30-31-1 NMSA 1978]:

- A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or his agent;
- B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman;
- C. "board" means the board of pharmacy;
- D. "bureau" means the narcotic and dangerous drug section of the criminal division of the United States department of justice, or its successor agency;
- E. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or rules adopted thereto;
- F. "counterfeit substance" means a controlled substance that bears the unauthorized trademark, trade name, imprint, number, device or other identifying mark or likeness of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the controlled substance;
- G. "deliver" means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;
- H. "dispense" means to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery;
- I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

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

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

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

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

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

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

N. "marijuana" means all parts of the plant cannabis, including any and all varieties, species and subspecies of the genus Cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination;

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

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

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

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

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

P. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts, dextromethorphan. "Opiate" does include its racemic and levorotatory forms;

Q. "person" means an individual, partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

R. "practitioner" means a physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, prescribing psychologist, veterinarian, pharmacist, pharmacist clinician or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act;

S. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission, or indirectly by means of a written order signed by the prescriber, bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue and in accordance with the Controlled Substances Act or rules adopted thereto;

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

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

V. "drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of the Controlled Substances Act. It includes:

- (1) kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled substance or controlled substance analog or from which a controlled substance can be derived;
- (2) kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs;
- (3) isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance;
- (4) testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs;
- (5) scales or balances used, intended for use or designed for use in weighing or measuring controlled substances or controlled substance analogs;
- (6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannite dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or controlled substance analogs;
- (7) separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning and refining, marijuana;
- (8) blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs;
- (9) capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances or controlled substance analogs;
- (10) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs;
- (11) hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or controlled substance analogs into the human body;
- (12) objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:
 - (a) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;
 - (b) water pipes;
 - (c) carburetion tubes and devices;
 - (d) smoking and carburetion masks;
 - (e) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small to hold in the hand;
 - (f) miniature cocaine spoons and cocaine vials;
 - (g) chamber pipes;
 - (h) carburetor pipes;
 - (i) electric pipes;
 - (j) air-driven pipes;
 - (k) chilams;
 - (l) bongs; or
 - (m) ice pipes or chillers; and
- (13) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:
 - (a) statements by the owner or by anyone in control of the object concerning its use;
 - (b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;
 - (c) the proximity of the object to controlled substances or controlled substance analogs;
 - (d) the existence of any residue of a controlled substance or controlled substance analog on the object;
 - (e) instructions, written or oral, provided with the object concerning its use;
 - (f) descriptive materials accompanying the object that explain or depict its use;
 - (g) the manner in which the object is displayed for sale; and

(h) expert testimony concerning its use;

W. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include the following:

- (1) phenethylamines;
- (2) N-substituted piperidines;
- (3) morphinans;
- (4) ecgonines;
- (5) quinazolinones;
- (6) substituted indoles; and
- (7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled substance analog" are those substances that are generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act;

X. "human consumption" includes application, injection, inhalation, ingestion or any other manner of introduction;

Y. "drug-free school zone" means a public school or property that is used for public school purposes and the area within one thousand feet of the school property line, but it does not mean any post-secondary school; and

Z. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's licensing board, between the practitioner and the patient.

30-31-3. Duty to administer.

A. The board shall administer the Controlled Substances Act [30-31-1 NMSA 1978] and may add by regulation substances to the list of substances enumerated in Schedules I through IV pursuant to the procedures of the Uniform Licensing Act [61-1-1 NMSA 1978]. In determining whether a substance has the potential for abuse, the board shall consider the following:

- (1) the actual or relative abuse of the substance;
- (2) the scientific evidence of the pharmacological effect of the substance, if known;
- (3) the state of current scientific knowledge regarding the substance;
- (4) the history and current pattern of abuse;
- (5) the scope, duration and significance of abuse;
- (6) the risk to the public health; and
- (7) the potential of the substance to produce psychic or physiological dependence liability.

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

C. If any substance is designated as a controlled substance under federal law and notice is given to the board, the board may, by regulation, similarly control the substance under the Controlled Substances Act [30-31-1 NMSA 1978] after providing for a hearing pursuant to the Uniform Licensing Act.

