Table of Contents

CODE OF VIRGINIA

Title 54.1

SUBTITLE I.
GENERAL PROVISIONS RELATING TO REGULATORY BOARDS.

Chapter 1.
General Provisions.

54.1-100. Regulations of professions and occupations.
54.1-100.1 Department of Commerce continued as Department of Professional and Occupational Regulation.
54.1-101. Copies of examinations filed by regulatory boards.
54.1-102. Unlawful procurement of certificate, license or permit; unauthorized possession of examination or answers; penalty.
54.1-103. Additional training of regulated persons; reciprocity; endorsement.
54.1-104. Suspension of license, certificate, registration, or authority for dishonor of fee payment; reinstatement.
54.1-105. Majority of board or panel required to suspend or revoke license, certificate or registration; imposition of sanctions.
54.1-106. Health care professionals rendering services to patients of certain clinics exempt from liability.
54.1-107. Appointments, terms and removal of members of regulatory boards; citizen members.
54.1-108. Disclosure of official records.
54.1-109. Reviews and appeals.
54.1-110. Presiding officer; participation of board in hearing; disqualification of board member.
54.1-111. Unlawful acts; prosecution; proceedings in equity.
54.1-112. Copies of records as evidence.
54.1-113. Regulatory boards to adjust fees.
54.1-114. Biennial report.
54.1-115. [Expired.]
54.1-116. Applicants to include social security numbers, or other identifying number.

SUBTITLE III.
PROFESSIONS AND OCCUPATIONS REGULATED BY BOARDS WITHIN THE DEPARTMENT OF HEALTH PROFESSIONS.

Chapter 24.
General Provisions.

54.1-2400. General powers and duties of health regulatory boards.
54.1-2400.01. Certain definition.

54.1-2400.1.	Mental health service providers; duty to protect third parties; immunity.
54.1-2400.2.	Confidentiality of information obtained during an investigation or disciplinary proceeding.
54.1-2400.3.	Disciplinary actions to be reported.
54.1-2400.4.	Mental health service providers duty to inform; immunity; civil penalty.
54.1-2401.	Monetary penalty.
54.1-2402.	Citizen members on health regulatory boards.
54.1-2402.1.	Appointments, removals, and limitation of terms of members of regulatory boards.
54.1-2403.	Certain advertising prohibited.
54.1-2403.01.	Routine component of prenatal care.
54.1-2403.1.	Protocol for certain medical history screening required.
54.1-2403.2.	Record storage.
54.1-2403.3.	Medical records; ownership; provision of copies.
54.1-2404.	Itemized statements required upon request.
54.1-2405.	Transfer of patient records in conjunction with sale of practice; notice required.
54.1-2406.	Treatment records of practitioners.
54.1-2407.	Requirements for human research.
54.1-2408.	Disqualification for license, certificate or registration.
54.1-2408.1.	Summary suspension of licenses, certificates or registrations; allegations to be in writing.
54.1-2409.	Mandatory suspension or revocation; reinstatement; appeal.
54.1-2409.1.	Criminal penalties for practicing certain professions and occupations without appropriate license.
54.1-2409.2.	Board to set criteria for determining need for professional regulation.

Chapter 24.1.
Practitioner Self-Referral Act.

54.1-2410.	Definitions.
54.1-2411.	Prohibited referrals and payments; exceptions.
54.1-2412.	Board to administer; powers and duties of Board; penalties for violation.
54.1-2413.	Additional conditions related to practitioner-investors.
54.1-2414.	Applicability of chapter; grace period for compliance.

Chapter 25.
Department of Health Professions.

54.1-2500.	Definitions.
54.1-2501.	Department established.
54.1-2502.	Use of consultants in investigations.
54.1-2503.	Boards within Department.
54.1-2504.	Appointment of Director.
54.1-2505.	Powers and duties of Director of Department.

54.1-2506. Enforcement of laws by Director and investigative personnel; authority of investigative personnel.
54.1-2506.1. Submission of required information.
54.1-2506.2. Protection of escrow funds, etc., held by persons licensed by any of the health regulatory boards.
54.1-2507. Board of Health Professions; membership, appointments, and terms of office.
54.1-2508. Chairman; meetings of Board; quorum.
54.1-2509. Reimbursement of Board members for expenses.
54.1-2510. Powers and duties of Board of Health Professions.

Chapter 25.1
Health Practitioners' Intervention Program

54.1-2515. Definitions.
54.1-2516. Program established; practitioner participation; disciplinary action stayed under certain conditions.
54.1-2517. Powers and duties of the Intervention Program Committee; certain meetings, decisions to be excepted for the Freedom of Information Act; confidentiality of records; immunity from liability. *[see supplement-1999 amendment]*
54.1-2518. Investigation by Department or other authorized official; prosecution for violation of law.

Chapter 29
Medicine and Other Healing Arts

…

Article 2.
Board of Medicine.

…
54.1-2914. Unprofessional conduct.
…

Article 4.
Licensure and Certification of Other Practitioners of the Healing Arts.

…
§ 54.1-2952.1. Prescription of certain controlled substances and devices by licensed physician assistant.
…
54.1-2957.01. Prescription of certain controlled substances and devices by licensed nurse practitioners.
…

Chapter 33.
Pharmacy.

Article 1.
General Provisions.

54.1-3300.	(Effective until July 1, 2004) Definitions.
54.1-3300.	(Effective July 1, 2004) Definitions.
54.1-3300.1.	(Effective until July 1, 2004) Participation in collaborative agreements; regulations to be promulgated by the Boards of Medicine and Pharmacy.
54.1-3301.	Exceptions.
54.1-3302.	Restrictions on practitioners of the healing arts.
54.1-3303.	Prescriptions to be issued and drugs to be dispensed for medical or therapeutic purposes only.
54.1-3304.	Licensing of physicians to dispense drugs; renewals.
54.1-3304.1.	Authority to license and regulate practitioners.

Article 2.
Board of Pharmacy.

54.1-3305.	Board; membership; terms; meetings; quorum; officers.
54.1-3306.	Nominations.
54.1-3307.	Specific powers and duties of Board.
54.1-3307.1.	[Repealed.]
54.1-3307.2.	Approval of innovative programs.
54.1-3308.	Power of inspection.
54.1-3309.	Enforcement.

Article 3.
Licensure of Pharmacists.

54.1-3310.	Unlawful to practice without license.
54.1-3311.	Application and examination.
54.1-3312.	Qualifications of pharmacist; approved school of pharmacy defined.
54.1-3313.	Licensure by endorsement.
54.1-3314.	Display of license.
54.1-3314.1.	Continuing education requirements; exemptions; extensions; procedures; out-of-state licensees; nonpractice licenses.
54.1-3315.	Unprofessional conduct.
54.1-3316.	Refusal; revocation; suspension and denial.
54.1-3317.	[Repealed.]
54.1-3318.	Notification of revocation.
54.1-3319.	Counseling.

Chapter 34.
Drug Control Act.

Article 1.
General Provisions.

54.1-3400.	Citation.
54.1-3401.	Definitions.
54.1-3401.1.	Practices not considered wholesale distribution.
54.1-3402.	Proprietor of pharmacy exempted.
54.1-3403.	Chapter not applicable to economic poisons.
54.1-3404.	Persons required to keep record of drugs; contents and form of record.
54.1-3405.	Access to and copies of records; inspections.
54.1-3406.	Records confidential.
54.1-3407.	Analysis of controlled substances.
54.1-3408.	(Effective until January 1, 2001) Professional use by practitioners.
54.1-3408.	(Effective January 1, 2001) Professional use by practitioners.
54.1-3408.01.	Requirements for prescriptions.
54.1-3408.02.	Transmission of prescriptions.
54.1-3408.1.	Prescription in excess of recommended dosage in certain cases.
54.1-3409.	Professional use by veterinarians.
54.1-3410.	When pharmacist may sell and dispense drugs.
54.1-3410.1.	Requirements for radiopharmaceuticals.
54.1-3411.	When prescriptions may be refilled.
54.1-3412.	Date of dispensing; initials of pharmacist; automated data processing system.
54.1-3413.	Manufacturing and administering Schedule I drugs.
54.1-3414.	Official orders for Schedule II drugs.
54.1-3415.	Distribution of drugs in Schedules II through VI by manufacturers and wholesalers.
54.1-3416.	No prescription for preparations listed pursuant to Schedule V.
54.1-3417.	Disposing of stocks of Schedules II through V drugs.
54.1-3418.	Sale of aqueous or oleaginous solutions.
54.1-3419.	Dispensing of insulin preparations.
54.1-3420.	Distribution of certain drugs; written request or confirmation of receipt.
54.1-3420.1.	Identification required for filling prescriptions.
54.1-3420.2.	Delivery of prescription drug order.
54.1-3421.	New drugs.
54.1-3422.	Controlled substances registration certificate required in addition to other requirements; exemptions.
54.1-3423.	Board to issue registration unless inconsistent with public interest; authorization to conduct research; application and fees.
54.1-3424.	Suspension or revocation of registration, license or permit; limitation to particular controlled substance; controlled substances placed under seal; sale of perishables and forfeiture; notification to DEA.
54.1-3425.	Issuance of limited permits to humane societies.
54.1-3426.	Regulations for special packaging.
54.1-3427.	Dispensing drugs without safety closure container.
54.1-3428.	Dissemination of information.
54.1-3429.	Revocation of permit issued to manufacturer, wholesaler or distributor.

54.1-3430. Display of permit; permits nontransferable; renewal.
54.1-3431. Admission into evidence of certain certificates of analysis.

Article 2.
Permitting of Pharmacies.

54.1-3432. Supervision by pharmacist.
54.1-3433. Certain advertising and signs unlawful.
54.1-3434. Permit to conduct pharmacy.
54.1-3434.01. Notice of pharmacy closing; change of ownership; penalty.
54.1-3434.02. Automated drug dispensing systems.

Article 2.1.
Registration of Nonresident Pharmacies.

54.1-3434.1. Nonresident pharmacies to register with Board.
54.1-3434.2. Permit to be issued.
54.1-3434.3. Denial, revocation, and suspension of registration.
54.1-3434.4. Prohibited acts.

Article 3.
Wholesale Distributors and Medical Equipment Suppliers.

54.1-3435. License to act as wholesale distributor; renewal; fee.
54.1-3435.01. Registration of nonresident wholesale distributors; renewal; fee.
54.1-3435.1. Denial, revocation, and suspension of license as wholesale distributor or of registration as a nonresident wholesale distributor.
54.1-3435.2. Permit to act as medical equipment supplier; storage; limitation; regulations.
54.1-3435.3. Denial, revocation, and suspension of permit as medical equipment supplier.
54.1-3435.4. Permit to act as warehouser; regulations.
54.1-3435.5. Denial, revocation, and suspension of permit as warehouser.
54.1-3436. [Repealed.]

Article 4.
Permitting of Manufacturers.

54.1-3437. Permit to manufacture drugs.
54.1-3437.1. Limited permit for repackaging drugs.
54.1-3438. Manufacturing, etc., of drugs or proprietary medicines, to be supervised by pharmacist.
54.1-3439. Application for nonrestricted manufacturing permit; fee.
54.1-3440. Persons to whom nonrestricted permit is granted.
54.1-3441. Restricted manufacturing permit; application; fee; separate application and permit for each place of manufacturing.
54.1-3442. When permit not to be granted; regulations.

Article 5.
Standards and Schedules.

54.1-3443. Board to administer article.

54.1-3444. Controlled substances included by whatever name designated.
54.1-3445. Placement of substance in Schedule I.
54.1-3446. Schedule I.
54.1-3447. Placement of substance in Schedule II.
54.1-3448. Schedule II.
54.1-3449. Placement of substance in Schedule III.
54.1-3450. Schedule III.
54.1-3451. Placement of substance in Schedule IV.
54.1-3452. Schedule IV.
54.1-3453. Placement of substance in Schedule V.
54.1-3454. Schedule V.
54.1-3455. Schedule VI.
54.1-3456. Designer drugs.

Article 6.
Misbranded and Adulterated Drugs and Cosmetics.

54.1-3457. Prohibited acts.
54.1-3458. Violations.
54.1-3459. Tagging of adulterated or misbranded drugs, devices, or cosmetics; condemnation; destruction; expenses.
54.1-3460. Poisonous or deleterious substance, or color additive.
54.1-3461. Adulterated drug or device.
54.1-3462. Misbranded drug or device.
54.1-3463. Exemption of drugs dispensed by filling or refilling prescription.
54.1-3464. Adulterated cosmetics.
54.1-3465. Misbranded cosmetics.

Article 7.
Controlled Paraphernalia.

54.1-3466. Possession or distribution of controlled paraphernalia; meaning of controlled paraphernalia; evidence; exceptions.
54.1-3467. Distribution of hypodermic needles or syringes, gelatin capsules, quinine or any of its salts.
54.1-3468. Conditions to dispensing device, item, or substance; records.
54.1-3469. Storage, usage, and disposition of controlled paraphernalia.
54.1-3470. Obtaining controlled paraphernalia by fraud, etc.
54.1-3471. Issuance of permits to certain persons other than registered pharmacists.
54.1-3472. Article inapplicable to certain persons.

Title 32.1
Health

Chapter 3
Medical Care Services

Article 3.
Virginia Voluntary Formulary.

32.1-79. Definitions.
32.1-80. Virginia Voluntary Formulary Council continued as Virginia Voluntary Formulary Board; members; officers; quorum; meetings; record of proceedings.
32.1-81. Amendments to the Formulary.
32.1-82. Composition of Formulary.
32.1-83. Inclusion and exclusion of drug products and vendors; protection of trade secret information.
32.1-84. Petition by manufacturers, etc., for inclusion of drug products.
32.1-85. Adoption.
32.1-86. Duties of the Board; Formulary fee.
32.1-87 Use of Formulary.
32.1-88 Immunity of State Board of Health and Formulary Board members, prescribers and pharmacists.

Title 18.2

Chapter 7.
Crimes Involving Health and Safety.

Article 1.
Drugs.

18.2-247. Use of terms "controlled substances," "marijuana," "Schedules I, II, III, IV, V and VI" and "imitation controlled substance" in Title 18.2
18.2-248. Manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance prohibited; penalties.
18.2-248.01. Transporting controlled substances into the Commonwealth; penalty.
18.2-248.1. Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana.
18.2-248.2. [Repealed.]
18.2-248.3. Professional use of imitation controlled substances.
18.2-248.4. Advertisement of imitation controlled substances prohibited; penalty.
18.2-248.5. Illegal stimulants and steroids; penalty.
18.2-248.6, 18.2-248.7. [Repealed.]
18.2-249. Seizure of property used in connection with or derived from illegal drug transactions.
18.2-250. Possession of controlled substances unlawful.
18.2-250.1. Possession of marijuana unlawful.

18.2-251.	Persons charged with first offense may be placed on probation; conditions; screening, assessment and education programs; drug tests; costs and fees; violations; discharge.
18.2-251.01.	Substance abuse screening and assessment for felony convictions.
18.2-251.02.	Drug Offender Assessment Fund.
18.2-251.1.	Possession or distribution of marijuana for medical purposes permitted.
18.2-251.2.	Possession and distribution of flunitrazepam; enhanced penalty.
18.2-251.3.	Possession and distribution of gamma-butyrolactone; 1, 4 - butanediol; enhanced penalty.
18.2-252.	Suspended sentence conditioned upon substance abuse screening, assessment, testing, and treatment or education.
18.2-253.	Disposal of seized substances.
18.2-253.1.	Destruction of seized substances prior to trial.
18.2-253.2.	Judge may order law-enforcement agency to maintain custody of controlled substances.
18.2-254.	Commitment of convicted person for treatment for drug or alcohol abuse.
18.2-255.	Distribution of certain drugs to persons under eighteen prohibited; penalty.
18.2-255.1.	Distribution, sale or display of printed material advertising instruments for use in administering marijuana or controlled substances to minors; penalty.
18.2-255.2.	Prohibiting the sale of drugs on or near certain properties.
18.2-256.	Conspiracy.
18.2-257.	Attempts.
18.2-258.	Certain premises deemed common nuisance; penalty.
18.2-258.01.	Enjoining nuisances involving illegal drug transactions.
18.2-258.02.	Maintaining a fortified drug house; penalty.
18.2-258.1.	Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit or forgery.
18.2-259.	Penalties to be in addition to civil or administrative sanctions.
18.2-259.1.	Forfeiture of driver's license for violations of article.
18.2-260.	Prescribing, dispensing, etc., drug except as authorized in article and Drug Control Act; violations for which no penalty provided.
18.2-260.1.	Falsifying patient records.
18.2-261.	Monetary penalty.
18.2-262.	Witnesses not excused from testifying or producing evidence because of self-incrimination.
18.2-263.	Unnecessary to negative exception, etc.; burden of proof of exception, etc.
18.2-264.	Inhaling drugs or other noxious chemical substances or causing, etc., others to do so.
18.2-264.01.	Charges for forensic laboratory analysis.
18.2-264.1, 18.2-265.	[Repealed.]

Article 1.1.
Drug Paraphernalia.

18.2-265.1.	Definition.
18.2-265.2.	Evidence to be considered in cases under this article.
18.2-265.3.	Penalties for sale, etc., of drug paraphernalia.
18.2-265.4.	Seizure and forfeiture of drug paraphernalia.
18.2-265.5.	Advertisement of drug paraphernalia prohibited; penalty.

Pharmacy Practice Act, Drug Control Act & Related Statutes

SUBTITLE I.
GENERAL PROVISIONS RELATING TO REGULATORY BOARDS.

Chapter 1.
General Provisions.

§ 54.1-100. Regulations of professions and occupations.

The right of every person to engage in any lawful profession, trade or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when it is clearly found that such abridgment is necessary for the preservation of the health, safety and welfare of the public.

No regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:

1. The unregulated practice of the profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;
2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor;
3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and
4. The public is not effectively protected by other means.

No regulation of a profession or occupation shall conflict with the Constitution of the United States, the Constitution of Virginia, the laws of the United States, or the laws of the Commonwealth of Virginia. Periodically and at least annually, all agencies regulating a profession or occupation shall review such regulations to ensure that no conflict exists.

§ 54.1-100.1. Department of Commerce continued as Department of Professional and Occupational Regulation.

The Department of Professional and Occupational Regulation, formerly known as the Department of Commerce, is continued, and wherever "Department of Commerce" is used in this Code, it shall mean the Department of Professional and Occupational Regulation. The Board for Professional and Occupational Regulation, formerly known as the Board of Commerce, is continued, and wherever "Board of Commerce" is used in this Code, it shall mean the Board for Professional and Occupational Regulation.

§ 54.1-101. Copies of examinations filed by regulatory boards.

A copy of examinations given by regulatory and advisory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions authorized to conduct examinations of applicants for admission to practice or pursue any profession, vocation, trade, calling, or art shall be kept on file at the office of the secretary of each board. A copy of the examination shall be placed on file within ten days after it is administered, and shall be preserved for at least one year as a public record accessible to any person desiring to examine it during usual business hours. After the expiration of one year from the time the examination is filed, the secretary of the respective board may withdraw and destroy the examination. However, this section shall not be construed or interpreted in a manner to require the filing or release of examinations or other information which would result in compromising the validity or security of future examinations conducted by regulatory or advisory boards of the Department of Professional and Occupational Regulation or the Department of Health Professions. In the event any provision of this section results in a conflict with the provisions of § 54.1-108, the provisions of § 54.1-108 shall prevail.

§ 54.1-102. Unlawful procurement of certificate, license or permit; unauthorized possession of examination or answers; penalty.

A. It shall be unlawful:

1. For any person to procure, or assist another to procure, through theft, fraud or other illegal means, a certificate, license or permit, from any state board, or other body charged by law with the responsibility of examining persons desiring to engage in a regulated business or profession, by giving to, or receiving from, any person any information, oral, written or printed, during the administration of the examination, which is intended to, or will, assist any person taking the examination in passing the examination and obtaining the required certificate, license or permit;

2. For any person, other than a member or officer of the board or body, to procure or have in his possession prior to the beginning of an examination, without written authority of a member or officer of the board or body, any question intended to be used by the board or body conducting the examination, or to receive or furnish to any person taking the examination, prior to or during the examination, any written or printed material purporting to be answers to, or aid in answering such questions;

3. For any person to attempt to procure, through theft, fraud or other illegal means, any questions intended to be used by the board or body conducting the examination, or the answers to the questions;

4. To promise or offer any valuable or other consideration to a person having access to the questions or answers as an inducement to procure for delivery to the promisor, or any other person, a copy or copies of any questions or answers.

If an examination is divided into separate parts, each of the parts shall be deemed an examination for the purposes of this section.

B. Any person violating the provisions of subsection A shall be guilty of a Class 2 misdemeanor.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

B. The regulatory boards may enter into agreements with other jurisdictions for the recognition of certificates and licenses issued by other jurisdictions.

C. The regulatory boards are authorized to promulgate regulations recognizing licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as full or partial fulfillment of qualifications for licensure or certification in the Commonwealth.

§ 54.1-104. Suspension of license, certificate, registration, or authority for dishonor of fee payment; reinstatement.

The Department of Professional and Occupational Regulation and the Department of Health Professions may suspend the license, certificate, registration or authority it has issued any person who submits a check, money draft or similar instrument for payment of a fee required by statute or regulation which is not honored by the bank or financial institution named. The suspension shall become effective ten days following delivery by certified mail of written notice of the dishonor and the impending suspension to such person's address. Upon notification of suspension, the person may reinstate the license, certificate, registration or authority upon payment of the fee and penalties required under statute or regulation. Suspension under this provision shall be exempt from the Administrative Process Act (§ 9-6.14:1 et seq.).

§ 54.1-105. Majority of board or panel required to suspend or revoke license, certificate or registration; imposition of sanctions.

An affirmative vote of a majority of those serving on a board who are qualified to vote or those serving on a panel of a health regulatory board convened pursuant to § 54.1-2400 shall be required for any action to

suspend or revoke a license, certification or registration or to impose a sanction on a licensee. However, an affirmative vote of a majority of a quorum of the regulatory board shall be sufficient for summary suspension pursuant to specific statutory authority.

§ 54.1-106. Health care professionals rendering services to patients of certain clinics exempt from liability.

A. No person who is licensed or certified by the Boards of 1 for Audiology and Speech-Language Pathology; Counseling; Dentistry; Medicine; Nursing; Optometry; Opticians; Pharmacy; Hearing Aid Specialists; Psychology; or Social Work who renders at any site any health care services within the limits of his license or certification, voluntarily and without compensation, to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge, shall be liable for any civil damages for any act or omission resulting from the rendering of such services unless the act or omission was the result of his gross negligence or willful misconduct.

For purposes of this section, any commissioned or contract medical officers or dentists serving on active duty in the United States armed services and assigned to duty as practicing commissioned or contract medical officers or dentists at any military hospital or medical facility owned and operated by the United States government shall be deemed to be licensed pursuant to this title.

B. For the purposes of Article 2.2 (§ 2.1-191.5 et seq.) of Chapter 14 of Title 2.1, any person rendering such health care services who (i) is registered with the Division of Risk Management and (ii) has no legal or financial interest in the clinic from which the patient is referred shall be deemed an agent of the Commonwealth and to be acting in an authorized governmental capacity with respect to delivery of such health care services. The premium for coverage of such person under the Risk Management Plan shall be paid by the Department of Health.

C. For the purposes of this section and Article 2.2 (§ 2.1-191.5 et seq.) of Chapter 14 of Title 2.1, "delivery of health care services without charge" shall be deemed to include the delivery of dental, medical or other health services when a reasonable minimum fee is charged to cover administrative costs.

§ 54.1-107. Appointments, terms and removal of members of regulatory boards; citizen members.

All members of regulatory boards shall be citizens of the United States and residents of Virginia. Members shall be appointed by the Governor and may be removed by him as provided in subsection B of § 2.1-43. Any vacancy occurring other than by expiration of terms shall be filled for the unexpired term. Members shall hold office after expiration of their terms until their successors are duly appointed and have qualified. Appointment to fill an unexpired term shall not be considered a full term. All members of regulatory boards appointed by the Governor for terms commencing on or after July 1, 1988, shall be appointed for terms of four years. No member shall serve more than two successive full terms on any regulatory board.

A "citizen member" of a regulatory board shall be a person who (i) is not by training or experience a practitioner of the profession or occupation regulated by the board, (ii) is not the spouse, parent, child, or sibling of such a practitioner, and (iii) has no direct or indirect financial interest, except as a consumer, in the practice of the profession or occupation regulated by the board.

The provisions of this section shall not apply to the Board for Branch Pilots.

§ 54.1-108. Disclosure of official records.

Official records of the Department of Professional and Occupational Regulation or the Department of Health Professions or any board named in this title shall be subject to the disclosure provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.), except for the following:

1. Examination questions, papers, booklets and answer sheets, which may be disclosed at the discretion of the board administering or causing to be administered such examinations.

2. Applications for admission to examinations or for licensure, and the scoring records maintained by any board or by the Departments on individual licensees or applicants. However, this material may be made

available during normal working hours for copying by the subject individual at his expense at the office of the Department or board which possesses the material.
3. Records of active investigations being conducted by the Departments or any board.

§ 54.1-109. Reviews and appeals.

Any person who has been aggrieved by any action of the Department of Professional and Occupational Regulation, Department of Health Professions, Board for Professional and Occupational Regulation, Board of Health Professions, any regulatory board within the Departments or any panel of a health regulatory board convened pursuant to § 54.1-2400 shall be entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

§ 54.1-110. Presiding officer; participation of board in hearing; disqualification of board member.

A. Every hearing in a contested case shall be conducted in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.). When a hearing officer presides, the regulatory board shall determine whether the hearing officer is to hear the case alone or with a panel of a health regulatory board convened pursuant to § 54.1-2400 or whether the board is to hear the case with the hearing officer.
B. A board member shall disqualify himself and withdraw from any case in which he cannot accord fair and impartial consideration. Any party may request the disqualification of any board member by stating with particularity the grounds upon which it is claimed that fair and impartial consideration cannot be accorded. The remaining members of the board or panel shall determine whether the individual should be disqualified.

§ 54.1-111. Unlawful acts; prosecution; proceedings in equity.

A. It shall be unlawful for any person, partnership, corporation or other entity to engage in any of the following acts:
1. Practicing a profession or occupation without holding a valid license as required by statute or regulation.
2. Making use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.
3. Making use of any titles, words, letters or abbreviations which may reasonably be confused with a designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.
4. Performing any act or function which is restricted by statute or regulation to persons holding a professional or occupational license or certification, without being duly certified or licensed.
5. Failing to register as a practitioner of a profession or occupation as required by statute or regulation.
6. Materially misrepresenting facts in an application for licensure, certification or registration.
7. Willfully refusing to furnish a regulatory board information or records required or requested pursuant to statute or regulation.
8. Violating any statute or regulation governing the practice of any profession or occupation regulated pursuant to this title.
9. Refusing to process a request, tendered in accordance with the regulations of the relevant health regulatory board or applicable statutory law, for patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice.

Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a thirty-six-month period shall constitute a Class 6 felony.
B. In addition to the criminal penalties provided for in subsection A of this section, the Department of Professional and Occupational Regulation or the Department of Health Professions, without compliance with the Administrative Process Act (§ 9-6.14:1 et seq.), shall have the authority to enforce the provisions

of subsection A of this section and may institute proceedings in equity to enjoin any person, partnership, corporation or any other entity from engaging in any unlawful act enumerated in this section. Such proceedings shall be brought in the name of the Commonwealth by the appropriate Department in the circuit court of the city or county in which the unlawful act occurred or in which the defendant resides.
C. This section shall not be construed to prohibit or prevent the owner of patient records from (i) retaining copies of his patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice or (ii) charging a reasonable fee, not in excess of the amounts authorized in § 8.01-413, for copies of patient records.

§ 54.1-112. Copies of records as evidence.
Copies of all records, documents and other papers of the Department of Professional and Occupational Regulation and the Department of Health Professions and their regulatory boards which bear the official seal and which are duly certified and authenticated in writing on the face of such documents to be true copies by the custodian thereof and by the person to whom the custodian reports shall be received as evidence with like effect as the original records, documents or other papers in all courts of the Commonwealth.

§ 54.1-113. Regulatory boards to adjust fees.
Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

§ 54.1-114. Biennial report.
The Board of Bar Examiners, the Department of Professional and Occupational Regulation and the Department of Health Professions shall submit biennial reports to the Governor and General Assembly on or before November 1 of each even-numbered year. The biennial report shall contain at a minimum the following information for the Board of Bar Examiners and for each board within the two Departments: (i) a summary of the board's fiscal affairs, (ii) a description of the board's activities, (iii) statistical information regarding the administrative hearings and decisions of the board, (iv) a general summary of all complaints received against licensees and the procedures used to resolve the complaints, and (v) a description of any action taken by the board designed to increase public awareness of board operations and to facilitate public participation. The Department of Health Professions shall include, in those portions of its report relating to the Board of Medicine, a compilation of the data required by § 54.1-2910.1. The biennial report shall be distributed in accordance with the provisions of § 2.1-467.

§ 54.1-115.
Expired.

§ 54.1-116. Applicants to include social security numbers, or other identifying number.
Every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth pursuant to this title, and every applicant for renewal thereof, shall provide on the application either his social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. An initial application or renewal application which does not include either identifying number shall not be considered or acted upon by the issuing entity, and no refund of any fees paid with the application shall be granted.

Chapter 24.
General Provisions.

§ 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.
2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.
3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.
4. To establish schedules for renewals of registration, certification and licensure.
5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.
6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.
7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.
8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.
9. To take appropriate disciplinary action for violations of applicable law and regulations.
10. To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.
11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.
12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

§ 54.1-2400.01. Certain definition.

As used in this subtitle, "laser surgery" means treatment through revision, destruction, incision or other structural alteration of human tissue using laser technology. Under this definition, the continued use of laser technology solely for nonsurgical purposes of examination and diagnosis shall be permitted for those professions whose licenses permit such use.

§ 54.1-2400.1. Mental health service providers; duty to protect third parties; immunity.

A. As used in this section:

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Client" or "patient" means any person who is voluntarily or involuntarily receiving mental health services or substance abuse services from any mental health service provider.

"Clinical psychologist" means a person who practices clinical psychology as defined in § 54.1-3600.

"Clinical social worker" means a person who practices social work as defined in § 54.1-3700.

"Licensed practical nurse" means a person licensed to practice practical nursing as defined in § 54.1-3000.

"Licensed substance abuse treatment practitioner" means any person licensed to engage in the practice of substance abuse treatment as defined in § 54.1-3500.

"Marriage and family therapist" means a person licensed to engage in the practice of marriage and family therapy as defined in § 54.1-3500.

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses which interfere with mental health and development.

"Mental health service provider" or "provider" refers to any of the following: (i) a person who provides professional services as a certified substance abuse counselor, clinical psychologist, clinical social worker, licensed substance abuse treatment practitioner, licensed practical nurse, marriage and family therapist, mental health professional, physician, professional counselor, psychologist, registered nurse, school psychologist, or social worker; (ii) a professional corporation, all of whose shareholders or members are so licensed; or (iii) a partnership, all of whose partners are so licensed.

"Professional counselor" means a person who practices counseling as defined in § 54.1-3500.

"Psychologist" means a person who practices psychology as defined in § 54.1-3600.

"Registered nurse" means a person licensed to practice professional nursing as defined in § 54.1-3000.

"School psychologist" means a person who practices school psychology as defined in § 54.1-3600.

"Social worker" means a person who practices social work as defined in § 54.1-3700.

B. A mental health service provider has a duty to take precautions to protect third parties from violent behavior or other serious harm only when the client has orally, in writing, or via sign language, communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons, if the provider reasonably believes, or should believe according to the standards of his profession, that the client has the intent and ability to carry out that threat immediately or imminently. If the third party is a child, in addition to taking precautions to protect the child from the behaviors in the above types of threats, the provider also has a duty to take precautions to protect the child if the client threatens to engage in behaviors that would constitute physical abuse or sexual abuse as defined in § 18.2-67.10. The duty to protect does not attach unless the threat has been communicated to the provider by the threatening client while the provider is engaged in his professional duties.

C. The duty set forth in subsection B is discharged by a mental health service provider who takes one or more of the following actions:

1. Seeks civil commitment of the client under Chapter 2 (§ 37.1-63 et seq.) of Title 37.1.

2. Makes reasonable attempts to warn the potential victims or the parent or guardian of the potential victim if the potential victim is under the age of eighteen.

3. Makes reasonable efforts to notify a law-enforcement official having jurisdiction in the client's or potential victim's place of residence or place of work, or place of work of the parent or guardian if the potential victim is under age eighteen, or both.
4. Takes steps reasonably available to the provider to prevent the client from using physical violence or other means of harm to others until the appropriate law-enforcement agency can be summoned and takes custody of the client.
5. Provides therapy or counseling to the client or patient in the session in which the threat has been communicated until the mental health service provider reasonably believes that the client no longer has the intent or the ability to carry out the threat.
D. A mental health service provider shall not be held civilly liable to any person for:
1. Breaching confidentiality with the limited purpose of protecting third parties by communicating the threats described in subsection B made by his clients to potential third party victims or law-enforcement agencies or by taking any of the actions specified in subsection C.
2. Failing to predict, in the absence of a threat described in subsection B, that the client would cause the third party serious physical harm.
3. Failing to take precautions other than those enumerated in subsection C to protect a potential third party victim from the client's violent behavior.

§ 54.1-2400.2. Confidentiality of information obtained during an investigation or disciplinary proceeding.

A. Any reports, information or records received and maintained by any health regulatory board in connection with possible disciplinary proceedings, including any material received or developed by a board during an investigation or proceeding, shall be strictly confidential. A board may only disclose such confidential information:
1. In a disciplinary proceeding before a board or in any subsequent trial or appeal of an action or order;
2. To regulatory authorities concerned with granting, limiting or denying licenses, certificates or registrations to practice a health profession;
3. To hospital committees concerned with granting, limiting or denying hospital privileges if a final determination regarding a violation has been made;
4. Pursuant to an order of a court of competent jurisdiction;
5. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any person is first deleted. Such release shall be made pursuant to a written agreement to ensure compliance with this section; or
6. To the Health Practitioners' Intervention Program within the Department of Health Professions in connection with health practitioners who apply to or participate in the Program.
B. In no event shall confidential information received, maintained or developed by any board, or disclosed by the board to others, pursuant to this section, be available for discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision of or failure to provide services. This section shall not, however, be construed to inhibit an investigation or prosecution under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.
C. Any claim of a physician-patient or practitioner-patient privilege shall not prevail in any investigation or proceeding by any health regulatory board acting within the scope of its authority. The disclosure, however, of any information pursuant to this provision shall not be deemed a waiver of such privilege in any other proceeding.
D. Orders and notices of a board relating to disciplinary action shall be disclosed.
E. This section shall not prohibit the Director of the Department of Health Professions, after consultation with the relevant health regulatory board president or his designee, from disclosing to the Attorney General, or the appropriate attorney for the Commonwealth, investigatory information which indicates a possible violation of any provision of law relating to the manufacture, distribution, dispensing, prescribing

or administration of drugs, other than drugs classified as Schedule VI drugs and devices, by any individual regulated by any health regulatory board.

F. This section shall not prohibit the Director of the Department of Health Professions from disclosing matters listed in subdivision A 1, A 2, or A 3 of § 54.1-2909; from making the reports of aggregate information and summaries required by § 54.1-2400.3; or from disclosing the information required to be made available to the public pursuant to § 54.1-2910.1.

G. Orders and notices of the health regulatory boards relating to disciplinary actions shall be disclosed.

H. Any person found guilty of the unlawful disclosure of confidential information possessed by a health regulatory board shall be guilty of a Class 1 misdemeanor.

§ 54.1-2400.3. Disciplinary actions to be reported.

In addition to the information required by § 54.1-114, the Director shall include in the Department's biennial report the number of reports or complaints of misconduct received and the investigations, charges, findings, and sanctions resulting therefrom. The report shall reflect the categories of allegations, kinds of complaints and the rates of disciplinary activity for the various regulated professions and the health regulatory boards having jurisdiction; summaries explaining the reported data shall be included with the report. The information shall be reported only in the aggregate without reference to any individual's name or identifying particulars. In those portions of this report relating to the Board of Medicine, the Director shall include a summary of the data required by § 54.1-2910.1.

§ 54.1-2400.4. Mental health service providers duty to inform; immunity; civil penalty.

A. Any mental health service provider, as defined in § 54.1-2400.1, shall, upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, advise his patient of his right to report such misconduct to the Department of Health Professions, hereinafter referred to as the "Department."

B. The mental health service provider shall provide relevant information to the patient, including, but not limited to, the Department's toll-free complaint hotline number for consumer complaints and written information, published by the Department of Health Professions, explaining how to file a report. The mental health service provider shall document in the patient's record the alleged misconduct, the category of licensure or certification, and approximate dates of treatment, if known, of the mental health service provider who will be the subject of the report, and the action taken by the mental health service provider to inform the patient of his right to file a complaint with the Department of Health Professions.

C. Any mental health service provider informing a patient of his right to file a complaint against a regulated person and providing the information required by this section shall be immune from any civil liability or criminal prosecution resulting therefrom unless such person acted in bad faith or with malicious intent.

D. Notwithstanding any other provision of law, any person required to inform a patient of his right to file a complaint against a regulated person pursuant to this section who fails to do so shall be subject to a civil penalty not to exceed $100.

§ 54.1-2401. Monetary penalty.

Any person licensed, registered or certified by any health regulatory board who violates any provision of statute or regulation pertaining to that board and who is not criminally prosecuted, may be subject to the monetary penalty provided in this section. If the board or any special conference committee determines that a respondent has violated any provision of statute or regulation pertaining to the board, it shall determine the amount of any monetary penalty to be imposed for the violation, which shall not exceed $1,000 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties shall be deposited in the Literary Fund.

§ 54.1-2402. Citizen members on health regulatory boards.

Citizen members appointed to boards within the Department of Health Professions after July 1, 1986, shall participate in all matters. Of the citizen members first appointed to boards with two citizen members, one shall be appointed for a term of two years and one for the maximum term established for members of the respective board. On boards with one citizen member, the citizen member initially appointed shall be appointed for the maximum term established for members of that board. The provisions of this section relating to terms of citizen members on such boards shall not apply to the Board of Medicine or to the Board of Funeral Directors and Embalmers. For the purposes of this section, "citizen member" shall have the meaning provided in § 54.1-107.

§ 54.1-2402.1. Appointments, removals, and limitation of terms of members of regulatory boards.

Except as otherwise expressly provided, members shall be appointed by the Governor and may be removed by him as provided in subsection B of § 2.1-43. Any vacancy occurring other than by expiration of term shall be filled for the unexpired term. Members shall hold office after expiration of their terms until their successors are duly appointed and have qualified.

All members of regulatory boards appointed by the Governor for terms commencing on or after July 1, 1988, shall be appointed for terms of four years. No members shall serve more than two successive full terms on any regulatory board.

§ 54.1-2403. Certain advertising prohibited.

No person licensed by one of the boards within the Department shall use any form of advertising that contains any false, fraudulent, misleading or deceptive statement or claim.

§ 54.1-2403.01. Routine component of prenatal care.

As a routine component of prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, regardless of the site of such practice, shall advise every pregnant woman who is his patient of the value of testing for Human Immunodeficiency Viruses (HIV) infection and shall request of each such pregnant woman consent to such testing. The confidentiality provisions of § 32.1-36.1, the informed consent stipulations, test result disclosure conditions, and appropriate counseling requirements of § 32.1-37.2 shall apply to any HIV testing conducted pursuant to this section. Practitioners shall counsel all pregnant women with HIV-positive test results about the dangers to the fetus and the advisability of receiving treatment in accordance with the then current Centers for Disease Control recommendations for HIV-positive pregnant women. Any pregnant woman shall have the right to refuse consent to testing for HIV infection and any recommended treatment. Documentation of such refusal shall be maintained in the patient's medical record.

§ 54.1-2403.1. Protocol for certain medical history screening required.

A. As a routine component of every pregnant woman's prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, regardless of the site of such practice, shall establish and implement a medical history protocol for screening pregnant women for substance abuse to determine the need for a specific substance abuse evaluation. The medical history protocol shall include, but need not be limited to, a description of the screening device and shall address abuse of both legal and illegal substances. The medical history screening may be followed, as necessary and appropriate, with a thorough substance abuse evaluation.

B. The results of such medical history screening and of any specific substance abuse evaluation which may be conducted shall be confidential and, if the woman is enrolled in a treatment program operated by any facility receiving federal funds, shall only be released as provided in federal law and regulations. However, if the woman is not enrolled in a treatment program or is not enrolled in a program operated by a facility receiving federal funds, the results may only be released to the following persons:

1. The subject of the medical history screening or her legally authorized representative.
2. Any person designated in a written release signed by the subject of the medical history screening or her legally authorized representative.
3. Health care providers for the purposes of consultation or providing care and treatment to the person who was the subject of the medical history screening.
C. The results of the medical history screening required by this section or any specific substance abuse evaluation which may be conducted as part of the prenatal care shall not be admissible in any criminal proceeding.
D. Practitioners shall advise their patients of the results of the medical history screening and specific substance abuse evaluation, and shall provide such information to third-party payers as may be required for reimbursement of the costs of medical care. However, such information shall not be admissible in any criminal proceedings. Practitioners shall advise all pregnant women whose medical history screenings and specific substance abuse evaluations are positive for substance abuse of appropriate treatment and shall inform such women of the potential for poor birth outcomes from substance abuse.

§ 54.1-2403.2. Record storage.
A. Medical records, as defined in § 42.1-77, may be stored by computerized or other electronic process or microfilm, or other photographic, mechanical, or chemical process; however, the stored record shall identify the location of any documents or information that could not be so technologically stored. If the technological storage process creates an unalterable record, a health care provider licensed, certified or registered by a health regulatory board within the Department shall not be required to maintain paper copies of medical records that have been stored by computerized or other electronic process, microfilm, or other photographic, mechanical, or chemical process. Upon completing such technological storage, paper copies of medical records may be destroyed in a manner that preserves the patient's confidentiality. However, any documents or information that could not be so technologically stored shall be preserved.
B. Notwithstanding the authority given in this section to store patient records in the form of microfilm, prescription dispensing records maintained in or on behalf of any pharmacy registered or permitted in Virginia shall only be stored in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412.

§ 54.1-2403.3. Medical records; ownership; provision of copies.
Medical records maintained by any health care provider as defined in § 32.1-127.1:03 shall be the property of such health care provider or, in the case of a health care provider employed by another health care provider, the property of the employer. Such health care provider shall release copies of any such medical records in compliance with § 32.1-127.1:03 or § 8.01-413, if the request is made for purposes of litigation, or as otherwise provided by state or federal law.

§ 54.1-2404. Itemized statements required upon request.
Upon the request of any of his patients, any health care provider licensed or certified by any of the boards within the Department, except in the case of health care services as defined in Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2, shall provide to such patient an itemized statement of the charges for the services rendered to the requesting patient regardless of whether a bill for the services which are the subject of the request has been or will be submitted to any third party payor including medical assistance services or the state/local hospitalization program.

§ 54.1-2405. Transfer of patient records in conjunction with sale of practice; notice required.
No person licensed, registered, or certified by one of the health regulatory boards under the Department shall transfer records pertaining to a current patient in conjunction with the sale of a professional practice until such person has first attempted to notify the patient of the pending transfer, by mail, at the patient's last known address, and by publishing prior notice in a newspaper of general circulation within the

provider's practice area. The notice shall specify that, at the written request of the patient or an authorized representative, within a reasonable time period, the records or copies will be sent to any other like-regulated provider of the patient's choice or destroyed.

§ 54.1-2406. Treatment records of practitioners.

No records of the identity, diagnosis, prognosis, or treatment of any practitioner of any profession regulated by any of the regulatory boards within the Department of Health Professions obtained by the Department or any health regulatory board from a health care provider or facility that is treating or has treated such practitioner for drug addiction or chronic alcoholism shall be disclosed except:

1. In a disciplinary hearing before a health regulatory board or in any subsequent trial or appeal of a board action or order;
2. To licensing or disciplinary authorities of other jurisdictions or to hospital committees located within or outside this Commonwealth which are concerned with granting, limiting, or denying a physician hospital privileges if a final determination regarding disciplinary action has been made; or
3. Pursuant to an order of a court of competent jurisdiction.

§ 54.1-2407. Requirements for human research.

Any person licensed, registered, or certified by any health regulatory board who engages in the conduct of human research, as defined in § 32.1-162.16, shall comply with the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1. Failure to so comply shall constitute unprofessional conduct.

§ 54.1-2408. Disqualification for license, certificate or registration.

A board within the Department of Health Professions shall refuse to admit a candidate to any examination and shall refuse to issue a license, certificate or registration to any applicant if the candidate or applicant has had his license, certificate or registration to practice the profession or occupation revoked or suspended, and has not had his license, certificate or registration to so practice reinstated by the jurisdiction which revoked or suspended his license, certificate or registration.