D. Authority to control under this section does not extend to distilled spirits, wine, malt beverages, tobacco or pesticides as defined in the Pesticide Control Act [76-4-1 NMSA 1978].

E. The board shall exclude any nonnarcotic substance from a schedule if such substance may, under Section 61-11-22 NMSA 1978, be lawfully sold over the counter without a prescription.

30-31-4. Nomenclature.

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

30-31-5. Schedules; criteria.

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

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

- (1) has a high potential for abuse; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30-31-6. Schedule I.

The following controlled substances are included in Schedule I:

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

(1) acetylmethadol;

(2) allylprodine;

(3) alphacetylmethadol;

(4) alphameprodine;

(5) alphamethadol;

(6) benzethidine;

(7) betacetylmethadol;

(8) betameprodine;

(9) betamethadol;

(10) betaprodine;

(11) clonitazene;

(12) dextromoramide;

(13) dextrorphan;

(14) diampromide;

(15) diethylthiambutene;

(16) dimenoxadol;

(17) dimepheptanol;

(18) dimethylthiambutene;

(19) dioxaphetyl butyrate;

(20) dipipanone;

(21) ethylmethylthiambutene;

(22) etonitazene;

(23) etoxeridine;

(24) furethidine;

(25) hydroxypethidine;

(26) ketobemidone;

(27) levomoramide;

(28) levophenacymorphan;

(29) morpheridine;

- (30) noracymethadol;
- (31) norlevorphanol;
- (32) normethadone;
- (33) norpipanone;
- (34) phenadoxone;
- (35) phenampromide;
- (36) phenomorphan;
- (37) phenoperidine;
- (38) piritramide;
- (39) proheptazine;
- (40) properidine;
- (41) racemoramide; and
- (42) trimeperidine;

B. any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) acetorphine;
- (2) acetyldihydrocodeine;
- (3) benzylmorphine;
- (4) codeine methylbromide;
- (5) codeine-N-oxide;
- (6) cyprenorphine;
- (7) desomorphine;
- (8) dihydromorphine;
- (9) etorphine;
- (10) heroin;
- (11) hydromorphanol;
- (12) methyl-desorphine;
- (13) methyldihydromorphine;
- (14) morphine methylbromide;
- (15) morphine methylsulfonate;
- (16) morphine-N-oxide;
- (17) myrophine;
- (18) nicocodeine;
- (19) nicomorphine;
- (20) normorphine;
- (21) pholcodine; and
- (22) thebacon;

C. any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 3,4,5-trimethoxy amphetamine;
- (4) bufotenine;
- (5) diethyltryptamine;
- (6) dimethyltryptamine;
- (7) 4-methyl-2,5-dimethoxy amphetamine;
- (8) ibogaine;
- (9) lysergic acid diethylamide;
- (10) marijuana;
- (11) mescaline;
- (12) peyote, except as otherwise provided in the Controlled Substances Act;
- (13) N-ethyl-3-piperidyl benzilate;
- (14) N-methyl-3-piperidyl benzilate;
- (15) psilocybin;

- (16) psilocyn;
- (17) tetrahydrocannabinols; and
- (18) hashish;

D. the enumeration of peyote as a controlled substance does not apply to the use of peyote in bona fide religious ceremonies by a bona fide religious organization, and members of the organization so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the organization or its members shall comply with the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 and all other requirements of law;

E. the enumeration of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol as Schedule I controlled substances does not apply to the use of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol by certified patients pursuant to the Controlled Substances Therapeutic Research Act [26-2A-1 NMSA 1978]; and

F. controlled substances added to Schedule I by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978.

30-31-7. Schedule II.

A. The following controlled substances are included in Schedule II:

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

- (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 Subparagraph (a) of this paragraph, but not including the isoquinoline alkaloids of opium;
- (c) opium poppy and poppy straw;
- (d) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;
- (e) marijuana, but only for the use by certified patients pursuant to the Controlled Substances Therapeutic Research Act [26-2A-1 NMSA 1978]; and
- (f) tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol, but only for the use of certified patients pursuant to the Controlled Substances Therapeutic Research Act.

Marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol shall be considered Schedule II controlled substances only for the purposes enumerated in the Controlled Substances Therapeutic Research Act;

(2) any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (a) alphaprodine;
- (b) anileridine;
- (c) bezitramide;
- (d) dihydrocodeine;
- (e) diphenoxylate;
- (f) fentanyl;
- (g) hydromorphone;
- (h) isomethadone;
- (i) levomethorphan;
- (j) levorphanol;
- (k) meperidine;
- (l) metazocine;
- (m) methadone;
- (n) methadone--intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (o) moramide--intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (p) oxycodone;
- (q) pethidine;
- (r) pethidine--intermediate--A, 4-cyano-1-methyl-4-phenylpiperidine;
- (s) pethidine--intermediate--B, ethyl-4-phenyl-piperidine-4-carboxylate;

- (t) pethidine--intermediate--C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (u) phenazocine;
- (v) piminodine;
- (w) racemethorphan; and
- (x) racemorphan;

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

- (a) amphetamine, its salts, optical isomers and salts of its optical isomers;
- (b) phenmetrazine and its salts;
- (c) methamphetamine, its salts, isomers and salts of isomers; and
- (d) methylphenidate; and

(4) controlled substances added to Schedule II by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978.

B. Where methadone is prescribed, administered or dispensed by a practitioner of a drug abuse rehabilitation program while acting in the course of his professional practice, or otherwise lawfully obtained or possessed by a person, such person shall not possess such methadone beyond the date stamped or typed on the label of the container of the methadone, nor shall any person possess methadone except in the container in which it was originally administered or dispensed to such person, and such container shall include a label showing the name of the prescribing physician or practitioner, the identity of methadone, the name of the ultimate user, the date when the methadone is to be administered to or used or consumed by the named ultimate user shown on the label and a warning on the label of the methadone container that the ultimate user must use, consume or administer to himself the methadone in such container. Any person who violates this subsection is guilty of a felony and shall be punished by imprisonment for not less than one year nor more than five years, or by a fine of up to five thousand dollars (\$5,000), or both.

30-31-8. Schedule III.

The following contraband substances are included in Schedule III:

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

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

(1) any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in another schedule;

- (2) chlorhexadol;
- (3) glutethimide;
- (4) lysergic acid;
- (5) lysergic acid amide;
- (6) methyprylon;
- (7) phencyclidine;
- (8) sulfondiethylmethane;
- (9) sulfonethylmethane; or
- (10) sulfonmethane;

C. nalorphine;

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

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

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

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

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

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

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

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

E. controlled substances added to Schedule III by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978; and

F. the board may exempt by regulation any compound, mixture or preparation containing any stimulant or depressant substance listed in Subsections A and B of this section from the application of any part of the Controlled Substances Act [30-31-1 NMSA 1978] if the compound, mixture or preparation contains any active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

30-31-9. Schedule IV.

The following controlled substances are included in Schedule IV:

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

- (1) barbital;
- (2) chloral betaine;
- (3) chloral hydrate;
- (4) ethchlorvynol;
- (5) ethinamate;
- (6) methohexital;
- (7) meprobamate;
- (8) methylphenobarbital;
- (9) paraldehyde;
- (10) petrichloral; or
- (11) phenobarbital;

B. controlled substances added to Schedule IV by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978; and

C. the board may exempt by regulation any compound, mixture or preparation containing any depressant substance listed in Subsection A of this section from the application of all or any part of the Controlled Substances Act [30-31-1 NMSA 1978] if the compound, mixture or preparation contains any active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

30-31-10. Schedule V.

The following controlled substances are included in Schedule V:

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

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

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

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

(4) not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit; or

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

B. the board may by regulation exempt any compound, mixture or preparation containing any depressant or stimulant substance enumerated in Schedules III, IV or V from the application of the Controlled Substances Act [30-31-1 NMSA 1978] if:

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

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

30-31-11. Regulations.

The board may promulgate regulations and charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances; provided, however, that in no case shall the fees exceed eighty dollars (\$80.00) per year. If the board determines to increase any fee, the board shall notify, in addition to any other notice required by law, the affected professional group of the board's intention to increase the fee and the date for the scheduled hearing to review the matter.

30-31-12. Registration requirements.