§ 54.1-2408.1. Summary suspension of licenses, certificates or registrations; allegations to be in writing.

A. Any health regulatory board may suspend the license, certificate or registration of any person holding a license, certificate or registration issued by it without a hearing simultaneously with the institution of proceedings for a hearing, if the relevant board finds that there is a substantial danger to the public health or safety which warrants this action. A board may meet by telephone conference call when summarily suspending a license, certificate or registration if a good faith effort to assemble a quorum of the board has failed and, in the judgment of a majority of the members of the board, the continued practice by the individual constitutes a substantial danger to the public health or safety. Institution of proceedings for a hearing shall be provided simultaneously with the summary suspension. The hearing shall be scheduled within a reasonable time of the date of the summary suspension.

B. Allegations of violations of this title shall be made in writing to the relevant health regulatory board.

§ 54.1-2409. Mandatory suspension or revocation; reinstatement; appeal.

Upon receipt of documentation by a court or agency, state or federal, that a person licensed, certified or registered by a board within the Department of Health Professions has had his license, certificate or registration to practice the same profession or occupation revoked or suspended in another jurisdiction and has not had his license, certificate or registration to so practice reinstated within that jurisdiction, or has been convicted of a felony or has been adjudged incapacitated, the Director of the Department shall immediately suspend, without a hearing, the license, certificate or registration of any person so disciplined, convicted or adjudged. The Director shall notify such person or his legal guardian, conservator, trustee,

committee or other representative of the suspension in writing to his address on record with the Department. Such notice shall include a copy of the order of such court or agency, certified by the Director as the order received from such court or agency. Such person shall not have the right to practice within this Commonwealth until his license, certificate or registration has been reinstated by the Board.

The clerk of any court in which a conviction of a felony or an adjudication of incapacity is made, who has knowledge that a person licensed, certified or registered by a board within the Department has been convicted or found incapacitated, shall have a duty to report these findings promptly to the Director.

When a conviction has not become final, the Director may decline to suspend the license, certificate or registration until the conviction becomes final if there is a likelihood of injury or damage to the public if the person's services are not available.

Any person whose license, certificate or registration has been suspended as provided in this section may apply to the board for reinstatement of his license, certificate or registration. Such person shall be entitled to a hearing not later than the next regular meeting of the board after the expiration of thirty days from the receipt of such application, and shall have the right to be represented by counsel and to summon witnesses to testify in his behalf.

The reinstatement of the applicant's license, certificate or registration shall require the affirmative vote of three-fourths of the members of the board. The board may order such reinstatement without further examination of the applicant, or reinstate the license, certificate or registration upon such terms and conditions as it deems appropriate.

§ 54.1-2409.1. Criminal penalties for practicing certain professions and occupations without appropriate license.

Any person who, without holding a current valid license, issued by a regulatory board pursuant to this title (i) performs an invasive procedure for which a license is required; (ii) administers, prescribes, sells, distributes, or dispenses a controlled drug; or (iii) practices a profession or occupation after having his license to do so suspended or revoked shall be guilty of a Class 6 felony.

§ 54.1-2409.2. Board to set criteria for determining need for professional regulation.

The Board of Health Professions shall study and prepare a report for submission to the Governor and the General Assembly by October 1, 1997, containing its findings and recommendations on the appropriate criteria to be applied in determining the need for regulation of any health care occupation or profession. Such criteria shall address at a minimum the following principles:

1. Promotion of effective health outcomes and protection of the public from harm.
2. Accountability of health regulatory bodies to the public.
3. Promotion of consumers' access to a competent health care provider workforce.
4. Encouragement of a flexible, rational, cost-effective health care system that allows effective working relationships among health care providers.
5. Facilitation of professional and geographic mobility of competent providers.
6. Minimization of unreasonable or anti-competitive requirements that produce no demonstrable benefit.

The Board in its study shall analyze and frame its recommendations in the context of the total health care delivery system, considering the current and changing nature of the settings in which health care occupations and professions are practiced. It shall recognize in its recommendations the interaction of the regulation of health professionals with other areas of regulation including, but not limited to, the following:

1. Regulation of facilities, organizations, and insurance plans;
2. Health delivery system data;
3. Reimbursement issues;
4. Accreditation of education programs; and
5. Health workforce planning efforts.

The Board in its study shall review and analyze the work of publicly and privately sponsored studies of reform of health care workforce regulation in other states and nations. In conducting its study the Board shall cooperate with the state academic health science centers with accredited professional degree programs.

Chapter 24.1.
Practitioner Self-Referral Act.

§ 54.1-2410. Definitions.

As used in this chapter or when referring to the Board of Health Professions regulatory authority therefor, unless the context requires a different meaning:

"Board" means the Board of Health Professions.

"Community" means a city or a county.

"Demonstrated need" means (i) there is no facility in the community providing similar services and (ii) alternative financing is not available for the facility, or (iii) such other conditions as may be established by Board regulation.

"Entity" means any person, partnership, firm, corporation, or other business, including assisted living facilities as defined in § 63.1-172, that delivers health services.

"Group practice" means two or more health care practitioners who are members of the same legally organized partnership, professional corporation, not-for-profit corporation, faculty practice or similar association in which (i) each member provides substantially the full range of services within his licensed or certified scope of practice at the same location as the other members through the use of the organization's office space, facilities, equipment, or personnel; (ii) payments for services received from a member are treated as receipts of the organization; and (iii) the overhead expenses and income from the practice are distributed according to methods previously determined by the members.

"Health services" means any procedures or services related to prevention, diagnosis, treatment, and care rendered by a health care worker, regardless of whether the worker is regulated by the Commonwealth.

"Immediate family member" means the individual's spouse, child, child's spouse, stepchild, stepchild's spouse, grandchild, grandchild's spouse, parent, stepparent, parent-in-law, or sibling.

"Investment interest" means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments, except investment interests in a hospital licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1.

"Investor" means an individual or entity directly or indirectly possessing a legal or beneficial ownership interest, including an investment interest.

"Office practice" means the facility or facilities at which a practitioner, on an ongoing basis, provides or supervises the provision of health services to consumers.

"Practitioner" means any individual certified or licensed by any of the health regulatory boards within the Department of Health Professions, except individuals regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Referral" means to send or direct a patient for health services to another health care practitioner or entity outside the referring practitioner's group practice or office practice or to establish a plan of care which requires the provision of any health services outside the referring practitioner's group practice or office practice.

§ 54.1-2411. Prohibited referrals and payments; exceptions.

A. Unless the practitioner directly provides health services within the entity and will be personally involved with the provision of care to the referred patient, or has been granted an exception by the Board or satisfies the provisions of subsection D of this section, a practitioner shall not refer a patient for health services to an entity outside the practitioner's office or group practice if the practitioner or any of the practitioner's immediate family members is an investor in such entity.

B. The Board may grant an exception to the prohibitions in this chapter, and may permit a practitioner to invest in and refer to an entity, regardless of whether the practitioner provides direct services within such entity, if there is a demonstrated need in the community for the entity and all of the following conditions are met:

1. Individuals other than practitioners are afforded a bona fide opportunity to invest in the entity on the same and equal terms as those offered to any referring practitioner;

2. No investor-practitioner is required or encouraged to refer patients to the entity or otherwise generate business as a condition of becoming or remaining an investor;

3. The services of the entity are marketed and furnished to practitioner-investors and other investors on the same and equal terms;

4. The entity does not issue loans or guarantee any loans for practitioners who are in a position to refer patients to such entity;

5. The income on the practitioner's investment is based on the practitioner's equity interest in the entity and is not tied to referral volumes; and

6. The investment contract between the entity and the practitioner does not include any covenant or clause limiting or preventing the practitioner's investment in other entities.

Unless the Board, the practitioner, or entity requests a hearing, the Board shall determine whether to grant or deny an exception within ninety days of the receipt of a written request from the practitioner or entity, stating the facts of the particular circumstances and certifying compliance with the conditions required by this subsection. The Board's decision shall be a final administrative decision and shall be subject to judicial review pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.).

C. When an exception is granted pursuant to subsection B:

1. The practitioner shall disclose his investment interest in the entity to the patient at the time of referral. If alternative entities are reasonably available, the practitioner shall provide the patient with a list of such alternative entities and shall inform the patient of the option to use an alternative entity. The practitioner shall also inform the patient that choosing another entity will not affect his treatment or care;

2. Information on the practitioner's investment shall be provided if requested by any third party payor;

3. The entity shall establish and utilize an internal utilization review program to ensure that practitioner-investors are engaging in appropriate and necessary utilization; and

4. In the event of a conflict of interests between the practitioner's ownership interests and the best interests of any patient, the practitioner shall not make a referral to such entity, but shall make alternative arrangements for the referral.

D. Further, a practitioner may refer patients for health services to a publicly traded entity in which such practitioner has an investment interest, without applying for or receiving an exception from the Board, if all of the following conditions are met:

1. The entity's stock is listed for trading on the New York Stock Exchange or the American Stock Exchange or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers;

2. The entity had, at the end of the corporation's most recent fiscal year, total net assets of at least $50,000,000 related to the furnishing of health services;

3. The entity markets and furnishes its services to practitioner-investors and other practitioners on the same and equal terms;

4. All stock of the entity, including the stock of any predecessor privately held company, is one class without preferential treatment as to status or remuneration;

5. The entity does not issue loans or guarantee any loans for practitioners who are in a position to refer patients to such entity;
6. The income on the practitioner's investment is not tied to referral volumes and is based on the practitioner's equity interest in the entity; and
7. The practitioner's investment interest does not exceed one half of one percent of the entity's total equity.

§ 54.1-2412. Board to administer; powers and duties of Board; penalties for violation.

A. In addition to its other powers and duties, the Board of Health Professions shall administer the provisions of this chapter.
B. The Board shall promulgate, pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.), regulations to:
1. Establish standards, procedures, and criteria which are reasonable and necessary for the effective administration of this chapter;
2. Establish standards, procedures, and criteria for determining compliance with, exceptions to, and violations of the provisions of § 54.1-2411;
3. Establish standards, procedures, and criteria for advising practitioners and entities of the applicability of this chapter to activities and investments;
4. Levy and collect fees for processing requests for exceptions from the prohibitions set forth in this chapter and for authorization to make referrals pursuant to subsection B of § 54.1-2411;
5. Establish standards, procedures, and criteria for review and referral to the appropriate health regulatory board of all reports of investigations of alleged violations of this chapter by practitioners and for investigations and determinations of violations of this chapter by entities;
6. Establish standards, procedures, and criteria for granting exceptions from the prohibitions set forth in this chapter; and
7. Establish such other regulations as may reasonably be needed to administer this chapter.
C. Upon a determination of a violation by the Board, pursuant to the Administrative Process Act, any entity, other than a practitioner, that presents or causes to be presented a bill or claim for services that the entity knows or has reason to know is prohibited by § 54.1-2411 shall be subject to a monetary penalty of no more than $20,000 per referral, bill, or claim. The monetary penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties shall be deposited in the Literary Fund.
D. Any violation of this chapter by a practitioner shall constitute grounds for disciplinary action as unprofessional conduct by the appropriate health regulatory board within the Department of Health Professions. Sanctions for violation of this chapter may include, but are not limited to, the monetary penalty authorized in § 54.1-2401.

§ 54.1-2413. Additional conditions related to practitioner-investors.

A. No hospital licensed in this Commonwealth shall discriminate against or otherwise penalize any practitioner for compliance with the provisions of this chapter.
B. No practitioner, other health care worker, or entity shall enter into any agreement, arrangement, or scheme intended to evade the provisions of this chapter by inducing patient referrals in a manner which would be prohibited by this chapter if the practitioner made the referrals directly.
C. No group practice shall be formed for the purpose of facilitating referrals that would otherwise be prohibited by this chapter.
D. Notwithstanding the provisions of this chapter, a practitioner may refer a patient who is a member of a health maintenance organization to an entity in which the practitioner is an investor if the referral is made pursuant to a contract with the health maintenance organization.

§ 54.1-2414. Applicability of chapter; grace period for compliance.

This chapter shall apply, in the case of any investment interest acquired after February 1, 1993, to referrals for health services made by a practitioner on or after July 1, 1993. However, in the case of any investment interest acquired prior to February 1, 1993, compliance with the provisions of this chapter is required by July 1, 1996.

Chapter 25.
Department of Health Professions.

§ 54.1-2500. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Board" means the Board of Health Professions.
"Department" means the Department of Health Professions.
"Director" means the Director of the Department of Health Professions.
"Health regulatory board" or "regulatory board" means any board included within the Department of Health Professions as provided in § 54.1-2503.

§ 54.1-2501. Department established.

The Department of Health Professions established within the executive branch, shall be under the supervision and management of the Director of the Department.

§ 54.1-2502. Use of consultants in investigations.

The Department of Health Professions shall establish a roster of consultants in health care specialties for each health regulatory board, as required. The Department shall contract with each consultant to assist in the investigation and evaluation of violations of statute or regulations of the health regulatory boards and to provide expert testimony as necessary in any subsequent administrative hearing. The cost of the consultants shall be paid by the board for which the services are provided.
Any consultant under contract to the Department shall have immunity from civil liability resulting from any communication, finding, opinion or conclusion made in the course of his duties unless such person acted in bad faith or with malicious intent.

§ 54.1-2503. Boards within Department.

In addition to the Board of Health Professions, the following boards are included within the Department: Board of Audiology and Speech-Language Pathology, Board of Counseling, Board of Dentistry, Board of Funeral Directors and Embalmers, Board of Medicine, Board of Nursing, Board of Nursing Home Administrators, Board of Optometry, Board of Pharmacy, Board of Physical Therapy, Board of Psychology, Board of Social Work and Board of Veterinary Medicine.

§ 54.1-2504. Appointment of Director.

The Director of the Department of Health Professions shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor.

§ 54.1-2505. Powers and duties of Director of Department.

The Director of the Department shall have the following powers and duties:
1. To supervise and manage the Department;
2. To perform or consolidate such administrative services or functions as may assist the operation of the boards;
3. To prepare, approve and submit to the Governor, after consultation with the boards, all requests for appropriations and be responsible for all expenditures pursuant to appropriations;
4. To provide such office facilities as will allow the boards to carry out their duties;

5. To employ personnel as required for the proper performance of the responsibilities of the Department subject to Chapter 10 (§ 2.1-110 et seq.) of Title 2.1 within the limits of appropriations made by law;
6. To receive all complaints made against regulated health care professionals;
7. To develop administrative policies and procedures governing the receipt and recording of complaints;
8. To monitor the status of actions taken under the auspices of the boards regarding complaints until the closure of each case;
9. To provide investigative and such other services as needed by the boards to enforce their respective statutes and regulations;
10. To provide staff to assist in the performance of the duties of the Board of Health Professions;
11. To collect and account for all fees to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the regulatory boards, the Health Practitioners' Intervention Program, and the Department and Board of Health Professions shall be paid;
12. To make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of the Commonwealth;
13. To accept grants from the United States government, its agencies and instrumentalities, and any other source. The Director shall have the power to comply with conditions and execute agreements as may be necessary, convenient or desirable;
14. To promulgate and revise regulations necessary for the administration of the Department and such regulations as are necessary for the implementation of the Health Practitioners' Intervention Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title and subdivision 19 of this section;
15. To report promptly, after consultation with the presiding officer of the appropriate health regulatory board or his designee, to the Attorney General or the appropriate attorney for the Commonwealth any information the Department obtains which, upon appropriate investigation, indicates, in the judgment of the Director, that a person licensed by any of the health regulatory boards has violated any provision of criminal law relating to manufacturing, distributing, dispensing, prescribing or administering drugs other than drugs classified as Schedule VI drugs. When necessary, the Attorney General or the attorney for the Commonwealth shall request that the Department of Health Professions or the Department of State Police conduct any subsequent investigation of such report. For the purpose of this section, the terms manufacturing, distributing, dispensing, prescribing or administering drugs shall not include minor administrative or clerical errors which do not affect the inventory of drugs required by Chapter 34 (§ 54.1-3400 et seq.) of this title and do not indicate a pattern of criminal behavior;
16. To keep records of the names and qualifications of registered, certified or licensed persons;
17. To exercise other powers and perform other duties required of the Director by the Governor;
18. To issue subpoenas in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) for any informal fact finding or formal proceeding within the jurisdiction of the Department or any regulatory board; and
19. To establish, and revise as necessary, a comprehensive health practitioners' intervention program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title.

§ 54.1-2506. Enforcement of laws by Director and investigative personnel; authority of investigative personnel.

The Director and investigative personnel appointed by him shall be sworn to enforce the statutes and regulations pertaining to the Department, the Board, and the health regulatory boards and shall have the authority to investigate any violations of those statutes and regulations and to the extent otherwise authorized by law inspect any office or facility operated, owned or employing individuals regulated by any health regulatory board. The Director or his designee shall have the power to subpoena witnesses and issue subpoenas requiring the production of patient records, business records, papers, and physical or other evidence in the course of any investigation.

All investigative personnel shall be vested with the authority to (i) administer oaths or affirmations for the purpose of receiving complaints of violations of this subtitle, (ii) serve and execute any warrant, paper or process issued by any court or magistrate, the Board, the Director or in his absence a designated subordinate, or by any regulatory board under the authority of the Director, and (iii) request and receive criminal history information under the provisions of § 19.2-389.

§ 54.1-2506.1. Submission of required information.

The Department is authorized to require individuals applying for initial licensure and individuals who are licensed to practice medicine, osteopathic medicine, dentistry, or to practice as a physician assistant, nurse practitioner or dental hygienist, to provide information in addition to that which is required to determine the individual's qualifications to be licensed. Such additional information shall identify the individual's specialty and subspecialty; credentials and certifications issued by professional associations, institutions and boards; and locations of practice and number of hours spent practicing at each practice location. Such information shall be collected and maintained by the Department for manpower planning purposes in cooperation with agencies and institutions of the Commonwealth and shall be released by the Department only in the aggregate without reference to any licensee's name or other individual identifying particulars. Prior to collecting any information described in this section from individual licensees, the Department shall first attempt to obtain from other sources information sufficient for manpower planning purposes.

§ 54.1-2506.2. Protection of escrow funds, etc., held by persons licensed by any of the health regulatory boards.

Whenever funds are held in escrow, in trust, or in some other fiduciary capacity by a person licensed by any of the health regulatory boards and the Director or investigative personnel appointed by him have reason to believe that such person is not able or is unwilling to adequately protect such funds or the interest of any person therein, the Director may file a petition with any court of record having equity jurisdiction over such person or any of the funds held by such person stating the facts upon which he relies. The court may temporarily enjoin further activity by such person and take such further action as shall be necessary to conserve, protect and disburse the funds involved, including the appointment of a receiver. If a receiver is appointed his expenses and a reasonable fee as determined by the court shall be paid by such person.

§ 54.1-2507. Board of Health Professions; membership, appointments, and terms of office.

The Board of Health Professions shall consist of one member from each health regulatory board appointed by the Governor, and five members to be appointed by the Governor from the Commonwealth at large. No member of the Board of Health Professions who represents a health regulatory board shall serve as such after he ceases to be a member of a board. The members appointed by the Governor shall be subject to confirmation by the General Assembly and shall serve for four-year terms.

§ 54.1-2508. Chairman; meetings of Board; quorum.

The chairman of the Board of Health Professions shall be elected by the Board from its members. The Board shall meet at least once quarterly and may hold additional meetings as necessary to perform its duties. A majority of the Board shall constitute a quorum for the conduct of business.

§ 54.1-2509. Reimbursement of Board members for expenses.

All members of the Board shall be compensated in accordance with § 2.1-20.3 from the funds of the Department.

§ 54.1-2510. Powers and duties of Board of Health Professions.

The Board of Health Professions shall have the following powers and duties:

1. To evaluate the need for coordination among the health regulatory boards and their staffs and report its findings and recommendations to the Director and the boards;
2. To evaluate all health care professions and occupations in the Commonwealth, including those regulated and those not regulated by other provisions of this title, to consider whether each such profession or occupation should be regulated and the degree of regulation to be imposed. Whenever the Board determines that the public interest requires that a health care profession or occupation which is not regulated by law should be regulated, the Board shall recommend to the General Assembly a regulatory system to establish the appropriate degree of regulation;
3. To review and comment on the budget for the Department;
4. To provide a means of citizen access to the Department;
5. To provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities;
6. To monitor the policies and activities of the Department, serve as a forum for resolving conflicts among the health regulatory boards and between the health regulatory boards and the Department and have access to departmental information;
7. To advise the Governor, the General Assembly and the Director on matters relating to the regulation or deregulation of health care professions and occupations;
8. To make bylaws for the government of the Board of Health Professions and the proper fulfillment of its duties under this chapter;
9. To promote the development of standards to evaluate the competency of the professions and occupations represented on the Board;
10. To review and comment, as it deems appropriate, on all regulations promulgated or proposed for issuance by the health regulatory boards under the auspices of the Department. At least one member of the relevant board shall be invited to be present during any comments by the Board on proposed board regulations;
11. To review periodically the investigatory, disciplinary and enforcement processes of the Department and the individual boards to ensure the protection of the public and the fair and equitable treatment of health professionals;
12. To examine scope of practice conflicts involving regulated and unregulated professions and advise the health regulatory boards and the General Assembly of the nature and degree of such conflicts;
13. To receive, review, and forward to the appropriate health regulatory board any departmental investigative reports relating to complaints of violations by practitioners of Chapter 24.1 (§ 54.1-2410 et seq.) of this subtitle;
14. To determine compliance with and violations of and grant exceptions to the prohibitions set forth in Chapter 24.1 of this subtitle; and
15. To take appropriate actions against entities, other than practitioners, for violations of Chapter 24.1 of this subtitle.

Chapter 29.
Medicine and Other Healing Arts.

Article 2.
Board of Medicine.

§ 54.1-2914. Unprofessional conduct.

A. Any practitioner of the healing arts regulated by the Board shall be considered guilty of unprofessional conduct if he:

1. Undertakes in any manner or by any means whatsoever to procure or perform or to aid or abet in procuring or performing a criminal abortion;

2. Engages in the practice of any of the healing arts under a false or assumed name, or impersonates another practitioner of a like, similar or different name;

3. Prescribes or dispenses any controlled substance with intent or knowledge that it will be used otherwise than medicinally, or for accepted therapeutic purposes, or with intent to evade any law with respect to the sale, use or disposition of such drug;

4. Violates provisions of this chapter on division of fees or practices any branch of the healing arts in violation of the provisions of this chapter;

5. Being a practitioner of physical therapy, undertakes to practice physical therapy, independently of the referral and direction of a duly licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery;

6. Being a licensed physical therapist assistant, undertakes to practice independently without direction of a physical therapist or under his supervision or control;

7. Knowingly and willfully commits any act which is a felony under the laws of this Commonwealth or the United States, or any act which is a misdemeanor under such laws and involves moral turpitude;

8. Aids or abets, has professional connection with, or lends his name to any person known to him to be practicing illegally any of the healing arts;

9. Conducts his practice in a manner contrary to the standards of ethics of his branch of the healing arts;

10. Conducts his practice in such a manner as to be a danger to the health and welfare of his patients or to the public;

11. Is unable to practice with reasonable skill or safety because of illness or substance abuse;

12. Publishes in any manner an advertisement relating to his professional practice which contains a claim of superiority or violates Board regulations governing advertising;

13. Performs any act likely to deceive, defraud or harm the public;

14. Violates any provision of statute or regulation, state or federal, relating to the manufacture, distribution, dispensing or administration of drugs;

15. Violates or cooperates with others in violating any of the provisions of this chapter or regulations of the Board; or

16. Engages in sexual contact with a patient concurrent with and by virtue of the practitioner/patient relationship or otherwise engages at any time during the course of the practitioner/patient relationship in conduct of a sexual nature that a reasonable patient would consider lewd and offensive.

B. A practitioner of the healing arts shall not engage in selling controlled substances unless he is licensed to do so by the Board of Pharmacy. However, this prohibition shall not apply to a doctor of medicine, osteopathy or podiatry who administers controlled substances to his patients or provides controlled substances to his patient in a bona fide medical emergency or when pharmaceutical services are not available. Practitioners who sell or dispense controlled substances shall be subject to inspection by the Department of Health Professions to ensure compliance with Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of this title and the Board of Pharmacy's regulations. This subsection shall not apply to physicians acting on behalf of the Virginia Department of Health or local health departments.

C. A practitioner of the healing arts who may lawfully sell medical appliances or devices shall not sell such appliances or devices to persons who are not his own patients and shall not sell such articles to his own patients either for his own convenience or for the purpose of supplementing his income. This subsection shall not apply to physicians acting on behalf of the Virginia Department of Health or local health departments.

D. A practitioner of the healing arts may, from within the practitioner's office, engage in selling or promoting the sale of eyeglasses and may dispense contact lenses. Only those practitioners of the healing arts who engage in the examination of eyes and prescribing of eyeglasses may engage in the sale or promotion of eyeglasses. Practitioners shall not employ any unlicensed person to fill prescriptions for eyeglasses within the practitioner's office except as provided in subdivision 6 of § 54.1-2901. A practitioner may also own, in whole or in part, an optical dispensary located adjacent to or at a distance from his office.

E. Any practitioner of the healing arts engaging in the examination of eyes and prescribing of eyeglasses shall give the patient a copy of any prescription for eyeglasses and inform the patient of his right to have the prescription filled at the establishment of his choice. No practitioner who owns, in whole or in part, an establishment dispensing eyeglasses shall make any statement or take any action, directly or indirectly, that infringes on the patient's right to have a prescription filled at an establishment other than the one in which the practitioner has an ownership interest.

Disclosure of ownership interest by a practitioner as required by § 54.1-2964 or participation by the practitioner in contractual arrangements with third-party payors or purchasers of vision care services shall not constitute a violation of this subsection.

Article 4.
Licensure and Certification of Other Practitioners of the Healing Arts.

§ 54.1-2952.1. Prescription of certain controlled substances and devices by licensed physician assistant.

A. A licensed physician assistant shall have the authority to prescribe Schedule VI controlled substances and devices as set forth in Chapter 34 (§ 54.1-3400 et seq.) of this title pursuant to the requirements of Chapter 33 (§ 54.1-3300 et seq.) of this title upon the provision to the Board of Medicine of such evidence as it may require that the assistant has entered into and is, at the time of writing a prescription, a party to a written agreement with a licensed physician or podiatrist which provides for the direction and supervision by such licensee of the prescriptive practices of the assistant.

B. It shall be unlawful for the assistant to prescribe controlled substances or devices pursuant to this section unless such prescription is authorized by the written agreement between the licensee and the assistant.

C. The Board of Medicine, in consultation with the Board of Pharmacy, shall promulgate such regulations governing the prescriptive authority of assistants as are deemed reasonable and necessary to ensure an appropriate standard of care for patients. The regulations promulgated pursuant to this section shall include, at a minimum, (i) a formulary of the specific Schedule VI drugs and devices that the assistant is eligible to prescribe pursuant to this section to the extent, and in the manner, authorized in a written protocol between the assistant and the supervising licensee; (ii) requirements for periodic site visits by supervising licensees who supervise and direct assistants who provide services at a location other than where the licensee regularly practices; and (iii) a requirement that the assistant disclose to his patients the name, address and telephone number of the supervising licensee and that he is a physician assistant. A separate office for the assistant shall not be established.

In order to maintain a current and appropriate list of specific Schedule VI drugs and devices, the Board of Medicine, in consultation with the Board of Pharmacy, may, from time to time, amend the formulary required by this subsection and, as provided in § 9-6.14:4.1, shall be exempted from the Administrative Process Act (§ 9-6.14:1 et seq.) when so doing. The Boards shall, however, jointly conduct public hearings

prior to making such amendments to the formulary. Thirty days prior to conducting such hearing, the Boards shall give written notice by mail of the date, time, and place of the hearings to all currently licensed assistants and any other persons requesting to be notified of the hearings and publish notice of their intention to amend the formulary in the Virginia Register of Regulations. Interested parties shall be given reasonable opportunity to be heard and present information prior to final adoption of any amendments. Proposed and final amendments of the list shall also be published, pursuant to § 9-6.14:22, in the Virginia Register of Regulations. Final amendments to the formulary shall become effective upon filing with the Registrar of Regulations.

D. This section shall not prohibit a licensed physician assistant from administering Schedule VI controlled substances in compliance with the definition of "administer" in § 54.1-3401 or from receiving and dispensing manufacturers' professional samples of Schedule VI controlled substances in compliance with the provisions of this section.

§ 54.1-2957.01. Prescription of certain controlled substances and devices by licensed nurse practitioners.

A. In accordance with the provisions of this section and pursuant to the requirements of Chapter 33 (§ 54.1-3300 et seq.) of this title, a licensed nurse practitioner, other than a certified registered nurse anesthetist, shall have the authority to prescribe controlled substances and devices as set forth in Chapter 34 (§ 54.1-3400 et seq.) of this title as follows: (i) Schedules V and VI controlled substances on and after July 1, 2000; (ii) Schedules IV through VI on and after January 1, 2002; and (iii) Schedules III through VI controlled substances on and after July 1, 2003. Nurse practitioners shall have such prescriptive authority upon the provision to the Board of Medicine and the Board of Nursing of such evidence as they may jointly require that the nurse practitioner has entered into and is, at the time of writing a prescription, a party to a written agreement with a licensed physician which provides for the direction and supervision by such physician of the prescriptive practices of the nurse practitioner. Such written agreements shall include the controlled substances the nurse practitioner is or is not authorized to prescribe and may restrict such prescriptive authority as deemed appropriate by the physician providing direction and supervision.

B. It shall be unlawful for a nurse practitioner to prescribe controlled substances or devices pursuant to this section unless such prescription is authorized by the written agreement between the licensed nurse practitioner and the licensed physician.

C. The Board of Nursing and the Board of Medicine, in consultation with the Board of Pharmacy, shall promulgate such regulations governing the prescriptive authority of nurse practitioners as are deemed reasonable and necessary to ensure an appropriate standard of care for patients.

The Board of Medicine and the Board of Nursing shall be assisted in this process by an advisory committee composed of two representatives of the Board of Nursing and one nurse practitioner appointed by the Board of Nursing, and four physicians, three of whom shall be members of the Board of Medicine appointed by the Board of Medicine. The fourth physician member shall be jointly appointed by the Boards of Medicine and Nursing. Regulations promulgated pursuant to this section shall include, at a minimum, (i) such requirements as may be necessary to ensure continued nurse practitioner competency which may include continuing education, testing, and/or any other requirement, and shall address the need to promote ethical practice, an appropriate standard of care, patient safety, the use of new pharmaceuticals, and appropriate communication with patients, and (ii) requirements for periodic site visits by physicians who supervise and direct nurse practitioners who provide services at a location other than where the physician regularly practices.

D. This section shall not limit the functions and procedures of certified registered nurse anesthetists or of any nurse practitioners which are otherwise authorized by law or regulation.

E. The following restrictions shall apply to any nurse practitioner authorized to prescribe drugs and devices pursuant to this section:

1. The nurse practitioner shall disclose to his patients the name, address and telephone number of the supervising physician, and that he is a licensed nurse practitioner.
2. Physicians, other than physicians employed by, or under contract with, local health departments, federally funded comprehensive primary care clinics, or nonprofit health care clinics or programs to provide supervisory services, shall not supervise and direct at any one time more than four nurse practitioners. In the case of nurse practitioners, other than certified nurse midwives, the supervising physician shall regularly practice in any location in which the nurse practitioner exercises prescriptive authority pursuant to this section. A separate office for the nurse practitioner shall not be established. In the case of certified nurse midwives, the supervising physician either shall regularly practice in the location in which the certified nurse midwife practices, or in the event that the certified nurse midwife has established a separate office, the supervising physician shall be required to make periodic site visits as required by regulations promulgated pursuant to this section.
3. Physicians employed by, or under contract with, local health departments, federally funded comprehensive primary care clinics, or nonprofit health care clinics or programs to provide supervisory services, shall not supervise and direct at any one time more than four nurse practitioners who provide services on behalf of such entities. Such physicians either shall regularly practice in such settings or shall make periodic site visits to such settings as required by regulations promulgated pursuant to this section.
F. This section shall not prohibit a licensed nurse practitioner from administering controlled substances in compliance with the definition of "administer" in § 54.1-3401 or from receiving and dispensing manufacturers' professional samples of controlled substances in compliance with the provisions of this section.

Chapter 33.
Pharmacy.

Article 1.
General Provisions.

§ 54.1-3300. (Effective until July 1, 2004) Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Pharmacy.

"Collaborative agreement" means a voluntary, written arrangement between one pharmacist and his designated alternate pharmacists involved directly in patient care at a location where patients receive services and a practitioner of medicine, osteopathy, or podiatry and his designated alternate practitioners involved directly in patient care which authorizes cooperative procedures with respect to patients of such practitioners. Collaborative procedures shall be related to treatment using drug therapy, laboratory tests or medical devices, under defined conditions or limitations, for the purpose of improving patient outcomes. A collaborative agreement is not required for the management of patients of an inpatient facility.

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

"Pharmacist" means a person holding a license issued by the Board to practice pharmacy.

"Pharmacy" means every establishment or institution in which the practice of pharmacy is conducted; drugs, medicines or medicinal chemicals are dispensed or offered for sale, or a sign is displayed bearing the word or words "pharmacist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "medicine store," "drug sundries," "prescriptions filled," or any similar words intended to indicate that the practice of pharmacy is being conducted.

"Practice of pharmacy" means the personal health service that is concerned with the art and science of selecting, procuring, recommending, administering, preparing, compounding, packaging and dispensing of drugs, medicines and devices used in the diagnosis, treatment, or prevention of disease, whether compounded or dispensed on a prescription or otherwise legally dispensed or distributed, and shall include the proper and safe storage and distribution of drugs; the maintenance of proper records ; the responsibility of providing information concerning drugs and medicines and their therapeutic values and uses in the treatment and prevention of disease; and the management of patient care under the terms of a collaborative agreement as defined in this section.

Other terms used in the context of this chapter shall be defined as provided in Chapter 34 (§ 54.1-3400 et seq.) of this title unless the context requires a different meaning.

§ 54.1-3300. (Effective July 1, 2004) Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Pharmacy.

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

"Pharmacist" means a person holding a license issued by the Board to practice pharmacy.

"Pharmacy" means every establishment or institution in which the practice of pharmacy is conducted; drugs, medicines or medicinal chemicals are dispensed or offered for sale, or a sign is displayed bearing the word or words "pharmacist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "medicine

store," "drug sundries," "prescriptions filled," or any similar words intended to indicate that the practice of pharmacy is being conducted.
"Practice of pharmacy" means the personal health service that is concerned with the art and science of selecting, procuring, recommending, administering, preparing, compounding, packaging and dispensing of drugs, medicines and devices used in the diagnosis, treatment, or prevention of disease, whether compounded or dispensed on a prescription or otherwise legally dispensed or distributed, and shall include the proper and safe storage and distribution of drugs, the maintenance of proper records and the responsibility of providing information concerning drugs and medicines and their therapeutic values and uses in the treatment and prevention of disease.
Other terms used in the context of this chapter shall be defined as provided in Chapter 34 of this title unless the context requires a different meaning.

§ 54.1-3300.1. (Effective until July 1, 2004) Participation in collaborative agreements; regulations to be promulgated by the Boards of Medicine and Pharmacy.
A pharmacist and his designated alternate pharmacists involved directly in patient care may participate with a practitioner of medicine, osteopathy, or podiatry and his designated alternate practitioners involved directly in patient care in collaborative agreements which authorize cooperative procedures related to treatment using drug therapy, laboratory tests or medical devices, under defined conditions and/or limitations, for the purpose of improving patient outcomes. No patient shall be required to participate in a collaborative procedure without such patient's consent.
Collaborative agreements may include the modification, continuation or discontinuation of drug therapy pursuant to written, patient-specific protocols; the ordering of laboratory tests; or other patient care management measures related to monitoring or improving the outcomes of drug or device therapy. No such collaborative agreement shall exceed the scope of practice of the respective parties. Any pharmacist who deviates from or practices in a manner inconsistent with the terms of a collaborative agreement shall be in violation of § 54.1-2902; such violation shall constitute grounds for disciplinary action pursuant to §§ 54.1-2400 and 54.1-3316.
Collaborative agreements may only be used for conditions which have protocols that are clinically accepted as the standard of care, or are approved by the Boards of Medicine and Pharmacy. The Boards of Medicine and Pharmacy shall jointly develop and promulgate regulations to implement the provisions of this section and to facilitate the development and implementation of safe and effective collaborative agreements between the appropriate practitioners and pharmacists. The regulations shall include guidelines concerning the use of protocols, and a procedure to allow for the approval or disapproval of specific protocols by the Boards of Medicine and Pharmacy if review is requested by a practitioner or pharmacist.
Nothing in this section shall be construed to supersede the provisions of § 54.1-3303.

§ 54.1-3301. Exceptions.
This chapter shall not be construed to:
1. Interfere with any legally qualified practitioner of dentistry, or veterinary medicine or any physician acting on behalf of the Virginia Department of Health or local health departments, in the compounding of his prescriptions or the purchase and possession of drugs as he may require;
2. Prevent any legally qualified practitioner of dentistry, or veterinary medicine or any physician acting on behalf of the Virginia Department of Health or local health departments, from administering or supplying to his patients the medicines that he deems proper under the conditions of § 54.1-3303;
3. Prohibit the sale by merchants and retail dealers of proprietary medicines as defined in Chapter 34 (§ 54.1-3400 et seq.) of this title;
4. Prevent the operation of automated drug dispensing systems in hospitals pursuant to Chapter 34 (§ 54.1-3400 et seq.) of this title;

5. Prohibit the employment of ancillary personnel to assist a pharmacist as provided in the regulations of the Board;
6. Interfere with any legally qualified practitioner of medicine, osteopathy, or podiatry from purchasing, possessing or administering controlled substances to his own patients or providing controlled substances to his own patients in a bona fide medical emergency or providing manufacturers' professional samples to his own patients;
7. Interfere with any legally qualified practitioner of optometry, certified or licensed to use diagnostic pharmaceutical agents, from purchasing, possessing or administering those controlled substances as specified in § 54.1-3221 or interfere with any legally qualified practitioner of optometry certified to prescribe therapeutic pharmaceutical agents from purchasing, possessing, or administering to his own patients those controlled substances as specified in § 54.1-3222 and the TPA formulary or providing manufacturers' samples of these drugs to his own patients; or
8. Interfere with any physician assistant with prescriptive authority receiving and dispensing to his own patients manufacturers' professional samples of those Schedule VI controlled substances and devices which he is authorized to prescribe.
9. Interfere with any licensed nurse practitioner with prescriptive authority receiving and dispensing to his own patients manufacturers' professional samples of controlled substances and devices that he is authorized, in compliance with the provisions of § 54.1-2957.01, to prescribe according to his practice setting and a written agreement with a physician.
This section shall not be construed as exempting any person from the licensure, registration, permitting and record keeping requirements of this chapter or Chapter 34 of this title.

§ 54.1-3302. Restrictions on practitioners of the healing arts.

A practitioner of the healing arts shall not sell or dispense controlled substances except as provided in §§ 54.1-2914 and 54.1-3304.1. Such exceptions shall extend only to his own patients unless he is licensed to practice pharmacy.

§ 54.1-3303. Prescriptions to be issued and drugs to be dispensed for medical or therapeutic purposes only.

A. A prescription for a controlled substance may be issued only by a practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine who is authorized to prescribe controlled substances, or by a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title. The prescription shall be issued for a medicinal or therapeutic purpose and may be issued only to persons or animals with whom the practitioner has a bona fide practitioner-patient relationship.
For purposes of this section, a bona fide practitioner-patient-pharmacist relationship is one in which a practitioner prescribes, and a pharmacist dispenses, controlled substances in good faith to his patient for a medicinal or therapeutic purpose within the course of his professional practice. In addition, a bona fide practitioner-patient relationship means that the practitioner shall (i) ensure that a medical or drug history is obtained; (ii) provide information to the patient about the benefits and risks of the drug being prescribed; (iii) perform or have performed an appropriate examination of the patient, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; except for medical emergencies, the examination of the patient shall have been performed by the practitioner himself, within the group in which he practices, or by a consulting practitioner prior to issuing a prescription; and (iv) initiate additional interventions and follow-up care, if necessary, especially if a prescribed drug may have serious side effects. Any practitioner who prescribes any controlled substance with the knowledge that the controlled substance will be used otherwise than medicinally or for therapeutic purposes shall be subject to the criminal penalties provided in § 18.2-248 for violations of the provisions of law relating to the distribution or possession of controlled substances.

B. In order to determine whether a prescription which appears questionable to the pharmacist results from a bona fide practitioner-patient relationship, the pharmacist shall contact the prescribing practitioner or his agent and verify the identity of the patient and name and quantity of the drug prescribed. The person knowingly filling an invalid prescription shall be subject to the criminal penalties provided in § 18.2-248 for violations of the provisions of law relating to the sale, distribution or possession of controlled substances. No prescription shall be filled unless there is a bona fide practitioner-patient-pharmacist relationship. A prescription not issued in the usual course of treatment or for authorized research is not a valid prescription.

C. A pharmacist may dispense a controlled substance pursuant to a prescription of an out-of-state practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine authorized to issue such prescription if the prescription complies with the requirements of this chapter and Chapter 34 (§ 54.1-3400 et seq.) of this title, known as the "Drug Control Act," except that out-of-state prescriptions are not required to comply with the provisions of subsection A of § 32.1-87 and subsection C of § 54.1-3408 which establish a prescription blank format accommodating the Virginia Voluntary Formulary.

D. A licensed nurse practitioner who is authorized to prescribe controlled substances pursuant to § 54.1-2957.01 may issue prescriptions or provide manufacturers' professional samples for controlled substances and devices as set forth in Chapter 34 of this title in good faith to his patient for a medicinal or therapeutic purpose within the scope of his professional practice.

E. A licensed physician assistant who is authorized to prescribe controlled substances pursuant to § 54.1-2952.1 may issue prescriptions or provide manufacturers' professional samples for Schedule VI controlled substances and devices as set forth in Chapter 34 of this title in good faith to his patient for a medicinal or therapeutic purpose within the scope of his professional practice.

F. A TPA-certified optometrist who is authorized to prescribe controlled substances pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title may issue prescriptions in good faith or provide manufacturers' professional samples to his patients for medicinal or therapeutic purposes within the scope of his professional practice for the drugs specified on the TPA-Formulary, established pursuant to § 54.1-3223, which shall be limited to oral analgesics included in Schedules III and VI, as defined in §§ 54.1-3450 and 54.1-3455 of the Drug Control Act (§ 54.1-3400 et seq.), when appropriate to relieve ocular pain, and topically applied Schedule VI drugs, as defined in § 54.1-3455 of the Drug Control Act.

§ 54.1-3304. Licensing of physicians to dispense drugs; renewals.

For good cause shown, the Board may grant a license to any physician licensed under the laws of Virginia authorizing such physician to dispense drugs to persons to whom a pharmaceutical service is not reasonably available. This license may be renewed annually. Any physician or osteopath so licensed shall be governed by the regulations of the Board of Pharmacy when applicable.

§ 54.1-3304.1. Authority to license and regulate practitioners.

The Board of Pharmacy shall have the authority to license and regulate the dispensing of controlled substances by practitioners of the healing arts.

Article 2.
Board of Pharmacy.

§ 54.1-3305. Board; membership; terms; meetings; quorum; officers.

The Board of Pharmacy shall consist of ten members, as follows: eight licensed pharmacists who are graduates of an approved school or college of pharmacy and two citizen members. The terms of office of the members shall be four years.

The Board shall meet at least annually at such times and places, and upon such notice as the Board may determine and as its business may require. A majority of the members of the Board shall constitute a quorum for the transaction of business.
The Board shall annually elect from its members a chairman.

§ 54.1-3306. Nominations.

Nominations may be made for each professional vacancy from a list of at least three names submitted to the Governor by the Virginia Pharmaceutical Association. The Governor may notify the Association of any professional vacancy other than by expiration. In no case shall the Governor be bound to make any appointment from among the nominees of the Association.

§ 54.1-3307. Specific powers and duties of Board.