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

B. Persons registered by the board to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense, prescribe or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of the Controlled Substances Act [30-31-1 NMSA 1978].

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

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

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

(3) an ultimate user.

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

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

30-31-13. Registrations.

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

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

(2) compliance with applicable state and local law;

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

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

(5) furnishing by the applicant of false or fraudulent material in any application filed under the Controlled Substances Act [30-31-1 NMSA 1978];

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

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

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

C. Compliance by manufacturers and distributors with the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 respecting registration, excluding state registration fees entitles them to be registered under the Controlled Substances Act [30-31-1 NMSA 1978].

D. Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under Section 39 [30-31-40 NMSA 1978] of the Controlled Substances Act [30-31-1 NMSA 1978]. The board need not require separate registration under this act for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under the Controlled Substances Act [30-31-1 NMSA 1978] in another capacity. Practitioners or scientific investigators registered under the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the board evidence of that federal registration.

30-31-14. Revocation and suspension of registration.

A. A registration under Section 30-31-13 NMSA 1978 to manufacture, distribute or dispense a controlled substance may be suspended or revoked upon a finding that the registrant:

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

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

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

(4) has had his practitioner's license suspended or revoked by his professional licensing board.

B. A hearing to revoke or suspend a registration of a practitioner shall be held before a special hearing panel consisting of the board and two additional persons designated to sit on the hearing panel by the practitioner's own examining and licensing authority.

C. The special hearing panel may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

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

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

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

30-31-15. Order to show cause.

A. Before denying, suspending or revoking a registration or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis of the order and shall require the applicant or registrant to appear before the board not less than thirty days after the date of service of the order, but in the case of a denial of renewal of registration the order shall be served not later than thirty days before the expiration of the registration unless the proceedings relate to suspension or revocation of a registration. These proceedings shall be conducted in accordance with the Uniform Licensing Act [61-1-1 NMSA 1978] without regard to any criminal prosecution or other proceeding. Proceedings to suspend or revoke a registration or to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the proceeding.

B. The board may suspend, without an order to show cause, any registrant simultaneously with the institution of proceedings under Section 14 [30-31-14 NMSA 1978] or where renewal of registration is refused if it finds that there is such a substantial and imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

30-31-16. Records of registrants.

A. Every registrant under the Controlled Substances Act [30-31-1 NMSA 1978] manufacturing, distributing or dispensing a controlled substance shall maintain, on a current basis, a complete and accurate record of each substance manufactured, received, sold or delivered by him in accordance with regulations of the board.

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

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

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

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

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

F. Each pharmacy licensed in the state shall provide information relating to the dispensing of any controlled substance designated by the board. The board shall administer the collection and dissemination of the information obtained. The manner of reporting and the extent of the required information shall be designated by regulation of the board.

30-31-17. Order forms.

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

30-31-18. Prescriptions.

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

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

- (1) the name and address of the patient for whom the drug is prescribed;
- (2) the name, address and registry number of the person prescribing the drug; and
- (3) the identity of the pharmacist of record.

C. A controlled substance included in Schedules III or IV, which is a prescription drug as determined under the New Mexico Drug and Cosmetic Act [26-1-1 NMSA 1978], shall not be dispensed without a written or oral prescription of a practitioner, except when administered directly by a practitioner to an ultimate user. The prescription shall not be filled or refilled more than six months after the date of issue or be refilled more than five times, unless renewed by the practitioner and a new prescription is placed in the file. Prescriptions shall be retained in conformity with the regulations of the board.

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

- (1) date of dispensing and prescription number;
- (2) name and address of the pharmacy;
- (3) name of the patient;

- (4) name of the practitioner; and
- (5) directions for use and cautionary statements, if any.

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

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

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

30-31-19. Distributions by manufacturers or distributors.

A registered manufacturer or distributor may distribute controlled substances to the following:

- A. a registered manufacturer, pharmacy or distributor;
- B. a registered practitioner;
- C. a registered hospital or clinic; and
- D. to a person in charge of a registered laboratory, but only for use by that laboratory for scientific and medical purposes.

30-31-20. Trafficking controlled substances; violation.