The Board shall regulate the practice of pharmacy and the manufacturing, dispensing, selling, distributing, processing, compounding, or disposal of drugs and devices. The Board shall also control the character and standard of all drugs, cosmetics and devices within the Commonwealth, investigate all complaints as to the quality and strength of all drugs, cosmetics, and devices and take such action as may be necessary to prevent the manufacturing, dispensing, selling, distributing, processing, compounding and disposal of such drugs, cosmetics and devices which do not conform to the requirements of law. In so regulating the Board shall consider any of the following criteria as they are applicable:
1. Maintenance of the quality, quantity, integrity, safety and efficacy of drugs or devices distributed, dispensed or administered.
2. Compliance with the prescriber's instructions regarding the drug, its quantity, quality and directions for use.
3. Controls and safeguards against diversion of drugs or devices.
4. Maintenance of the integrity of, and public confidence in, the profession and improving the delivery of quality pharmaceutical services to the citizens of Virginia.
5. Maintenance of complete records of the nature, quantity or quality of drugs or substances distributed or dispensed, and of all transactions involving controlled substances or drugs or devices so as to provide adequate information to the patient, the practitioner or the Board.
6. Control of factors contributing to abuse of legitimately obtained drugs, devices, or controlled substances.
7. Promotion of scientific or technical advances in the practice of pharmacy and the manufacture and distribution of controlled drugs, devices or substances.
8. Impact on costs to the public and within the health care industry through the modification of mandatory practices and procedures not essential to meeting the criteria set out in subdivisions 1 through 7 of this section.
9. Such other factors as may be relevant to, and consistent with, the public health and safety and the cost of rendering pharmacy services.
The Board may collect and examine specimens of drugs, devices and cosmetics which are manufactured, stored or dispensed in this Commonwealth.

§ 54.1-3307.2. Approval of innovative programs.

A. Any person who proposes to use a process or procedure related to the dispensing of drugs or devices or to the practice of pharmacy not specifically authorized by Chapter 33 (§ 54.1-3300 et seq.) of this title or by a regulation of the Board of Pharmacy may apply to the Board for approval to use such process or procedure. The application under this section may only include new processes or procedures, within the current scope of the practice of pharmacy, that relate to the form or format of prescriptions, the manner of transmitting prescriptions or prescription information, the manner of required recordkeeping, the use of unlicensed ancillary personnel in the dispensing process, and the use of new technologies in the dispensing

process. The authority granted the Board under this section shall not authorize expansion of the current scope of practice for pharmacists and shall not interfere with the requirement that pharmacists only dispense drugs in accordance with instructions from a prescriber, as defined in § 54.1-3401.

B. The application to the Board shall address safety to the public regarding the new process or procedure, any potential benefit to the public, promotion of scientific or technical advances in the practice of pharmacy, compliance with prescriber's instructions for any drug dispensed, any impact the new process may have on the potential for diversion of drugs, maintenance in the integrity of and public confidence in the profession of pharmacy and of the drugs dispensed, impact on cost to the public and within the health care industry, means of monitoring the new process or procedure for any negative outcomes or other problems, and the reporting of such outcomes to the Board.

C. An informal conference committee, composed of not less than two members of the Board and in accordance with § 9-6.14:11, shall receive and review the application and any investigative report requested by the committee. The committee shall have the authority to grant or deny approval of the request. The committee may grant approval of the request unconditionally or may impose conditions on the approval as follows:

1. The committee may grant approval for a finite period of time, after which time the applicant must provide additional information as requested by the committee in order to continue the approval;
2. The committee may require that ongoing reports concerning performance and problems be submitted; or
3. The committee may impose such other conditions as it deems necessary to provide assurance of public health and safety and accountability for controlled substances.

D. If an applicant does not agree with the decision of the committee, the applicant may request a hearing before the Board or a panel of the Board, in accordance with § 9-6.14:12.

E. Application under this section shall be on a form provided by the Board and shall be accompanied by a fee determined by the Board.

§ 54.1-3308. Power of inspection.

The members of the Board and their duly authorized agents shall have the power to inspect in a lawful manner the drugs, cosmetics and devices which are manufactured, stored or dispensed in the Commonwealth. For this purpose the Board shall have the right to enter and inspect during business hours any pharmacy, or any other place in Virginia where drugs, cosmetics or devices are manufactured, stored or dispensed. The Board shall report any evidence of violation of the provisions of this chapter or Chapter 34 (§ 54.1-3400 et seq.) of this title by practitioners for action to the appropriate licensing board. The report shall constitute a pending complaint upon which the appropriate licensing board shall initiate action within thirty days.

§ 54.1-3309. Enforcement.

A. The Board or its agents are authorized upon presenting appropriate credentials and a written notice as to the purpose of the inspection to the owner, operator or agent in charge to enter at reasonable times any factory, warehouse or establishment in which drugs, devices or cosmetics are manufactured, processed, packed or held for introduction into commerce or to enter any vehicle being used to transport or hold such drugs, devices or cosmetics.

The Board or its agents are authorized to inspect such factory, warehouse, establishment or vehicle and all pertinent equipment, materials, containers and labeling.

In the case of any factory, warehouse, establishment or consulting laboratory in which prescription drugs are manufactured, processed, packed or held, the inspection shall extend to all things, including records, files, papers, processes, controls and facilities, bearing on compliance with Chapter 34 (§ 54.1-3400 et seq.) of this title.

No inspection authorized for prescription drugs shall extend to financial data, sales data other than shipment data, pricing data, personnel data, other than data as to qualifications of technical and professional personnel performing functions subject to this chapter, and research data.
Each inspection shall be commenced and completed with reasonable promptness. The Board or its agents shall have access to copy all records of carriers in commerce showing the movement in commerce of any drug, device, or cosmetic and the quantity, shipper and consignee. The evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained; and carriers shall not be subject to the provisions of Chapter 34 by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business.
B. If the authorized agent inspecting a factory, warehouse or other establishment has obtained any sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples.

Article 3.
Licensure of Pharmacists.

§ 54.1-3310. Unlawful to practice without license.
Except as prescribed in this chapter or by Board regulations it shall be unlawful for any person to practice pharmacy, or to engage in, carry on, or be employed in the dispensing, or compounding of drugs within this Commonwealth unless licensed by the Board as a pharmacist. The possession by any person in any place of a miscellaneous stock of drugs shall be prima facie evidence that such person is practicing pharmacy.

§ 54.1-3311. Application and examination.
Every person desiring to be licensed as a pharmacist shall file with the executive director of the Board an application, verified under oath, setting forth the name and age of the applicant, the place or places at which, and the time spent in, the study of pharmacy, and other information required by the Board.
The Board shall conduct examinations of applicants for licensure at least twice a calendar year.

§ 54.1-3312. Qualifications of pharmacist; approved school of pharmacy defined.
A. In order to be licensed as a pharmacist within the meaning of this chapter, an applicant shall present to the Board satisfactory evidence that he:
1. Is at least eighteen years of age;
2. Is of good moral character;
3. Is a graduate of a school of pharmacy approved by the Board, or a foreign college of pharmacy, if the graduate has satisfactorily completed (i) a college of pharmacy equivalency examination program approved by the Board and (ii) written and oral communication ability tests of the English language approved by the Board;
4. Has had a period of practical experience in the United States in accordance with the Board's regulations; however, such requirement shall not exceed twelve months; and
5. Has passed the examination prescribed by the Board.
B. As used in this article, an approved school of pharmacy shall be an institution which meets the minimum standards of the American Council on Pharmaceutical Education and appears on the Council's list of schools of pharmacy as published annually.

§ 54.1-3313. Licensure by endorsement.
The Board of Pharmacy may issue a license by endorsement, without examination, except as provided in this section, to practice pharmacy to persons who hold a current and unrestricted license as pharmacists in

other states, the District of Columbia or possessions or territories of the United States. The applicant for such license shall present satisfactory evidence of the qualifications equal to those required of applicants for licensure by examination in Virginia and that he was licensed by examination by the board of pharmacy in such other jurisdiction. The standard of competence required in such other jurisdiction shall not be lower than that required in Virginia.
Prior to the issuance of a license, the Board may require applicants for licensure by endorsement to pass an examination on Virginia drug laws and Board of Pharmacy regulations equal to that required of applicants for licensure by examination in Virginia.

§ 54.1-3314. Display of license.
Every person licensed to practice as a pharmacist must at all times display his license conspicuously in the place in which he regularly practices.

§ 54.1-3314.1. Continuing education requirements; exemptions; extensions; procedures; out-of-state licensees; nonpractice licenses.
A. Each pharmacist shall have obtained a minimum of fifteen continuing education hours of pharmaceutical education through an approved continuing pharmaceutical education program during the year immediately preceding his license renewal date.
B. An approved continuing pharmaceutical education program shall be any program approved by the Board.
C. Pharmacists who have been initially licensed by the Board during the one year preceding the license renewal date shall not be required to comply with the requirement on the first license renewal date that would immediately follow.
D. The Board may grant an exemption from the continuing education requirement if the pharmacist presents evidence that failure to comply was due to circumstances beyond the control of the pharmacist.
E. Upon the written request of a pharmacist, the Board may grant an extension of one year in order for a pharmacist to fulfill the continuing education requirements for the period of time in question. Such extension shall not relieve the pharmacist of complying with the continuing education requirement for the current period.
F. The pharmacist shall attest to the fact that he has completed the continuing education requirements as specified by the Board.
G. The following shall apply to the requirements for continuing pharmaceutical education:
1. The provider of an approved continuing education program shall issue to each pharmacist who has successfully completed a program certification that the pharmacist has completed a specified number of hours.
2. The certificates so issued to the pharmacist shall be maintained by the pharmacist for a period of two years following the renewal of his license.
3. The pharmacist shall provide the Board, upon request, with certification of completion of continuing education programs in a manner to be determined by the Board.
H. Pharmacists who are also licensed in other states and who have obtained a minimum of fifteen hours of approved continuing education requirements of such other states need not obtain additional hours.
I. The Board shall provide for an inactive status for those pharmacists who do not wish to practice in Virginia. The Board shall require upon request for change from inactive to active status proof of continuing education hours equal to that which would have been required should the pharmacist have continued to hold an active license. No person shall practice in Virginia unless he holds a current active license.

§ 54.1-3315. Unprofessional conduct.
Any pharmacist shall be considered guilty of unprofessional conduct who:

1. Is convicted of any crime involving moral turpitude; or
2. Issues or publishes in any way statements about his professional service which are intended to deceive or defraud, or are contrary to the public health and welfare.

§ 54.1-3316. Refusal; revocation; suspension and denial.

The Board of Pharmacy may revoke, suspend or refuse to issue or renew any license, permit, or registration or may deny any application if it finds that the applicant:
1. Has been negligent in the practice of pharmacy;
2. Has been guilty of unprofessional conduct;
3. Has become incompetent to practice pharmacy because of his mental or physical condition;
4. Uses drugs or alcohol to the extent that he is rendered unsafe to practice pharmacy;
5. Has engaged in or attempted any fraud or deceit upon the consumer, any third-party payor, including Medicaid, any individual or group accident and sickness insurance policy or subscription contract providing coverage under a health services plan, or any health care plan, any practitioner or the Board in connection with the practice of pharmacy;
6. Has assisted or allowed unlicensed persons to engage in the practice of pharmacy;
7. Has violated or cooperated with others in violating any provisions of law relating to practice of pharmacy or of any regulation of the Board;
8. Has had his federal registration to dispense controlled substances revoked or suspended;
9. Has been convicted of violating any federal drug law or any drug law of Virginia or of another state or has had his license to practice pharmacy suspended or revoked in any other state; or
10. Has failed to comply with requirements of this chapter or any regulation of the Board relating to continuing education.

§ 54.1-3317. Repealed

§ 54.1-3318. Notification of revocation.

Whenever the Board revokes the license of any pharmacist, it shall notify the licensee of such action, and he shall immediately deliver his license to the Board or its representative.

§ 54.1-3319. Counseling.

A. A pharmacist shall conduct a prospective drug review before each new prescription is dispensed or delivered to a patient or a person acting on behalf of the patient. Such review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions, including serious interactions with nonprescription or over-the-counter drugs, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse. A pharmacist may conduct a prospective drug review before refilling a prescription to the extent the pharmacist deems appropriate in his professional judgment.
B. A pharmacist shall offer to counsel any person who presents a new prescription for filling. The offer to counsel may be made in any manner the pharmacist deems appropriate in his professional judgment, and may include any one or a combination of the following:
1. Face-to-face communication with the pharmacist or the pharmacist's designee;
2. A sign posted in such a manner that it can be seen by patients;
3. A notation affixed to or written on the bag in which the prescription is to be delivered;
4. A notation contained on the prescription container; or
5. By telephone.
For the purposes of medical assistance and other third-party reimbursement or payment programs, any of the above methods, or a combination thereof, shall constitute an acceptable offer to provide counseling, except to the extent this subsection is inconsistent with regulations promulgated by the federal Health Care

Financing Administration governing 42 U.S.C. § 1396r-8 (g) (2) (A) (ii). A pharmacist may offer to counsel any person who receives a refill of a prescription to the extent deemed appropriate by the pharmacist in his professional judgment.

C. If the offer to counsel is accepted, the pharmacist shall counsel the person presenting the prescription to the extent the pharmacist deems appropriate in his professional judgment. Such counseling shall be performed by the pharmacist himself and may, but need not, include the following:

1. The name and description of the medication;
2. The dosage form, dosage, route of administration, and duration of drug therapy;
3. Special directions and precautions for preparation, administration, and use by the patient;
4. Common adverse or severe side effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
5. Techniques for self-monitoring drug therapy;
6. Proper storage;
7. Prescription refill information; and
8. Action to be taken in the event of a missed dose.

Nothing in this section shall be construed as requiring a pharmacist to provide counseling when the person presenting the prescription fails to accept the pharmacist's offer to counsel. If the prescription is delivered to a person residing outside of the local telephone calling area of the pharmacy, the pharmacist shall either provide a toll-free telephone number or accept reasonable collect calls from such person.

D. Reasonable efforts shall be made to obtain, record, and maintain the following patient information generated at the individual pharmacy:

1. Name, address, telephone number, date of birth or age, and gender;
2. Individual history where significant, including known allergies and drug reactions, and a comprehensive list of medications and relevant devices; and
3. Any additional comments relevant to the patient's drug use, including any failure to accept the pharmacist's offer to counsel.

Such information may be recorded in the patient's manual or electronic profile, or in the prescription signature log, or in any other system of records and may be considered by the pharmacist in the exercise of his professional judgment concerning both the offer to counsel and content of counseling. The absence of any record of a failure to accept the pharmacist's offer to counsel shall be presumed to signify that such offer was accepted and that such counseling was provided.

E. This section shall not apply to any drug dispensed to an inpatient of a hospital or nursing home, except to the extent required by regulations promulgated by the federal Health Care Financing Administration implementing 42 U.S.C. § 1396r-8 (g) (2) (A).

Chapter 34.
Drug Control Act.

Article 1.
General Provisions.

§ 54.1-3400. Citation.

This chapter may be cited as "The Drug Control Act."

§ 54.1-3401. Definitions.

As used in this chapter, unless the context requires a different meaning:
"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 by (i) a practitioner or by his authorized agent and under his direction or (ii) the patient or research subject at the direction and in the presence of the practitioner.
"Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs or devices.
"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.
"Anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth.
"Animal" means any nonhuman animate being endowed with the power of voluntary action.
"Automated drug dispensing system" means a mechanical or electronic system that performs operations or activities, other than compounding or administration, relating to pharmacy services, including the storage, dispensing, or distribution of drugs and the collection, control, and maintenance of all transaction information, to provide security and accountability for such drugs.
"Board" means the Board of Pharmacy.
"Change of ownership" of an existing entity permitted, registered or licensed by the Board means (i) the sale or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor, the dissolution of a partnership, or change in partnership composition; (iii) the acquisition or disposal of fifty percent or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; (iv) the merger of a corporation owning the entity or of the parent corporation of a wholly-owned subsidiary owning the entity with another business or corporation; or (v) the expiration or forfeiture of a corporation's charter.
"Compound" means the taking of two or more ingredients and fabricating them into a single preparation, usually referred to as a dosage form.
"Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI of this chapter. The term shall not include distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 3.1 or Title 4.1.
"DEA" means the Drug Enforcement Administration, United States Department of Justice, or its successor agency.
"Deliver" or "delivery" means the actual, constructive, or attempted transfer of any item regulated by this chapter, whether or not there exists an agency relationship.

"Device" means instruments, apparatus, and contrivances, including their components, parts and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals or to affect the structure or any function of the body of man or animals.
"Dialysis care technician" means an unlicensed individual who, under the supervision of a licensed practitioner of medicine or a registered nurse, assists in the care of patients undergoing renal dialysis treatments in a Medicare-certified renal dialysis facility.
"Dialysis solution" means either the commercially available, unopened, sterile solutions whose purpose is to be instilled into the peritoneal cavity during the medical procedure known as peritoneal dialysis, or commercially available solutions whose purpose is to be used in the performance of hemodialysis not to include any solutions administered to the patient intravenously.
"Dispense" means to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.
"Dispenser" means a practitioner who dispenses.
"Distribute" means to deliver other than by administering or dispensing a controlled substance.
"Distributor" means a person who distributes.
"Drug" means (i) articles or substances recognized in the official United States Pharmacopoeia National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them; (ii) articles or substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (iii) articles or substances, other than food, intended to affect the structure or any function of the body of man or animals; or (iv) articles or substances intended for use as a component of any article specified in clause (i), (ii) or (iii). "Drug" does not include devices or their components, parts or accessories.
"Electronic transmission prescription" means any prescription, other than an oral or written prescription or a prescription transmitted by facsimile machine, that is electronically transmitted directly to a pharmacy without interception or intervention from a third party from a practitioner authorized to prescribe or from one pharmacy to another pharmacy.
"Facsimile (FAX) prescription" means a written prescription or order, which is transmitted by an electronic device over telephone lines that sends the exact image to the receiving pharmacy in hard copy form.
"Hashish oil" means any oily extract containing one or more cannabinoids, but shall not include any such extract with a tetrahydrocannabinol content of less than twelve percent by weight.
"Immediate precursor" means a substance which the Board of Pharmacy has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.
"Label" means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made by or under authority of this chapter that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of such article, or is easily legible through the outside container or wrapper.
"Labeling" means all labels and other written, printed or graphic matter on an article or any of its containers or wrappers, or accompanying such article.
"Manufacture" means the production, preparation, propagation, compounding, conversion or processing of any item regulated by this chapter, either directly or indirectly 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. This term does not include the preparing, compounding, packaging or labeling of a controlled substance by a practitioner as an incident to his administering or dispensing of a controlled substance or marijuana in the course of his professional practice, or 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.

"Manufacturer" means every person who manufactures.

"Marijuana" means any part of a plant of the genus Cannabis whether growing or not, its seeds or resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or its resin. Marijuana shall not include any oily extract containing one or more cannabinoids unless such extract contains less than twelve percent of tetrahydrocannabinol by weight, nor shall marijuana include the mature stalks of such plant, fiber produced from such stalk, oil or cake made from the seeds of such plant, unless such stalks, fiber, oil or cake is combined with other parts of plants of the genus Cannabis.

"Medical equipment supplier" means any person, as defined in § 1-13.19, engaged in the delivery to the ultimate consumer, pursuant to the lawful order of a practitioner, of hypodermic syringes and needles, medicinal oxygen, Schedule VI controlled devices, those Schedule VI controlled substances with no medicinal properties which are used for the operation and cleaning of medical equipment and solutions for peritoneal dialysis.

"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: (i) opium, opiates, and any salt, compound, derivative, or preparation of opium or opiates; (ii) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (i), but not including the isoquinoline alkaloids of opium; (iii) opium poppy and poppy straw; (iv) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extraction of coca leaves which do not contain cocaine or ecgonine.

"New drug" means: (i) any drug, except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling, except that such a drug not so recognized shall not be deemed to be a "new drug" if at any time prior to the enactment of this chapter it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use; or (ii) any drug, except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

"Nuclear medicine technologist" means an individual who holds a current certification with the American Registry of Radiological Technologists or the Nuclear Medicine Technology Certification Board.

"Official compendium" means the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them.

"Official written order" means an order written on a form provided for that purpose by the United States Drug Enforcement Administration, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided then on an official form provided for that purpose by the Board of Pharmacy.

"Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Article 4 (§ 54.1-3437 et seq.) of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

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

"Original package" means the unbroken container or wrapping in which any drug or medicine is enclosed together with label and labeling, put up by or for the manufacturer, wholesaler, or distributor for use in the delivery or display of such article.

"Person" means both the plural and singular, as the case demands, and includes an individual, partnership, corporation, association, governmental agency, trust, or other institution or entity.

"Pharmacist-in-charge" means the person who, being licensed as a pharmacist, signs the application for a pharmacy permit and assumes full legal responsibility for the operation of the relevant pharmacy in a manner complying with the laws and regulations for the practice of pharmacy and the sale and dispensing of controlled substances; the "pharmacist-in-charge" shall personally supervise the pharmacy and the pharmacy's personnel as required by § 54.1-3432.

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

"Practitioner" means a physician, dentist, licensed nurse practitioner pursuant to § 54.1-2957.01, licensed physician assistant pursuant to § 54.1-2952.1, pharmacist pursuant to § 54.1-3300, TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to, a controlled substance in the course of professional practice or research in this Commonwealth.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 to issue a prescription.

"Prescription" means an order for drugs or medical supplies, written or signed or transmitted by word of mouth, telephone, telegraph or other means of communication to a pharmacist by a duly licensed physician, dentist, veterinarian or other practitioner, authorized by law to prescribe and administer such drugs or medical supplies.

"Prescription drug" means any drug required by federal law or regulation to be dispensed only pursuant to a prescription, including finished dosage forms and active ingredients subject to § 503 (b) of the federal Food, Drug, and Cosmetic Act.

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

"Proprietary medicine" means a completely compounded nonprescription drug in its unbroken, original package which does not contain any controlled substance or marijuana as defined in this chapter and is not in itself poisonous, and which is sold, offered, promoted or advertised directly to the general public by or under the authority of the manufacturer or primary distributor, under a trademark, trade name or other trade symbol privately owned, and the labeling of which conforms to the requirements of this chapter and applicable federal law. However, this definition shall not include a drug which is only advertised or promoted professionally to licensed practitioners, a narcotic or drug containing a narcotic, a drug which may be dispensed only upon prescription or the label of which bears substantially the statement "Warning - may be habit-forming," or a drug intended for injection.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any non-radioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as an individual, proprietor, agent, servant or employee.

"Warehouser" means any person, other than a wholesale distributor, engaged in the business of selling or otherwise distributing prescription drugs or devices to any person who is not the ultimate user or consumer. No person shall be subject to any state or local tax by reason of this definition.

"Wholesale distribution" means distribution of prescription drugs to persons other than consumers or patients, subject to the exceptions set forth in § 54.1-3401.1.
"Wholesale distributor" means any person engaged in wholesale distribution of prescription drugs including, but not limited to, manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses conducting wholesale distributions, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies conducting wholesale distributions. No person shall be subject to any state or local tax as a wholesale merchant by reason of this definition.
The words "drugs" and "devices" as used in Chapter 33 (§ 54.1-3300 et seq.) of this title and in this chapter shall not include surgical or dental instruments, physical therapy equipment, X-ray apparatus or glasses or lenses for the eyes.
The terms "pharmacist," "pharmacy" and "practice of pharmacy" as used in this chapter shall be defined as provided in Chapter 33 of this title unless the context requires a different meaning.

§ 54.1-3401.1. Practices not considered wholesale distribution.

A. Wholesale distribution, as defined in § 54.1-3401, shall not include:
1. Intracompany sales, including any transaction or transfer between any division, subsidiary, parent, and/or affiliated or related company under the common ownership and control of a corporate entity;
2. The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organization;
3. The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization, described in § 501 (c) (3) of the Internal Revenue Code of 1986, to a nonprofit affiliate of such organization to the extent otherwise permitted by law;
4. The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control;
5. The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons;
6. The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;
7. The distribution of drug samples by manufacturers' representatives or distributors' representatives; or
8. The sale, purchase, or trade of or the offer to sell, purchase, or trade blood and blood components intended for transfusion.
B. For the purposes of this section:
"Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.
"Blood component" means that part of blood separated by physical or mechanical means.
"Common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise.
"Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.
"Emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage arising from delays in or interruptions of regular distribution schedules.

§ 54.1-3402. Proprietor of pharmacy exempted.

This article shall not be construed to require the proprietor of a pharmacy to register as a manufacturer or distributor if the products manufactured or purchased are labeled under the name of the pharmacy and dispensed within the premises and not sold for distribution and resale outside the premises.

§ 54.1-3403. Chapter not applicable to economic poisons.

This chapter shall not be construed to apply (i) to poisons used for the control of insects, animal pests, weeds, fungus diseases or other substances sold for use in agricultural, horticultural or related arts and sciences when such substances which are poisons within the meaning of this chapter are sold in original unbroken packages bearing a label having plainly printed upon it the name of the contents and the word POISON and an effective antidote or (ii) to any person, persons, corporations or associations engaged in the business of selling, making, compounding or manufacturing industrial chemicals for distribution or sale at wholesale or for making, compounding or manufacturing other products.

§ 54.1-3404. Persons required to keep record of drugs; contents and form of record.

A. Every person manufacturing, compounding, processing, selling, dispensing or otherwise disposing of drugs in Schedules I, II, III, IV or V shall take a complete and accurate inventory of all stocks of Schedules I through V drugs on the date he first engages in business. If there are no controlled substances on hand at that time, he shall record this fact as part of the inventory. An inventory taken by use of an oral recording device shall be promptly reduced to writing and maintained in a written, typewritten or printed form. Such inventory shall be made either as of the opening of business or as of the close of business on the inventory date.

B. After the initial inventory is taken, every person described herein shall take a new inventory at least every two years of all stocks on hand of Schedules I through V drugs. The biennial inventory shall be taken on any date which is within two years of the previous biennial inventory.

C. The record of such drugs received shall in every case show the date of receipt, the name and address of the person from whom received and the kind and quantity of drugs received, the kind and quantity of drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture. The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced.

D. The record of all drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Any person selling, administering, dispensing or otherwise disposing of such drugs shall make and sign such record at the time of each transaction. The keeping of a record required by or under the federal laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of any drugs lost, destroyed or stolen, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction or theft. The form of records shall be prescribed by the Board.

E. Whenever any registrant or licensee discovers a theft or any other unusual loss of any controlled substance, he shall immediately report such theft or loss to the Board. If the registrant or licensee is unable to determine the exact kind and quantity of the drug loss, he shall immediately make a complete inventory of all Schedule I through V drugs.

Within thirty days after the discovery of a loss of drugs, the registrant or licensee shall furnish the Board with a listing of the kind, quantity and strength of such drugs lost.

F. All records required pursuant to this section shall be maintained completely and accurately for two years from the date of the transaction recorded.

§ 54.1-3405. Access to and copies of records; inspections.

Every person required to prepare or obtain, and keep, records, and any carrier maintaining records with respect to any shipment containing any drug, and every person in charge or having custody of such records shall, upon request of an agent designated by the Board, permit such agent at reasonable times to have access to and copy such records.

Any agent designated by the Superintendent of the Department of State Police to conduct drug diversion investigations shall, for the purpose of such investigations, also be permitted access at reasonable times to all such records relevant to a specific investigation and be allowed to inspect and copy such records. However, agents designated by the Superintendent of the Department of State Police to conduct drug diversion investigations shall not copy and remove patient records unless such patient records are relevant to a specific investigation. Any agent designated by the Superintendent of the Department of State Police shall allow the person or carrier maintaining such records, or agent thereof, to examine any copies of records before their removal from the premises. If the agent designated by the Superintendent of State Police copies records on magnetic storage media, he will deliver a duplicate of the magnetic storage media on which the copies are stored to the person or carrier maintaining such records or an agent thereof, prior to removing the copies from the premises. If the original of any record is removed by any agent designated by the Superintendent of State Police, a receipt therefor shall be left with the person or carrier maintaining such records or an agent thereof, and a copy of the removed record shall be provided the person or carrier maintaining such records within a reasonable time thereafter.

For the purposes of verification of such records and of enforcement of this chapter, agents designated by the Board or by the Superintendent are authorized, upon presenting appropriate credentials to the owner, operator, or agent in charge, to enter, at reasonable times, any factory, warehouse, establishment, or vehicle in which any drug is held, manufactured, compounded, processed, sold, delivered, or otherwise disposed of; and to inspect, within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished material, containers and labeling, including records, files, papers, processes, controls, and facilities, bearing on violation of this chapter; and to inventory and obtain samples of any stock of any drugs.

If a sample of any drug is obtained, the agent making the inspection shall, upon completion of the inspection and before leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample. No inspection shall extend to financial data, sales data other than shipment data, pricing data, personnel data or research data.

Any information obtained by a designated State Police agent during an inspection under this section which constitutes evidence of a violation of any provision of this chapter shall be reported to the Department of Health Professions upon its discovery.

Any information obtained by an agent designated by the Board during an inspection under this section which constitutes evidence of a violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 shall be reported to the Department of State Police upon its discovery.

§ 54.1-3406. Records confidential.

No agent of the Board or agent designated by the Superintendent of the Department of State Police having knowledge by virtue of his office of any prescriptions, papers, records, or stocks of drugs shall divulge such knowledge, except in connection with a criminal investigation authorized by the Attorney General or attorney for the Commonwealth or with a prosecution or proceeding in court or before a regulatory board or officer, to which investigation, prosecution or proceeding the person to whom such prescriptions, papers or records relate is a subject or party. This section shall not be construed to prohibit the Board president or his designee and the Director of the Department of Health Professions from discharging their duties as provided in this title.

§ 54.1-3407. Analysis of controlled substances.

A licensed physician or pharmacist may receive controlled substances from or on behalf of a patient for qualitative or quantitative analysis purposes only, without an official order form, if within twenty-four hours of its receipt the physician or pharmacist mails or delivers the entire sample to a laboratory operated by the Commonwealth and designated by the Board to receive such substances. If the sample is mailed, it shall be sent by registered or certified mail, postage prepaid, with return receipt requested. If personally

delivered, a receipt shall be obtained from such laboratory. All receipts or returns shall be kept on file for three years and shall be available for inspection by the Board at any reasonable time.

§ 54.1-3408. (Effective until January 1, 2001) Professional use by practitioners.

A practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine or a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice.

The prescribing practitioner's order may be on a written prescription or pursuant to an oral prescription as authorized by this chapter. The prescriber may administer drugs and devices, or he may cause them to be administered by a nurse, physician assistant or intern under his direction and supervision, or he may prescribe and cause drugs and devices to be administered to patients in state-owned or state-operated hospitals or facilities licensed as hospitals by the Board of Health or psychiatric hospitals licensed by the State Mental Health, Mental Retardation and Substance Abuse Services Board by other persons who have been trained properly to administer drugs and who administer drugs only under the control and supervision of the prescriber or a pharmacist or a prescriber may cause drugs and devices to be administered to patients by emergency medical services personnel who have been certified and authorized to administer such drugs and devices pursuant to Board of Health regulations governing emergency medical services and who are acting within the scope of such certification. A prescriber may authorize a certified respiratory therapy practitioner as defined in § 54.1-2954 to administer by inhalation controlled substances used in inhalation or respiratory therapy.

Pursuant to an oral or written order or standing protocol, the prescriber, who is authorized by state or federal law to possess and administer radiopharmaceuticals in the scope of his practice, may authorize a nuclear medicine technologist to administer, under his supervision, radiopharmaceuticals used in the diagnosis or treatment of disease.

Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered nurses and licensed practical nurses to possess (i) epinephrine for administration in treatment of emergency medical conditions and (ii) heparin and sterile normal saline to use for the maintenance of intravenous access lines.

Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize, with the consent of the parents as defined in § 22.1-1, an employee of a school board who is trained in the administration of insulin and glucagon to assist with the administration of insulin or administer glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed nurse, nurse practitioner, physician or physician assistant is not present to perform the administration of the medication.

A prescriber may authorize, pursuant to a protocol approved by the Board of Nursing, the administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is not physically present, (i) by licensed pharmacists, (ii) by registered nurses, or (iii) licensed practical nurses under the immediate and direct supervision of a registered nurse. A prescriber acting on behalf of and in accordance with established protocols of the Department of Health may authorize the administration of vaccines to any person by a pharmacist or nurse when the prescriber is not physically present.

A dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by either a dental hygienist or by an authorized agent of the dentist.

This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration,

and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) a resident of a facility licensed or certified by the State Mental Health, Mental Retardation and Substance Abuse Services Board; (ii) a resident of any assisted living facility which is licensed by the Department of Social Services; (iii) a resident of the Virginia Rehabilitation Center for the Blind and Visually Impaired; (iv) a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; (v) a program participant of an adult day-care center licensed by the Department of Social Services; or (vi) a resident of any facility authorized or operated by a state or local government whose primary purpose is not to provide health care services.

In addition, this section shall not prevent the administration of drugs by a person who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration and with written authorization of a parent, and in accordance with school board regulations relating to training, security and record keeping, when the drugs administered would be normally self-administered by a student of a Virginia public school. Training for such persons shall be accomplished through a program approved by the local school boards, in consultation with the local departments of health.

Nothing in this title shall prohibit the administration of normally self-administered oral or topical drugs by unlicensed individuals to a person in his private residence.

This section shall not interfere with any prescriber issuing prescriptions in compliance with his authority and scope of practice and the provisions of this section to a Board agent for use pursuant to subsection G of § 18.2-258.1. Such prescriptions issued by such prescriber shall be deemed to be valid prescriptions.

Nothing in this title shall prevent dialysis care technicians, in the ordinary course of their duties in a Medicare-certified renal dialysis facility, from administering heparin, topical needle site anesthetics, dialysis solutions and sterile normal saline solution for the purpose of facilitating renal dialysis treatment, provided such administration of medications occurs under the orders of a licensed physician and under the immediate and direct supervision of a licensed registered nurse. The dialysis care technician administering the medications must have been trained in renal dialysis practices and procedures by a licensed nurse, and must have demonstrated competency as evidenced by satisfactory completion of a training program in accordance with the Core Curriculum for the Dialysis Technician, also known as the Amgen Core Curriculum, or a comparable education and training curriculum.

§ 54.1-3408. (Effective January 1, 2001) Professional use by practitioners.

A practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine or a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice.

The prescribing practitioner's order may be on a written prescription or pursuant to an oral prescription as authorized by this chapter. The prescriber may administer drugs and devices, or he may cause them to be administered by a nurse, physician assistant or intern under his direction and supervision, or he may prescribe and cause drugs and devices to be administered to patients in state-owned or state-operated hospitals or facilities licensed as hospitals by the Board of Health or psychiatric hospitals licensed by the State Mental Health, Mental Retardation and Substance Abuse Services Board by other persons who have been trained properly to administer drugs and who administer drugs only under the control and supervision of the prescriber or a pharmacist or a prescriber may cause drugs and devices to be administered to patients by emergency medical services personnel who have been certified and authorized to administer such drugs and devices pursuant to Board of Health regulations governing emergency medical services and who are acting within the scope of such certification. A prescriber may authorize a certified respiratory therapy

practitioner as defined in § 54.1-2954 to administer by inhalation controlled substances used in inhalation or respiratory therapy.

Pursuant to an oral or written order or standing protocol, the prescriber, who is authorized by state or federal law to possess and administer radiopharmaceuticals in the scope of his practice, may authorize a nuclear medicine technologist to administer, under his supervision, radiopharmaceuticals used in the diagnosis or treatment of disease.

Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered nurses and licensed practical nurses to possess (i) epinephrine for administration in treatment of emergency medical conditions and (ii) heparin and sterile normal saline to use for the maintenance of intravenous access lines.

Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize, with the consent of the parents as defined in § 22.1-1, an employee of a school board who is trained in the administration of insulin and glucagon to assist with the administration of insulin or administer glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed nurse, nurse practitioner, physician or physician assistant is not present to perform the administration of the medication.

A prescriber may authorize, pursuant to a protocol approved by the Board of Nursing, the administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is not physically present, (i) by licensed pharmacists, (ii) by registered nurses, or (iii) licensed practical nurses under the immediate and direct supervision of a registered nurse. A prescriber acting on behalf of and in accordance with established protocols of the Department of Health may authorize the administration of vaccines to any person by a pharmacist or nurse when the prescriber is not physically present.

A dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by either a dental hygienist or by an authorized agent of the dentist.

This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) a resident of a facility licensed or certified by the State Mental Health, Mental Retardation and Substance Abuse Services Board; (ii) a resident of any assisted living facility which is licensed by the Department of Social Services; (iii) a resident of the Virginia Rehabilitation Center for the Blind and Vision Impaired; (iv) a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; (v) a program participant of an adult day-care center licensed by the Department of Social Services; or (vi) a resident of any facility authorized or operated by a state or local government whose primary purpose is not to provide health care services.

In addition, this section shall not prevent the administration of drugs by a person who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration and with written authorization of a parent, and in accordance with school board regulations relating to training, security and record keeping, when the drugs administered would be normally self-administered by a student of a Virginia public school. Training for such persons shall be accomplished through a program approved by the local school boards, in consultation with the local departments of health.

Nothing in this title shall prohibit the administration of normally self-administered oral or topical drugs by unlicensed individuals to a person in his private residence.

This section shall not interfere with any prescriber issuing prescriptions in compliance with his authority and scope of practice and the provisions of this section to a Board agent for use pursuant to subsection G of § 18.2-258.1. Such prescriptions issued by such prescriber shall be deemed to be valid prescriptions. Nothing in this title shall prevent dialysis care technicians, in the ordinary course of their duties in a Medicare-certified renal dialysis facility, from administering heparin, topical needle site anesthetics, dialysis solutions and sterile normal saline solution for the purpose of facilitating renal dialysis treatment, provided such administration of medications occurs under the orders of a licensed physician and under the immediate and direct supervision of a licensed registered nurse. The dialysis care technician administering the medications must have been trained in renal dialysis practices and procedures by a licensed nurse, and must have demonstrated competency as evidenced by satisfactory completion of a training program in accordance with the Core Curriculum for the Dialysis Technician, also known as the Amgen Core Curriculum, or a comparable education and training curriculum.

§ 54.1-3408.01. Requirements for prescriptions.

A. The written prescription referred to in § 54.1-3408 shall be written with ink or individually typed or printed. The prescription shall contain the name, address, and telephone number of the prescriber. A prescription for a controlled substance other than one controlled in Schedule VI shall also contain the federal controlled substances registration number assigned to the prescriber. The prescriber's information shall be either preprinted upon the prescription blank, electronically printed, typewritten, rubber stamped, or printed by hand.

The written prescription shall contain the first and last name of the patient for whom the drug is prescribed. The address of the patient shall either be placed upon the written prescription by the prescriber or his agent, or by the dispenser of the prescription. If not otherwise prohibited by law, the dispenser may record the address of the patient in an electronic prescription dispensing record for that patient in lieu of recording it on the prescription. Each written prescription shall be dated as of, and signed by the prescriber on, the day when issued. The prescription may be prepared by an agent for the prescriber's signature.

This section shall not prohibit a prescriber from using preprinted prescriptions for drugs classified in Schedule VI if all requirements concerning dates, signatures, and other information specified above are otherwise fulfilled.

No written prescription order form shall include more than one prescription. However, this provision does not apply to the entry of any order on a patient's chart in any hospital or any long-term care facility, as defined in Board regulations, in Virginia or to a prescription ordered through a pharmacy operated by or for the Department of Corrections or the Department of Juvenile Justice, the central pharmacy of the Department of Health, or the central outpatient pharmacy operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

B. Pursuant to § 32.1-87, any prescription form shall include two boxes, one labeled "Voluntary Formulary Permitted" and the other labeled "Dispense As Written." A prescriber may indicate his permission for the dispensing of a drug product included in the Formulary upon signing a prescription form and marking the box labeled "Voluntary Formulary Permitted." A Voluntary Formulary product shall be dispensed if the prescriber fails to indicate his preference. If no Voluntary Formulary product is immediately available or if the patient objects to the dispensing of a generic drug, the pharmacist may dispense a brand name drug. Printed prescription forms shall provide:

"[] Dispense As Written
[] Voluntary Formulary Permitted

.....
Signature of prescriber

If neither box is marked, a Voluntary Formulary product must be dispensed."

C. Prescribers' orders, whether written as chart orders or prescriptions, for Schedules II, III, IV and V controlled drugs to be administered to (i) patients or residents of long-term care facilities served by a Virginia pharmacy from a remote location or (ii) patients receiving parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion therapy and served by a home infusion pharmacy from a remote location, may be transmitted to that remote pharmacy by an electronic communications device over telephone lines which send the exact image to the receiver in hard copy form, and such facsimile copy shall be treated as a valid original prescription order. If the order is for a radiopharmaceutical, a physician authorized by state or federal law to possess and administer medical radioactive materials may authorize a nuclear medicine technologist to transmit a prescriber's verbal or written orders for radiopharmaceuticals.
D. The oral prescription referred to in subsection A of this section shall be transmitted to the pharmacy of the patient's choice by the prescriber or his authorized agent. For the purposes of this section, an authorized agent of the prescriber shall be an employee of the prescriber who is under his immediate and personal supervision, or if not an employee, an individual who holds a valid license allowing the administration or dispensing of drugs and who is specifically directed by the prescriber.

§ 54.1-3408.02. Transmission of prescriptions.

Consistent with federal law and in accordance with regulations promulgated by the Board, prescriptions may be transmitted to a pharmacy by electronic transmission or by facsimile machine and shall be treated as valid original prescriptions.

§ 54.1-3408.1. Prescription in excess of recommended dosage in certain cases.

In the case of a patient with intractable pain, a physician may prescribe a dosage in excess of the recommended dosage of a pain relieving agent if he certifies the medical necessity for such excess dosage in the patient's medical record. Any person who prescribes, dispenses or administers an excess dosage in accordance with this section shall not be in violation of the provisions of this title because of such excess dosage, if such excess dosage is prescribed, dispensed or administered in good faith for accepted medicinal or therapeutic purposes.
Nothing in this section shall be construed to grant any person immunity from investigation or disciplinary action based on the prescription, dispensing or administration of an excess dosage in violation of this title.

§ 54.1-3409. Professional use by veterinarians.

A veterinarian may not prescribe controlled substances for human use and shall only prescribe, dispense or administer a controlled substance in good faith for use by animals within the course of his professional practice. He may prescribe, on a written prescription or on oral prescription as authorized by § 54.1-3410. He may administer drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued, and shall bear the full name and address of the owner of the animal, and the species of the animal for which the drug is prescribed and the full name, address and registry number, under the federal laws of the person prescribing, if he is required by those laws to be so registered.

§ 54.1-3410. When pharmacist may sell and dispense drugs.

A. A pharmacist, acting in good faith, may sell and dispense drugs and devices to any person pursuant to a prescription of a prescriber as follows:
1. A drug listed in Schedule II shall be dispensed only upon receipt of a written prescription that is properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal laws of the person prescribing, if he is required by those laws to be so registered. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed;

2. In emergency situations, Schedule II drugs may be dispensed pursuant to an oral prescription in accordance with the Board's regulations;
3. Whenever a pharmacist dispenses any drug listed within Schedule II on a prescription issued by a prescriber, he shall affix to the container in which such drug is dispensed, a label showing the prescription serial number or name of the drug; the date of initial filling; his name and address, or the name and address of the pharmacy; the name of the patient or, if the patient is an animal, the name of the owner of the animal and the species of the animal; the name of the prescriber by whom the prescription was written; and such directions as may be stated on the prescription.
B. A drug controlled by Schedules III through VI or a device controlled by Schedule VI shall be dispensed upon receipt of a written or oral prescription as follows:
1. If the prescription is written, it shall be properly executed, dated and signed by the person prescribing on the day when issued and bear the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name and address of the person prescribing. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed.
2. If the prescription is oral, the prescriber shall furnish the pharmacist with the same information as is required by law in the case of a written prescription for drugs and devices, except for the signature of the prescriber.
A pharmacist who dispenses a Schedule III through VI drug or device shall label the drug or device as required in subdivision A 3 of this section.
C. A drug controlled by Schedule VI may be refilled without authorization from the prescriber if, after reasonable effort has been made to contact him, the pharmacist ascertains that he is not available and the patient's health would be in imminent danger without the benefits of the drug. The refill shall be made in compliance with the provisions of § 54.1-3411.
If the written or oral prescription is for a Schedule VI drug or device and does not contain the address or registry number of the prescriber, or the address of the patient, the pharmacist need not reduce such information to writing if such information is readily retrievable within the pharmacy.
D. Pursuant to authorization of the prescriber, an agent of the prescriber on his behalf may orally transmit a prescription for a drug classified in Schedules III through VI if, in such cases, the written record of the prescription required by this subsection specifies the full name of the agent of the prescriber transmitting the prescription.

§ 54.1-3410.1. Requirements for radiopharmaceuticals.