A. As used in the Controlled Substances Act [30-31-1 NMSA 1978], "traffic" means the:

(1) manufacture of any controlled substance enumerated in Schedules I through V or any controlled substance analog as defined in Subsection W of Section 30-31-2 NMSA 1978;

(2) distribution, sale, barter or giving away of any controlled substance enumerated in Schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug; or

(3) possession with intent to distribute any controlled substance enumerated in Schedule I or II that is a narcotic drug or controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug.

B. Except as authorized by the Controlled Substances Act [30-31-1 NMSA 1978], it is unlawful for any person to intentionally traffic. Any person who violates this subsection is:

(1) for the first offense, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) for the second and subsequent offenses, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Any person who knowingly violates Subsection B of this section within a drug-free school zone, excluding private property residentially zoned or used primarily as a residence, is guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

30-31-21. Distribution to a minor.

Except as authorized by the Controlled Substances Act [30-31-1 NMSA 1978], no person who is eighteen years of age or older shall intentionally distribute a controlled substance to a person under the age of eighteen years. Any person who violates this section with respect to:

A. marijuana is:

(1) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

B. any other controlled substance enumerated in Schedules [Schedule] I, II, III or IV or a controlled substance analog of any controlled substance enumerated in Schedule I, II, III or IV is:

(1) for the first offense, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) for the second and subsequent offenses, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

30-31-22. Controlled or counterfeit substances; distribution prohibited.

A. Except as authorized by the Controlled Substances Act [30-31-1 NMSA 1978], it is unlawful for any person to intentionally distribute or possess with intent to distribute a controlled substance or a controlled substance analog except a substance enumerated in Schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug. Any person who violates this subsection with respect to:

(1) marijuana is:

(a) for the first offense, guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(b) for the second and subsequent offenses, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(c) for the first offense, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(d) for the second and subsequent offenses, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug, is:

(a) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(b) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(3) a controlled substance enumerated in Schedule V or a controlled substance analog of a controlled substance enumerated in Schedule V is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment for a definite term not less than one hundred eighty days but less than one year, or both.

B. It is unlawful for any person to distribute gamma hydroxybutyric acid or flunitrazepam to another person without that person's knowledge and with intent to commit a crime against that person, including criminal sexual penetration. For the purposes of this subsection, "without that person's knowledge" means the person is unaware that a substance with the ability to alter that person's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is being distributed to that person. Any person who violates this subsection is:

(1) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

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

(1) a counterfeit substance enumerated in Schedule I, II, III or IV is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) a counterfeit substance enumerated in Schedule V is guilty of a petty misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100) or by imprisonment for a definite term not to exceed six months, or both.

D. Any person who knowingly violates Subsection A or C of this section while within a drug-free school zone, excluding private property residentially zoned or used primarily as a residence, with respect to:

(1) marijuana is:

(a) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(b) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(c) for the first offense, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(d) for the second and subsequent offenses, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug, is:

(a) for the first offense, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(b) for the second and subsequent offenses, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(3) a controlled substance enumerated in Schedule V or a controlled substance analog of a controlled substance enumerated in Schedule V is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(4) the intentional creation, delivery or possession with the intent to deliver:

(a) a counterfeit substance enumerated in Schedule I, II, III or IV is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

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

E. Notwithstanding the provisions of Subsection A of this section, distribution of a small amount of marijuana for no remuneration shall be treated as provided in Paragraph (1) of Subsection B of Section 30-31-23 NMSA 1978.

30-31-23. Controlled substances; possession prohibited.

A. It is unlawful for any person intentionally to possess a controlled substance unless the substance was obtained pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or except as otherwise authorized by the Controlled Substances Act [30-31-1 NMSA 1978]. It is unlawful for any person intentionally to possess a controlled substance analog.

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

(1) one ounce or less of marijuana is, for the first offense, guilty of a petty misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50.00) or more than one hundred dollars (\$100) and by imprisonment for not more than fifteen days, and, for the second and subsequent offenses, guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both;

(2) more than one ounce and less than eight ounces of marijuana is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both; or

(3) eight ounces or more of marijuana is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Except for those substances listed in Subsection D of this section, any person who violates this section with respect to any amount of any controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in Schedule I, II, III or IV is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both.