A. A pharmacist who is authorized by the Board and acting in good faith, may sell and dispense radiopharmaceuticals pursuant to the order of a physician who is authorized by state or federal law to possess and administer radiopharmaceuticals for the treatment or diagnosis of disease.
B. When an authorized nuclear pharmacist dispenses a radioactive medical material, he shall assure that the outer container (shield) of the radiopharmaceutical shall bear the following information:
1. The name and address of the nuclear pharmacy;
2. The name of the prescriber (authorized user);
3. The date of dispensing;
4. The serial number assigned to the radiopharmaceutical order;
5. The standard radiation symbol;
6. The name of the diagnostic procedure;
7. The words "Caution: Radioactive Material";
8. The name of the radionuclide;
9. The amount of radioactivity and the calibration date and time;
10. The expiration date and time;
11. In the case of a diagnostic radiopharmaceutical, the patient's name or the words "Per Physician's Order"; and

12. In the case of a therapeutic radiopharmaceutical, the patient's name.
C. Orders for radiopharmaceuticals, whether written or verbal, shall include at least the following information:
1. The name of the institution or facility and the name of the person transmitting the order;
2. The date that the radiopharmaceutical will be needed and the calibration time;
3. The name or generally recognized and accepted abbreviation of the radiopharmaceutical;
4. The dose or activity of the radiopharmaceutical at the time of calibration; and
5. In the case of a therapeutic radiopharmaceutical or a radiopharmaceutical blood product, the name of the patient shall be obtained prior to dispensing.

§ 54.1-3411. When prescriptions may be refilled.

Prescriptions may be refilled as follows:
1. A prescription for a drug in Schedule II may not be refilled.
2. A prescription for a drug in Schedules III or IV may not be filled or refilled more than six months after the date on which such prescription was issued and no such prescription may be authorized to be refilled, nor be refilled, more than five times, except that any prescription for such a drug after six months from the date of issue, or after being refilled five times, may be renewed by the prescriber issuing it either in writing, or orally, if promptly reduced to writing and filed by the pharmacist filling it.
3. A prescription in Schedule VI may not be refilled, unless authorized by the prescriber either on the face of the original prescription or orally by the prescriber except as provided in subdivision 4 of this section. Oral instructions shall be reduced promptly to writing by the pharmacist and filed on or with the original prescription.
4. A prescription for a drug controlled by Schedule VI may be refilled without authorization from the prescriber if reasonable effort has been made to communicate with the prescriber, and the pharmacist has determined that he is not available and the patient's health would be in imminent danger without the benefits of the drug. The pharmacist shall inform the patient of the prescriber's unavailability and that the refill is being made without his authorization. The pharmacist shall promptly inform the prescriber of such refill. The date and quantity of the refill, the prescriber's unavailability and the rationale for the refill shall be noted on the reverse side of the prescription.

§ 54.1-3412. Date of dispensing; initials of pharmacist; automated data processing system.

The pharmacist dispensing any prescription shall record the date of dispensing and his initials on the prescription or in an automated data processing system used for the storage and retrieval of dispensing information for prescriptions pursuant to regulations promulgated by the Board.

§ 54.1-3413. Manufacturing and administering Schedule I drugs.

It shall be lawful for a person to manufacture, and for a practitioner to administer, Schedule I drugs if:
1. The manufacturer and practitioner are expressly authorized to engage in such activities by the Attorney General of the United States, or pursuant to the federal Food, Drug and Cosmetic Act;
2. The manufacturer or dispenser is registered under all appropriate provisions of this chapter;
3. Any Schedule I drug so manufactured is sold or furnished on an official written order to a practitioner or other authorized person only; and
4. The manufacturer and practitioner comply with all other requirements of this chapter.

§ 54.1-3414. Official orders for Schedule II drugs.

An official written order for any Schedule II drug shall be signed by the purchasing licensee or by his agent. The original shall be presented to the person who supplies the drug or drugs. If such person accepts the order, each party to the transaction shall preserve his copy of the order for two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this

chapter. It shall be deemed a compliance with this section if the parties to the transaction have complied with the federal laws respecting the requirements governing the use of order forms.

§ 54.1-3415. Distribution of drugs in Schedules II through VI by manufacturers and wholesalers.

A. A permitted manufacturer or wholesaler may distribute Schedule II drugs to any of the following persons, but only on official written orders:

1. To a manufacturer or wholesaler who has been issued permits pursuant to this chapter;

2. To a licensed pharmacist, permitted pharmacy or a licensed practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine;

3. To a person who has been issued a controlled substance registration certificate pursuant to § 54.1-3422, if the certificate of such person authorizes such purchase;

4. On a special written order accompanied by a certificate of exemption, as required by the federal laws, to a person in the employ of the United States government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving or possessing drugs by reason of his official duties;

5. To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or aircraft when not in port. However, such drugs shall be sold to a master of such ship or person in charge of such aircraft pursuant to a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service; and

6. To a person in a foreign country in compliance with the provisions of the relevant federal laws.

B. A permitted manufacturer or wholesaler may distribute drugs classified in Schedule III through Schedule VI and devices to all persons listed in subsection A of this section without an official written order. However, this section shall not be construed to prohibit the distribution of a Schedule VI drug or device to any person who is otherwise authorized by law to administer, prescribe or dispense such drug or device.

§ 54.1-3416. No prescription for preparations listed pursuant to Schedule V.

A preparation listed pursuant to Schedule V may be dispensed without a prescription if:

1. The preparation is dispensed only by a pharmacist directly to the person requesting the preparation;

2. The preparation is dispensed only to a person who is at least eighteen years of age;

3. The pharmacist requires the person requesting the preparation to furnish suitable identification including proof of age when appropriate;

4. The pharmacist does not dispense to any one person, or for the use of any one person or animal, any narcotic drug preparation or preparations, when he knows, or can by reasonable diligence ascertain, that such dispensing will provide the person to whom or for whose use, or the owner of the animal for the use of which, such preparation is dispensed, within 48 consecutive hours, with more than 200 milligrams of opium, or more than 270 milligrams of codeine, or more than 130 milligrams of dihydrocodeinone, or more than 65 milligrams of ethylmorphine, or more than 32 5/10 milligrams of diphenoxylate. In dispensing such a narcotic drug preparation, the pharmacist shall exercise professional discretion to ensure that the preparation is being dispensed for medical purposes only.

Any pharmacist shall, at the time of dispensing, make and keep a record showing the date of dispensing, the name and quantity of the preparation, the name and address of the person to whom the preparation is dispensed, and enter his initials thereon. Such records shall be maintained as set forth in § 54.1-3404 and the regulations of the Board.

§ 54.1-3417. Disposing of stocks of Schedules II through V drugs.

The owner of any stocks of drugs included in Schedules II through V obtained in compliance with this chapter, upon discontinuance of dealing in such drugs, may dispose of such stocks only on an official written order as follows:

1. A pharmacy or practitioner or an agent or agents of a pharmacy or practitioner under specific written authorization from the owner of such pharmacy or such practitioner, may dispose of such stocks to a manufacturer or wholesaler holding a valid license to deal in such drugs, or to another pharmacy or practitioner.

2. A manufacturer or wholesaler may dispose of such stocks only to a manufacturer or wholesaler holding a valid permit to deal in such drugs.

§ 54.1-3418. Sale of aqueous or oleaginous solutions.

A pharmacist, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions compounded by the pharmacist, of which the content of narcotic drugs does not exceed a proportion greater than twenty percent of the complete solution, to be used for medical purposes.

§ 54.1-3419. Dispensing of insulin preparations.

Any insulin preparation shall be dispensed only by or under the supervision of a licensed pharmacist.

§ 54.1-3420. Distribution of certain drugs; written request or confirmation of receipt.

No manufacturer or distributor of controlled substances shall distribute or dispense any substance listed on Schedules II through V to any person, whether a practitioner of the healing arts or some other profession, except with the written request or confirmation of receipt of the practitioner. Such request or confirmation shall be maintained as required by this chapter.

Subject to the foregoing provisions, no person shall be prohibited from distributing controlled substances listed on Schedules II through V for charitable uses or for use in research or investigations.

§ 54.1-3420.1. Identification required for filling prescriptions.

Before dispensing any drug listed on Schedules II through V, a pharmacist may require proof of identity from any patient presenting a prescription or requesting a refill of a prescription.

§ 54.1-3420.2. Delivery of prescription drug order.

Whenever any pharmacy permitted to operate in this Commonwealth or nonresident pharmacy registered to conduct business in the Commonwealth delivers a prescription drug order by mail, common carrier, or delivery service, when the drug order is not personally hand delivered directly, to the patient or his agent at the person's residence or other designated location, the following conditions shall be required:

1. Written notice shall be placed in each shipment alerting the consumer that under certain circumstances chemical degradation of drugs may occur; and

2. Written notice shall be placed in each shipment providing a toll-free or local consumer access telephone number which is designed to respond to consumer questions pertaining to chemical degradation of drugs.

§ 54.1-3421. New drugs.

A. No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless an application with respect to the drug has been approved and the approval has not been withdrawn under § 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355)

B. This section shall not apply to a drug subject to the federal act intended solely for investigational use and for which a notice of claimed investigational exemption for a new drug has been filed with the U.S. Food and Drug Administration in accordance with 21 C.F.R. Part 312.

§ 54.1-3422. Controlled substances registration certificate required in addition to other requirements; exemptions.

A. Every person who manufactures, distributes or dispenses any substance which is controlled in Schedules I through V or who proposes to engage in the manufacture, distribution or dispensing of any such controlled substance except permitted pharmacies, those persons who are licensed pharmacists, and those persons who are licensed practitioners of medicine, osteopathy, podiatry, dentistry, or veterinary medicine shall obtain annually a controlled substances registration certificate issued by the Board. This registration shall be in addition to other licensing or permitting requirements enumerated in this chapter or otherwise required by law.

B. Registration under this section and under all other applicable registration requirements shall entitle the registrant to possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by this registration and in conformity with the other provisions of this chapter.

C. The following persons need not register and may possess controlled substances listed on Schedules I through VI:

1. An agent or employee of any holder of a controlled substance registration certificate or of any practitioner listed in subsection A of this section as exempt from the requirement for registration, if such agent or employee is acting in the usual course of his business or employment;

2. A common or contract carrier or warehouseman, or his employee, whose possession is in the usual course of business or employment; or

3. An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a prescriber or in lawful possession of a Schedule V substance.

D. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

§ 54.1-3423. Board to issue registration unless inconsistent with public interest; authorization to conduct research; application and fees.

A. The Board shall register an applicant to manufacture or distribute controlled substances included in Schedules I through V 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 and 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 this chapter;

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

7. Any other factors relevant to and consistent with the public health and safety.

B. Registration under subsection A does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

C. Practitioners must be registered to conduct research with controlled substances in Schedules II through VI. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this Commonwealth upon furnishing the evidence of that federal registration.

D. The Board may register other persons or entities to possess controlled substances listed on Schedules II through VI upon a determination that (i) there is a documented need, (ii) the issuance of the registration is consistent with the public interest, (iii) the possession and subsequent use of the controlled substances

complies with applicable state and federal laws and regulations, and (iv) the subsequent storage, use, and recordkeeping of the controlled substances will be under the general supervision of a licensed pharmacist, practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine as specified in the Board's regulations. The Board shall consider, at a minimum, the factors listed in subsection A of this section in determining whether the registration shall be issued. Notwithstanding the exceptions listed in § 54.1-3422 A, the Board may mandate a controlled substances registration for sites maintaining certain types and quantities of Schedules II through VI controlled substances as it may specify in its regulations. The Board shall promulgate regulations related to requirements or criteria for the issuance of such controlled substances registration, storage, security, supervision, and recordkeeping. The first such regulations shall be promulgated within 280 days of the enactment of this provision.

E. Applications for controlled substances registration certificates and renewals thereof shall be made on a form prescribed by the Board and such applications shall be accompanied by a fee in an amount to be determined by the Board.

F. Upon (i) any change in ownership or control of a business, (ii) any change of location of the controlled substances stock, (iii) the termination of authority by or of the person named as the responsible party on a controlled substances registration, or (iv) a change in the supervising practitioner, if applicable, the registrant or responsible party shall immediately surrender the registration. The registrant shall, within fourteen days following surrender of a registration, file a new application and, if applicable, name the new responsible party or supervising practitioner.

§ 54.1-3424. Suspension or revocation of registration, license or permit; limitation to particular controlled substance; controlled substances placed under seal; sale of perishables and forfeiture; notification to DEA.

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

1. Has furnished false or fraudulent material information in an application filed under this chapter;

2. Has been convicted of a felony under any state or federal law relating to any controlled substance;

3. Has had his federal registration to manufacture, distribute or dispense controlled substances suspended or revoked;

4. Has violated or cooperated with others in violating any provision of this chapter or regulations of the Board relating to the manufacture, distribution or dispensing of controlled substances.

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

C. If the Board suspends or revokes a registration, or if the license or permit of a person possessing controlled substances under an exemption in § 54.1-3422 A is suspended or revoked by the issuing board, all controlled substances owned or possessed by the registrant, licensee or permittee 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 orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances shall be forfeited to the Commonwealth.

D. The Board shall promptly notify the DEA of all orders suspending or revoking registration and all forfeitures of controlled substances.

§ 54.1-3425. Issuance of limited permits to humane societies.

The Board may issue, upon such terms and conditions as it finds proper, to any humane society making application, a limited permit only for the purpose of buying, possessing, and using any drug approved by the State Veterinarian for the purpose of euthanizing injured, sick, homeless, and unwanted domestic pets

and animals. The application and renewal thereof for such a special permit shall be accompanied by a fee as determined by the Board.

§ 54.1-3426. Regulations for special packaging.

A. The Board shall adopt standards for special packaging consistent with those promulgated pursuant to the federal Poison Prevention Packaging Act of 1970. The Board may exempt any drug from the requirements of special packaging and shall exempt any drug exempted pursuant to the Poison Prevention Packaging Act of 1970.

B. A prescriber or a purchaser may direct that a drug, which is subject to being dispensed in special packaging, be dispensed in other than special packaging.

§ 54.1-3427. Dispensing drugs without safety closure container.

When a pharmacist receives the request of any person that a drug or drugs for such person to be dispensed by the pharmacist not be placed in a safety closure container, the pharmacist may dispense such drug or drugs in such nonsafety closure container. The delivering pharmacist shall not be civilly liable simply by reason of dispensing a drug or drugs in such a container if the recipient signs a release covering a period of time or a single delivery, which release provides that the recipient releases the pharmacist from civil liability for not using the safety closure container, unless the pharmacist acted with willful and wanton disregard of safety.

§ 54.1-3428. Dissemination of information.

The Board may disseminate such information regarding drugs, devices, and cosmetics as the Board deems necessary in the interest of public health and the protection of the consumer against fraud. This section shall not be construed to prohibit the Board from collecting, reporting, and illustrating the results of its investigations.

§ 54.1-3429. Revocation of permit issued to manufacturer, wholesaler or distributor.

The Board may revoke a permit issued to a manufacturer, wholesaler or distributor for failure to comply with regulations promulgated pursuant to the provisions of this chapter.

§ 54.1-3430. Display of permit; permits nontransferable; renewal.

Permits issued under the provisions of this chapter shall be displayed in a conspicuous place in the factory or other place of business for which issued.

Permits shall not be transferable and shall be renewed annually.

§ 54.1-3431. Admission into evidence of certain certificates of analysis.

In any administrative hearing, a certificate of analysis of a chemist, performed in any laboratory operated by the Division of Forensic Science or authorized by such Division to conduct such analysis, when such certificate is attested by such chemist, shall be admissible as evidence. A copy of such certificate shall be delivered to the parties in interest at least seven days prior to the date fixed for the hearing.

Any certificate of analysis purporting to be signed by any chemist shall be admissible as evidence in such hearing without any proof of the seal or signature or of the official character of the chemist whose name is signed to it.

Article 2.
Permitting of Pharmacies.

§ 54.1-3432. Supervision by pharmacist.

Every pharmacy shall be under the personal supervision of a pharmacist on the premises of the pharmacy.

History

§ 54.1-3433. Certain advertising and signs unlawful.

It shall be unlawful for any place of business which is not a pharmacy as defined in this chapter to advertise or to have upon it or in it as a sign the words, "pharmacy," "pharmacist," "apothecary," "drugstore," "druggist," "drugs," "medicine store," "drug sundries," "prescriptions filled" or any like words indicating that drugs are compounded or sold or prescriptions filled. Each day during which such advertisement appears or such sign is allowed to remain upon or in such place of business shall constitute a separate offense under this section.

§ 54.1-3434. Permit to conduct pharmacy.

No person shall conduct a pharmacy without first obtaining a permit from the Board.

The application for such permit shall be made on a form provided by the Board and signed by a pharmacist who will be in full and actual charge of the pharmacy and who will be fully engaged in the practice of pharmacy at the location designated on the application.

The application shall (i) show the corporate name and trade name, (ii) list any pharmacist in addition to the pharmacist-in-charge practicing at the location indicated on the application, and (iii) list the hours during which the pharmacy will be open to provide pharmacy services. Any change in the hours of operation, which is expected to last more than one week, shall be reported to the Board in writing and posted, at least fourteen days prior to the anticipated change, in a conspicuous place to provide notice to the public. The Board shall promulgate regulations to provide exceptions to this prior notification.

If the owner is other than the pharmacist making the application, the type of ownership shall be indicated and shall list any partner or partners, and, if a corporation, then the corporate officers and directors. Further, if the owner is not a pharmacist, he shall not abridge the authority of the pharmacist-in-charge to exercise professional judgment relating to the dispensing of drugs in accordance with this act and Board regulations.

The permit shall be issued only to the pharmacist who signs the application as the pharmacist-in-charge and as such assumes the full responsibilities for the legal operation of the pharmacy. This permit and responsibilities shall not be construed to negate any responsibility of any pharmacist or other person.

Upon termination of practice by the pharmacist-in-charge, or upon any change in partnership composition, or upon the acquisition, as defined in Board regulations, of the existing corporation by another person or the closing of a pharmacy, the permit previously issued shall be immediately surrendered to the Board by the pharmacist-in-charge to whom it was issued, or by his legal representative, and an application for a new permit may be made in accordance with the requirements of this chapter.

The Board shall promulgate regulations (i) defining acquisition of an existing permitted, registered or licensed facility or of any corporation under which the facility is directly or indirectly organized; (ii) providing for the transfer, confidentiality, integrity, and security of the pharmacy's prescription dispensing records and other patient records, regardless of where located; and (iii) establishing a reasonable time period for designation of a new pharmacist-in-charge. At the conclusion of the time period for designation of a new pharmacist-in-charge, a pharmacy which has failed to designate a new pharmacist-in-charge shall not operate as a pharmacy nor maintain a stock of prescription drugs on the premises. The Director shall immediately notify the owner of record that the pharmacy no longer holds a valid permit and that the owner shall make provision for the proper disposition of all Schedule II through VI drugs and devices on the premises within fifteen days of receipt of this notice. At the conclusion of the fifteen-day period, the Director or his authorized agent shall seize and indefinitely secure all Schedule II through VI drugs and devices still on the premises, and notify the owner of such seizure. The Director may properly dispose of the seized drugs and devices after six months from the date of the notice of seizure if the owner has not claimed and provided for the proper disposition of the property. The Board shall assess a fee of not less than the cost of storage of said drugs upon the owner for reclaiming seized property.

The succeeding pharmacist-in-charge shall cause an inventory to be made of all Schedule I, II, III, IV and V drugs on hand. Such inventory shall be completed as of the date he becomes pharmacist-in-charge and prior to opening for business on that date.
The pharmacist to whom such permit is issued shall provide safeguards against diversion of all controlled substances.
An application for a pharmacy permit shall be accompanied by a fee determined by the Board. All permits shall expire on December 31 of each year.
Every pharmacy must be equipped so that prescriptions can be properly filled. The Board of Pharmacy shall prescribe the minimum of such professional and technical equipment and reference material which a pharmacy shall at all times possess. No permit shall be issued or continued for the conduct of a pharmacy until or unless there is compliance with the provisions of this chapter and regulations promulgated by the Board.
Each day during which a person is in violation of this section shall constitute a separate offense.

§ 54.1-3434.01. Notice of pharmacy closing; change of ownership; penalty.

A. Prior to the closing of a pharmacy for more than one week, the owner shall either (i) post a conspicuous notice at least thirty days prior to the anticipated closing or (ii) mail a notice, at least fourteen days prior to the anticipated closing, to every current pharmacy customer having refill authority. Each notice posted or mailed pursuant to this section shall indicate the date of such closing, if available, and the name of the pharmacy to which prescriptions and other required prescription dispensing records and individual patient records will be transferred unless patients indicate their preference to the contrary. The Board of Pharmacy shall promulgate regulations providing for a definition of "closing of a pharmacy" and exceptions to the requirements of this section.
B. Upon any change of ownership of a pharmacy, regardless of how such change may be effectuated, the prescription dispensing records and other patient records for at least two years immediately prior to the change of ownership, shall be transferred, in accordance with Board regulations, to the new owner in a manner to ensure the confidentiality, integrity, and security of the pharmacy's prescription dispensing records and other patient records and the continuity of pharmacy services at substantially the same level as that offered by the previous owner.
Refusing to process a request for the prescription dispensing records and other patient records tendered in accordance with law or regulation shall constitute a closing and the requirements of this section shall apply. Such refusal may constitute a violation of § 54.1-111 A 9, depending on the circumstance.

§ 54.1-3434.02. Automated drug dispensing systems.

A. Hospitals licensed pursuant to Title 32.1 or Title 37.1 may use automated drug dispensing systems, as defined in § 54.1-3401, upon meeting the following conditions:
1. Drugs are placed in the automated drug dispensing system in a hospital and are under the control of a pharmacy providing services to the hospital;
2. The pharmacist-in-charge of the pharmacy providing services to the hospital has established procedures for assuring the accurate stocking and proper storage of drugs in the automated drug dispensing system and for ensuring accountability for and security of all drugs utilized in the automated drug dispensing system until the time such drugs are removed from the automated drug dispensing system for administration to the patients;
3. Removal of drugs from any automated drug dispensing system for administration to patients can only be made pursuant to a valid prescription or lawful order of a prescriber;
4. Adequate security for automated drug dispensing systems is provided, as evidenced by written policies and procedures, for (i) preventing unauthorized access, (ii) complying with federal and state regulations on prescribing and dispensing controlled substances, (iii) maintaining patient confidentiality, and (iv) assuring compliance with the requirements of this section;

5. Accountability for drugs dispensed from automated drug dispensing systems is vested in the pharmacist-in-charge of a pharmacy located within the hospital or the pharmacist-in-charge of any outside pharmacy providing pharmacy services to the hospital;
6. Filling and stocking of all drugs in automated drug dispensing systems shall be performed under the direction of the pharmacist-in-charge. The task of filling and stocking of drugs into an automated drug dispensing system shall be performed by a pharmacist or the designee of the pharmacist-in-charge, who shall be an employee of the provider pharmacy and shall be properly trained in accordance with established standards set forth in a policy and procedure manual maintained by the provider pharmacy. Delegation of filling and stocking tasks to a nonpharmacist shall not be conditioned on the use of the automated drug dispensing system as a floor stock system or a patient-specific drug dispensing system; however, the filling and stocking shall be performed by a person who holds current certification by the National Pharmacy Technician Certification Board as a pharmacy technician. The pharmacist stocking and filling the automated drug dispensing system or, if a nonpharmacist is delegated this task, the pharmacist-in-charge shall be responsible for the proper and accurate stocking and filling of the automated drug dispensing system.
B. Drugs placed into and removed from automated drug dispensing systems for administration to patients shall be in the manufacturer's or distributor's sealed original packaging or in unit-dose containers packaged by the pharmacy.
C. The pharmacist-in-charge in a pharmacy located within a hospital or the pharmacist-in-charge of any outside pharmacy providing pharmacy services to a hospital shall be responsible for establishing procedures for (i) periodically inspecting and auditing automated drug dispensing systems to assure the proper storage, security, and accountability for all drugs placed in and removed from automated drug dispensing systems, and (ii) reviewing the operation and maintenance of automated drug dispensing systems. This monitoring shall be reviewed by a pharmacist while on the premises of the hospital and in accordance with the pharmacist-in-charge's procedures and the Board of Pharmacy's regulations.
D. The Board of Pharmacy shall promulgate regulations establishing minimum requirements for random periodic inspections and monthly audits of automated drug dispensing systems to assure the proper storage, security, and accountability of all drugs placed in and removed from automated drug dispensing systems and for reviewing the operation and maintenance of automated drug dispensing systems.