D. Any person who violates this section with respect to phencyclidine as enumerated in Schedule III or a controlled substance analog of phencyclidine; methamphetamine, its salts, isomers or salts of isomers as enumerated in Schedule II or a controlled substance analog of methamphetamine, its salts, isomers or salts of isomers; flunitrazepam, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of flunitrazepam, including naturally occurring metabolites, its salts, isomers or salts of isomers; gamma hydroxybutyric acid and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma

hydroxybutyric acid, its salts, isomers or salts of isomers; gamma butyrolactone and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma butyrolactone, its salts, isomers or salts of isomers; 1-4 butane diol and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of 1-4 butane diol, its salts, isomers or salts of isomers; or a narcotic drug enumerated in Schedule I or II or a controlled substance analog of a narcotic drug enumerated in Schedule I or II is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Any person who violates Subsection A of this section while within a posted drug-free school zone, excluding private property residentially zoned or used primarily as a residence and excluding any person in or on a motor vehicle in transit through the posted drug-free school zone, with respect to:

(1) one ounce or less of marijuana is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both, and for the second or subsequent offense, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) more than one ounce and less than eight ounces of marijuana is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(3) eight ounces or more of marijuana is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(4) any amount of any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in Schedule I, II, III or IV, except phencyclidine as enumerated in Schedule III, a narcotic drug enumerated in Schedule I or II or a controlled substance analog of a narcotic drug enumerated in Schedule I or II, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(5) phencyclidine as enumerated in Schedule III, a narcotic drug enumerated in Schedule I or II, a controlled substance analog of phencyclidine or a controlled substance analog of a narcotic drug enumerated in Schedule I or II is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

30-31-24. Controlled substances; violations of administrative provisions.

A. It is unlawful for any person:

(1) who is subject to Sections 30-31-11 through 30-31-19 NMSA 1978 to intentionally distribute or dispense a controlled substance in violation of Section 30-31-18 NMSA 1978;

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

(3) to intentionally refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under the Controlled Substances Act [30-31-1 NMSA 1978]; or

(4) to intentionally refuse an entry into any premises for any inspection authorized by the Controlled Substances Act [30-31-1 NMSA 1978].

B. Any person who violates this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

30-31-25. Controlled substances; prohibited acts.

A. It is unlawful for any person:

(1) who is a registrant to distribute a controlled substance classified in Schedules [Schedule] I or II, except pursuant to an order form as required by Section 30-31-17 NMSA 1978;

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

(3) to intentionally acquire or obtain, or attempt to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(4) to intentionally furnish false or fraudulent material information in, or omit any material information from, any application, report or other document required to be kept or filed under the Controlled Substances Act [30-31-1 NMSA 1978], or any record required to be kept by that act; or

(5) to intentionally make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any

likeness of any of the foregoing, upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

B. Any person who violates this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

30-31-25.1. Possession, delivery or manufacture of drug paraphernalia prohibited; exceptions.

A. It is unlawful for a person to use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act [30-31-1 NMSA 1978]. The provisions of this subsection do not apply to a person who is in possession of hypodermic syringes or needles at the time he is directly and immediately engaged in a harm reduction program, as provided in the Harm Reduction Act [24-2C-1 NMSA 1978].

B. It is unlawful for a person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act [30-31-1 NMSA 1978]. The provisions of this subsection do not apply to:

(1) department of health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act; or

(2) the sale or distribution of hypodermic syringes and needles by pharmacists licensed pursuant to the Pharmacy Act [61-11-1 NMSA 1978]

C. A person who violates this section with respect to Subsection A of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) or by imprisonment for a definite term less than one year, or both. A person who violates this section with respect to Subsection B of this section is guilty of a misdemeanor.

D. A person eighteen years of age or over who violates the provisions of Subsection B of this section by delivering drug paraphernalia to a person under eighteen years of age and who is at least three years his junior is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

30-31-26. Penalties under other laws.

A. Any penalty imposed for violation of the Controlled Substances Act [30-31-1 NMSA 1978] is in addition to any civil or administrative penalty or sanction otherwise provided by law.

B. A municipality may, by ordinance, prohibit distribution or possession of a controlled substance enumerated in Schedules I, II, III or IV but penalty provisions shall be the same as those provided for a similar crime in the Controlled Substances Act [30-31-1 NMSA 1978].

30-31-27. Bar to prosecution.

If a violation of the Controlled Substances Act [30-31-1 NMSA 1978] is a violation of a federal law, the law of another state or the ordinance of a municipality, a conviction or acquittal under federal law, the law of another state or the ordinance of a municipality for the same act is a bar to prosecution.

30-31-28. Conditional discharge for possession as first offense.

A. If any person who has not previously been convicted of violating the laws of any state or any laws of the United States relating to narcotic drugs, marijuana, hallucinogenic or depressant or stimulant substances, is found guilty of a violation of Section 23 [30-31-23 NMSA 1978], after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place him on probation upon reasonable conditions and for a period, not to exceed one year, as the court may prescribe.

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

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

a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the penalties prescribed under this section for second or subsequent convictions or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

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

30-31-29. Probationary period.

Notwithstanding any other provision of law, the court may place on probation for a period not to exceed one year any person convicted of a violation of the Controlled Substances Act [30-31-1 NMSA 1978] where the maximum length of the term of imprisonment is one year or less if:

- A. the judge does not impose a prison sentence; or
- B. the judge suspends all of any prison sentence which he imposes.

30-31-30. Powers of enforcement personnel.

Any officer or employee designated by the board may:

- A. serve search warrants, arrest warrants and administrative inspection warrants;
- B. make arrests without warrant for any offense under the Controlled Substances Act [30-31-1-NMSA 1978] committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of the Controlled Substances Act [30-31-1 NMSA 1978] which may constitute a felony; or
- C. make seizures of property pursuant to the Controlled Substances Act [30-31-1 NMSA 1978].

30-31-31. Administrative inspections and warrants.

Issuance and execution of administrative inspection warrants shall be as follows:

- A. a magistrate, within his jurisdiction and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections and seizures of property authorized by the Controlled Substances Act [30-31-1 NMSA 1978]. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of the Controlled Substances Act [30-31-1 NMSA 1978] sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;
- B. a warrant shall issue only upon an affidavit of a designated officer or employee having actual knowledge of the alleged facts, sworn to before the magistrate and establishing the grounds for issuing the warrant. If the magistrate is satisfied that grounds for the warrant exist, he shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:
 - (1) state the grounds for its issuance and the name of each person whose affidavit has been taken in its support;
 - (2) be directed to a person authorized by Section 29 [30-31-30 NMSA 1978] or a state police officer to serve and carry out the warrant;
 - (3) command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;
 - (4) identify the items or types of property to be seized, if any; and
 - (5) direct that it be served during normal business hours or other hours designated by the magistrate and designate the magistrate to whom it shall be returned;
- C. a warrant issued pursuant to this section must be served and returned within five days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy of the warrant shall be given to the person from whom or from whose premises the property is taken,

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

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

30-31-32. Administrative inspections.

The board may make administrative inspections of controlled premises in accordance with the following provisions:

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

(1) places where persons registered or exempted from registration requirements under the Controlled Substances Act [30-31-1 NMSA 1978] are required to keep records; and

(2) places, including factories, warehouses, establishments and conveyances in which persons registered or exempted from registration requirements under the Controlled Substances Act [30-31-1 NMSA 1978] are permitted to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any controlled substance;

B. when authorized by an administrative inspection warrant issued pursuant to Section 30 [30-31-31 NMSA 1978], an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter the controlled premises for the purpose of conducting an administrative inspection;

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

(1) inspect and copy records required by the Controlled Substances Act [30-31-1 NMSA 1978] to be kept;

(2) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in Subsection E, all other things bearing on violations of the Controlled Substances Act [30-31-1 NMSA 1978], including records, files, papers, processes, controls and facilities; and

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

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

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

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

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

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

30-31-33. Injunctions.

A. The district courts may exercise jurisdiction to restrain or enjoin violations of the Controlled Substances Act [30-31-1 NMSA 1978].

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

30-31-34. Forfeitures; property subject.

The following are subject to forfeiture:

A. all controlled substances and all controlled substance analogs which have been manufactured, distributed, dispensed or acquired in violation of the Controlled Substances Act [30-31-1 NMSA 1978];

B. all raw materials, products and equipment of any kind including firearms which are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or controlled substance analog in violation of the Controlled Substances Act [30-31-1 NMSA 1978];

C. all property which is used or intended for use as a container for property described in Subsection A or B of this section;

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

E. all books, records and research products and materials, including formulas, microfilm, tapes and data, which are used or intended for use in violation of the Controlled Substances Act [30-31-1 NMSA 1978];

F. narcotics paraphernalia or money which is a fruit or instrumentality of the crime;

G. notwithstanding Subsection D of this section:

(1) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of the Controlled Substances Act [30-31-1 NMSA 1978];

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

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

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

H. all drug paraphernalia as defined by Subsection W[V] of Section 30-31-2 NMSA 1978.

30-31-35. Forfeiture; procedure.

The provisions of the Forfeiture Act [31-27-1 NMSA 1978] apply to the seizure, forfeiture and disposal of property subject to forfeiture and disposal under the Controlled Substances Act [30-31-1 NMSA 1978].

30-31-36. Summary forfeiture.

A. Controlled substances listed in Schedule I or controlled substance analogs of substances listed in Schedule I that are possessed, transferred, sold or offered for sale in violation of the Controlled Substances Act [30-31-1 NMSA 1978] are contraband and shall be seized and summarily forfeited to the state.

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

C. Species of plants from which controlled substances in Schedules I and II or controlled substance analogs of substances listed in Schedules I and II may be derived which have been planted or cultivated in violation of the Controlled Substances Act [30-31-1 NMSA 1978], or of which the owners or cultivators are unknown or which are wild growths, may be seized and summarily forfeited to the state.

30-31-37. Burden of proof.

It is not necessary for the state to negate any exemption or exception in the Controlled Substances Act [30-31-1 NMSA 1978] in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under the Controlled Substances Act [30-31-1 NMSA 1978]. The burden of proof of any exemption or exception is upon the person claiming it.

30-31-38. Cooperative duties of board.

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

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

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

(3) cooperate with the bureau by establishing a centralized unit to accept, catalogue, file and collect statistics and make the information available for federal, state and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under Section 39 [30-31-40 NMSA 1978].

B. Results, information and evidence received from the bureau relating to the regulatory functions of the Controlled Substances Act [30-31-1 NMSA 1978], including results of inspections conducted by it, may be

relied and acted upon by the board in the exercise of its regulatory functions under the Controlled Substances Act [30-31-1 NMSA 1978].

30-31-39. Education.

The board shall provide for educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

- A. promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry;
- B. assist the regulated industry in contributing to the reduction of misuse and abuse of controlled substances; and
- C. assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

30-31-40. Research; confidentiality.

A. The board shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of the Controlled Substances Act [30-30-1- NMSA 1978], it may register public agencies, institutions of higher education and private organizations or individuals for the purpose of conducting research, demonstrations or special projects which bear directly on misuse and abuse of controlled substances.

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

C. The board may authorize the possession and distribution of controlled substances by persons engaged in research. Such authorization shall contain the conditions and terms of the research to be conducted. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

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

30-31-41. Anabolic steroids; possession; distribution; penalties; notice.

A. Except as authorized by the New Mexico Drug[, Device] and Cosmetic Act [26-1-1 NMSA 1978], it is unlawful for any person to intentionally possess anabolic steroids. Any person who violates this subsection is guilty of a misdemeanor.

B. Except as authorized by the New Mexico Drug[, Device] and Cosmetic Act, it is unlawful for any person to intentionally distribute or possess with intent to distribute anabolic steroids. Any person who violates this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Except as authorized by the New Mexico Drug[, Device] and Cosmetic Act, it is unlawful for any person eighteen years of age or older to intentionally distribute anabolic steroids to a person under eighteen years of age. Any person who violates this subsection is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. A copy of this act shall be distributed to each licensed athletic trainer by the athletic trainers advisory board and displayed prominently in the athletic locker rooms of all state post-secondary and public schools.