Article 2.1.
Registration of Nonresident Pharmacies.

§ 54.1-3434.1. Nonresident pharmacies to register with Board.

A. Any pharmacy located outside this Commonwealth which ships, mails, or delivers, in any manner, Schedule II through VI drugs or devices pursuant to a prescription into this Commonwealth shall be considered a nonresident pharmacy, shall be registered with the Board, and shall disclose to the Board all of the following:
1. The location, names, and titles of all principal corporate officers and all pharmacists who are dispensing prescription drugs or devices to residents of this Commonwealth. A report containing this information shall be made on an annual basis and within thirty days after any change of office, corporate officer, or principal pharmacist.
2. That it complies with all lawful directions and requests for information from the regulatory or licensing agency of the Commonwealth in which it is licensed as well as with all requests for information made by the Board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the Board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

3. That it maintains its records of prescription drugs or dangerous drugs or devices dispensed to patients in this Commonwealth so that the records are readily retrievable from the records of other drugs dispensed and provides a copy or report of such dispensing records to the Board, its authorized agents, or any agent designated by the Superintendent of the Department of State Police upon request within seven days of receipt of a request.
4. That its pharmacists do not knowingly fill or dispense a prescription for a patient in Virginia in violation of § 54.1-3303.
B. Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of forty hours per week, provide a toll-free telephone service to facilitate communication between patients in this Commonwealth and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this Commonwealth.
C. The registration fee shall be the fee specified for pharmacies within Virginia.

§ 54.1-3434.2. Permit to be issued.

No out-of-state pharmacy doing business in this Commonwealth which has not obtained a permit shall conduct the business of selling or distributing drugs in Virginia without registering as a nonresident pharmacy.
Applications for a nonresident pharmacy registration, under this section, shall be made on a form furnished by the Board. The Board may require such information as it deems is necessary to carry out the purpose of the section.
The permit or nonresident pharmacy registration shall be renewed annually on or before January 1 of each year.

§ 54.1-3434.3. Denial, revocation, and suspension of registration.

The Board may deny, revoke, or suspend a nonresident pharmacy registration for conduct which causes serious bodily or serious psychological injury to a resident of the Commonwealth if the Board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and the regulatory or licensing agency fails to initiate an investigation within forty-five days of the referral.

§ 54.1-3434.4. Prohibited acts.

It is unlawful for any nonresident pharmacy which is not registered under this article to advertise its services in Virginia or for any person who is a resident of Virginia to advertise the pharmacy services of a nonresident pharmacy which has not registered with the Board, with the knowledge that the advertisement will or is likely to induce members of the public in the Commonwealth to use the pharmacy to dispense prescriptions.

Article 3.
Wholesale Distributors and Medical Equipment Suppliers.

§ 54.1-3435. License to act as wholesale distributor; renewal; fee.

It shall be unlawful for any person to engage in the wholesale distribution of prescription drugs in this Commonwealth without a valid unrevoked license issued by the Board. The applicant for licensure as a wholesale distributor, as defined in § 54.1-3401, in this Commonwealth shall apply to the Board for a license, using such forms as the Board may furnish; renew such license using such forms as the Board may furnish, if granted, annually on or before January 1 of each year; notify the Board within thirty days of any substantive change in the information reported on the application form previously submitted to the Board; and remit a fee as determined by the Board.

The Board may promulgate such regulations relating to the storage, handling, and distribution of prescription drugs by wholesale distributors as it deems necessary to implement this section, to prevent diversion of prescription drugs, and to protect the public.

§ 54.1-3435.01. Registration of nonresident wholesale distributors; renewal; fee.

A. Any person located outside this Commonwealth who engages in the wholesale distribution of prescription drugs into this Commonwealth shall be registered with the Board. The applicant for registration as a nonresident wholesale distributor shall apply to the Board using such forms as the Board may furnish; renew such registration, if granted, using such forms as the Board may furnish, annually on or before January 1 of each year; notify the Board within thirty days of any substantive change in the information previously submitted to the Board; and remit a fee, which shall be the fee specified for wholesale distributors located within the Commonwealth.

B. The nonresident wholesale distributor shall at all times maintain a valid, unexpired license, permit, or registration in the state in which it is located and shall furnish proof of such upon application and at each renewal.

C. Records of prescription drugs distributed into this Commonwealth shall be maintained in such a manner that they are readily retrievable from records of distributions into other jurisdictions and shall be provided to the Board, its authorized agent, or any agent designated by the Superintendent of the Department of State Police upon request within seven days of receipt of such request.

D. This section shall not apply to persons who distribute prescription drugs directly to a licensed wholesale distributor located within this Commonwealth.

§ 54.1-3435.1. Denial, revocation, and suspension of license as wholesale distributor or of registration as a nonresident wholesale distributor.

A. The license as a wholesale distributor or registration as a nonresident wholesale distributor of prescription drugs may be denied, suspended, or revoked by the Board for any of the following:

1. Any conviction of the applicant or licensee under federal or state laws relating to controlled substances, including, but not limited to, drug samples and wholesale or retail prescription drug distribution;
2. Any felony conviction of the applicant or licensee;
3. Any misdemeanor conviction of the applicant or licensee for a crime involving moral turpitude;
4. Conduct in the manufacture or distribution of prescription drugs contrary to the protection of the health, safety, and welfare of the public;
5. Fraud or deceit in any application for licensure or permit under this chapter;
6. Denial, suspension, revocation, or restriction of any federal or state license previously or currently held by the applicant or licensee for the manufacture or distribution of any drug;
7. Violations of licensing requirements under previously held licenses;
8. Failure to maintain and make available to the Board or to federal regulatory officials those records required to be maintained by wholesale distributors of prescription drugs;
9. Violations of the minimum requirements for qualifications, personnel, storage, and handling of prescription drugs and maintenance of prescription drug records as set forth in the federal Prescription Drug Marketing Act of 1987 and Part 205 of Chapter 21 of the Code of Federal Regulations; or
10. Violations of any provision of this chapter or regulations of the Board governing wholesale distributors.

B. Wholesale drug distributors shall allow the Board or its authorized agents to enter and inspect, at reasonable times and in a reasonable manner, their premises and delivery vehicles, and to audit their records and written operating procedures. Such agents shall be required to show appropriate identification prior to being permitted access to wholesale drug distributors' premises and delivery vehicles.

§ 54.1-3435.2. Permit to act as medical equipment supplier; storage; limitation; regulations.

A. Unless otherwise authorized by this chapter or Chapter 33 (§ 54.1-3300 et seq.) of this title, it shall be unlawful for any person to act as a medical equipment supplier, as defined in § 54.1-3401, in this Commonwealth without a valid unrevoked permit issued by the Board. The applicant for a permit to act as a medical equipment supplier in this Commonwealth shall apply to the Board for a permit, using such form as the Board may furnish; renew such permit, if granted, annually on or before January 1 of each year; and remit a fee as determined by the Board.

B. Prescription drugs received, stored, and distributed by authority of this section shall be limited to those Schedule VI controlled substances with no medicinal properties which are used for the operation and cleaning of medical equipment and solutions for peritoneal dialysis.

C. Distribution of any Schedule VI drug or device or of any hypodermic needle or syringe, or medicinal oxygen by authority of this section is limited to delivery to the ultimate user upon lawful order by a prescriber authorized to prescribe such drugs and devices.

D. The Board may promulgate such regulations relating to the storage, handling, and distribution of prescription drugs, devices and controlled paraphernalia by medical equipment suppliers as it deems necessary to implement this section, to prevent diversion of prescription drugs and devices and controlled paraphernalia, and to protect the public.

§ 54.1-3435.3. Denial, revocation, and suspension of permit as medical equipment supplier.

A. The permit as a medical equipment supplier may be denied, suspended, or revoked by the Board for any of the following:

1. Any conviction of the applicant or permit holder under federal or state laws relating to wholesale or retail distribution or delivery of prescription drugs or devices or controlled substances;
2. Any felony conviction of the applicant or permit holder;
3. Any misdemeanor conviction of the applicant or permit holder for a crime involving moral turpitude;
4. Violations of any provision of this chapter or regulations of the Board governing medical equipment suppliers;
5. Fraud or deceit in any application for licensure or permit under this chapter; or
6. Engaging in or attempting any fraud upon the consumer.

B. Medical equipment suppliers shall allow the Board or its authorized agents to enter and inspect, at reasonable times and in a reasonable manner, their premises and delivery vehicles, and to audit their records and written operating procedures.

§ 54.1-3435.4. Permit to act as warehouser; regulations.

A. Unless otherwise authorized by this chapter or Chapter 33 (§ 54.1-3300 et seq.) of this title, it shall be unlawful for any person to act as a warehouser, as defined in § 54.1-3401, in this Commonwealth without a valid unrevoked permit issued by the Board. The applicant for a permit to act as a warehouser in this Commonwealth shall apply to the Board for a permit, using such form as the Board may furnish; renew such permit, if granted, annually on or before January 1 of each year; and remit a fee as determined by the Board.

B. The Board may promulgate such regulations relating to the storage, handling, and distribution of prescription drugs and devices by warehousers as it deems necessary to implement this section, to prevent diversion of prescription drugs and devices, and to protect the public.

C. Warehousers shall allow the Board or its authorized agents to enter and inspect, at reasonable times and in a reasonable manner, their premises and delivery vehicles, and to audit their records and written operating procedures. Such agents shall be required to show appropriate identification prior to being permitted access to warehousers' premises and delivery vehicles.

§ 54.1-3435.5. Denial, revocation, and suspension of permit as warehouser.

The permit as a warehouser may be denied, suspended, or revoked by the Board for any of the following:
1. Conduct in the distribution of prescription drugs or devices contrary to the protection of the health, safety, and welfare of the citizens of this Commonwealth; or
2. Violations of any provisions of this chapter or regulations of the Board governing warehousers.

§ 54.1-3436. Repealed

Article 4.
Permitting of Manufacturers.

§ 54.1-3437. Permit to manufacture drugs.

It shall be lawful to manufacture, make, produce, pack, package, repackage, relabel or prepare any drug not controlled by Schedule I after first obtaining the appropriate permit from the Board. Such permits shall be subject to the Board's regulations on sanitation, equipment, and safeguards against diversion. This provision shall not apply to manufacturers or packers of medicated feeds who manufacture or package no other drugs.

§ 54.1-3437.1. Limited permit for repackaging drugs.

The Board may issue a limited manufacturing permit for the purpose of repackaging drugs, upon such terms and conditions approved by the Board, to the pharmacy directly operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services and which serves clients of the community services boards.

§ 54.1-3438. Manufacturing, etc., of drugs or proprietary medicines, to be supervised by pharmacist.

No drugs or proprietary medicines shall be manufactured, made, produced, packed, packaged, repackaged, relabeled or prepared within this Commonwealth, except under the personal and immediate supervision of a pharmacist or such other person as may be approved by the Board of Pharmacy after an investigation and a determination by the Board that they are qualified by scientific or technical training to perform such duties or supervision as may be necessary to protect the public health and safety. This provision shall not apply to manufacturers or packers of medicated feeds who manufacture or pack no other drugs. Medicated feeds are hereby defined as products obtained by mixing a commercial feed and a drug.

§ 54.1-3439. Application for nonrestricted manufacturing permit; fee.

Every person desiring to manufacture any drug or proprietary medicines shall annually apply to the Board for a nonrestricted manufacturing permit. The application shall be accompanied by the required fee. Separate applications shall be made and separate permits issued for each specific place of manufacturing. Each such permit shall expire on December 31.

§ 54.1-3440. Persons to whom nonrestricted permit is granted.

No person shall be granted a nonrestricted permit as a manufacturer unless he is of good moral character and properly equipped as to land, buildings, equipment and safeguards against diversion to carry out the functions of a manufacturer with due regard to the protection of the public safety.

§ 54.1-3441. Restricted manufacturing permit; application; fee; separate application and permit for each place of manufacturing.

Every person desiring to manufacture a proprietary medicine or to repackage medical gases shall apply to the Board for a restricted manufacturing permit. The application shall be accompanied by the required fee. Separate applications shall be made and separate permits issued for each separate place of manufacturing.

§ 54.1-3442. When permit not to be granted; regulations.

No person shall be granted a restricted manufacturing permit as a manufacturer unless such person is properly equipped as to buildings and equipment to carry out the functions of a manufacturer with due regard to the protection of the public health. The Board shall promulgate regulations in order to carry out the provisions of this section.

Article 5.
Standards and Schedules.

§ 54.1-3443. Board to administer article.

A. The Board shall administer this article and may add substances to or deschedule or reschedule all substances enumerated in the schedules in this article pursuant to the procedures of the Administrative Process Act (§ 9-6.14:1 et seq.). In making a determination regarding a substance, the Board shall consider the following:

1. The actual or relative potential for abuse;
2. The scientific evidence of its pharmacological effect, if known;
3. The state of current scientific knowledge regarding the substance;
4. The history and current pattern of abuse;
5. The scope, duration, and significance of abuse;
6. The risk to the public health;
7. The potential of the substance to produce psychic or physical dependence; and
8. Whether the substance is an immediate precursor of a substance already controlled under this article.

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

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

D. If any substance is designated, rescheduled, or descheduled as a controlled substance under federal law and notice of such action is given to the Board, the Board may similarly control the substance under this chapter after the expiration of 120 days from publication in the Federal Register of the final order designating a substance as a controlled substance or rescheduling or descheduling a substance without following the provisions specified in subsections A and B of this section.

E. Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 4.1.

F. The Board shall exempt any nonnarcotic substance from a schedule if such substance may, under the provisions of the federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.) or state law, be lawfully sold over the counter without a prescription.

§ 54.1-3444. Controlled substances included by whatever name designated.

The controlled substances listed or to be listed in the schedules in this chapter are included by whatever official, common, usual, chemical, or trade name designated.

§ 54.1-3445. Placement of substance in Schedule I.

The Board shall place a substance in Schedule I if it finds that the substance:

1. Has 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.

§ 54.1-3446. Schedule I.

The controlled substances listed in this section are included in Schedule I:

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

Acetylmethadol;
Allylprodine;
Alphamethylfentanyl;
Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
Alphameprodine;
Alphamethadol;
Benzethidine;
Betacetylmethadol;
Betameprodine;
Betamethadol;
Betaprodine;
Clonitazene;
Dextromoramide;
Diampromide;
Diethylthiambutene;
Difenoxin;
Dimenoxadol;
Dimepheptanol;
Dimethylthiambutene;
Dioxaphetylbutyrate;
Dipipanone;
Ethylmethylthiambutene;
Etonitazene;
Etoxeridine;
Furethidine;
Hydroxypethidine;
Ketobemidone;
Levomoramide;
Levophenacylmorphan;
Morpheridine;
Noracymethadol;
Norlevorphanol;
Normethadone;
Norpipanone;
Phenadoxone;
Phenampromide;
Phenomorphan;

Phenoperidine;
Piritramide;
Proheptazine;
Properidine;
Propiram;
Racemoramide;
Trimeperidine.
2. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:
Acetorphine;
Acetyldihydrocodeine;
Benzylmorphine;
Codeine methylbromide;
Codeine-N-Oxide;
Cyprenorphine;
Desomorphine;
Dihydromorphine;
Drotebanol;
Etorphine;
Heroin;
Hydromorphinol;
Methyldesorphine;
Methyldihydromorphine;
Morphine methylbromide;
Morphine methylsulfonate;
Morphine-N-Oxide;
Myrophine;
Nicocodeine;
Nicomorphine;
Normorphine;
Phoclodine;
Thebacon.
3. 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 subdivision only, the term "isomer" includes the optical, position, and geometric isomers):
Alpha-ethyltryptamine (some trade or other names: Monase;a-ethyl-1H-indole-3-ethanamine; 3-[2-aminobutyl] indole; a-ET; AET);
4-Bromo-2,5-dimethoxyphenethylamine (some trade or other names: 2-[4-bromo-2,5-dimethoxyphenyl]-1-aminoethane;alpha-desmethyl DOB;2C-B; Nexus);
3,4-methylenedioxy amphetamine;
5-methoxy-3,4-methylenedioxy amphetamine;
3,4,5-trimethoxy amphetamine;
Bufotenine;
Diethyltryptamine;
Dimethyltryptamine;
4-methyl-2,5-dimethoxyamphetamine;

2,5-dimethoxy-4-ethylamphetamine (DOET);
Ibogaine;
Lysergic acid diethylamide;
Mescaline;
Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl);
Peyote;
N-ethyl-3-piperidyl benzilate;
N-methyl-3-piperidyl benzilate;
Psilocybin;
Psilocyn;
Tetrahydrocannabinols, except as present in marijuana and dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration;
Hashish oil (some trade or other names: hash oil; liquid marijuana; liquid hashish);
2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA);
3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers;
3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);
4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA);
4-methoxyamphetamine (some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA);
N-ethyl analog of phencyclidine;
Pyrrolidine analog of phencyclidine;
Thiophene analog of phencyclidine.
4. 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:
Gamma hydroxybutyric acid (some other names include GHB; gamma hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);
Mecloqualone;
Methaqualone.
5. 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:
Aminorex (some trade or other names; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4, 5-dihydro-5-phenyl-2-oxazolamine);
Fenethylline;
Ethylamphetamine;
Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, norephedrone), and any plant material from which Cathinone may be derived;
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 UR 1432).
6. Any material, compound, mixture or preparation containing any quantity of the following substances:

3-methylfentany-(N-[3-methyl -1- (2-phenyethyl) -4- piperidyl] N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;
1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts and salts of isomers;
1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP), its optical isomers, salts and salts of isomers;
N-[1-(1-methyl-2-phenyl)ethyl-4-piperidyl]-N-phenylacetamide (acetyl-alpha-methylfentanyl), its optical isomers, salts and salts of isomers;
N-[1-(1-methyl-2-2-thienyl)ethyl-4 piperidyl]-N-phenylpropanamide (alpha-methylthiofentanyl), its optical isomers, salts and salts of isomers;
N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers;
N-[1-(2-hydroxy-2-phenyl) ethyl-4-piperidyl]-N-phenylpropanamide (beta-hydroxyfentanyl), its optical isomers, salts and salts of isomers;
N-[3-methyl-1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl]-N-phenylpr opanamide (beta-hydroxy-3-methylfentanyl), its optical and geometric isomers, salts and salts of isomers;
N-[3-methyl-1-(2-2-thienyl)ethyl-4-piperidyl]-N-phenylpropanami de (3-methylthiofentanyl), its optical and geometric isomers, salts and salts of isomers;
N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide(thenylf entanyl), its optical isomers, salts and salts of isomers;
N-[1-(2-2-thienyl)ethyl-4-piperidyl]-N-phenylpropanimide(thiofe ntanyl), its optical isomers, salts and salts of isomers.

§ 54.1-3447. Placement of substance in Schedule II.

The Board shall place a substance in Schedule II if it finds that:
1. The substance has high potential for abuse;
2. The substance has 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.

§ 54.1-3448. Schedule II.

The controlled substances listed in this section 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:
Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone naltrexone and their respective salts, but including the following:
Raw opium;
Opium extracts;
Opium fluid extracts;
Powdered opium;
Granulated opium;
Tincture of opium;
Codeine;
Ethylmorphine;
Etorphine hydrochloride;
Hydrocodone;
Hydromorphone;
Metopon;
Morphine;

Oxycodone;
Oxymorphone;
Thebaine.
Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in this subdivision, but not including the isoquinoline alkaloids of opium.
Opium poppy and poppy straw.
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; cocaine or any salt or isomer thereof.
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.
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:
Alfentanil;
Alphaprodine;
Anileridine;
Bezitramide;
Bulk dextropropoxyphene (nondosage forms);
Dihydrocodeine;
Diphenoxylate;
Fentanyl;
Isomethadone;
Levo-alphacetylmethadol (levo-alpha-acetylmethadol)
(levomethadyl acetate) (LAAM);
Levomethorphan;
Levorphanol;
Metazocine;
Methadone;
Methadone - Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
Moramide - Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylicacid;
Pethidine;
Pethidine - Intermediate - A, 4-cyano-1-methyl-4-phenylpiperidine;
Pethidine - Intermediate - B, ethyl-4-phenylpiperidine-4-carboxylate;
Pethidine - Intermediate - C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
Phenazocine;
Piminodine;
Racemethorphan;
Racemorphan;
Remifentanil.
3. 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:
Amphetamine, its salts, optical isomers, and salts of its optical isomers;
Phenmetrazine and its salts;
Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;
Methylphenidate.

4. 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:
Amobarbital;
Glutethimide;
Secobarbital;
Pentobarbital;
Phencyclidine.
5. The following hallucinogenic substance:
Nabilone.
6. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances which are immediate precursors to amphetamine and methamphetamine or phencyclidine:
Phenylacetone;
1-phenylcyclohexylamine;
1-piperidinocyclohexanecarbonitrile.

§ 54.1-3449. Placement of substance in Schedule III.
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 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.

§ 54.1-3450. Schedule III.
The controlled substances listed in this section are included in Schedule III:
1. Unless specifically exempted or 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:
Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;
Any compound, mixture or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of amobarbital, secobarbital, or pentobarbital and one or more other active medicinal ingredients which are not listed in Schedules II through V;
Any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of amobarbital, secobarbital, or pentobarbital and approved by the Food and Drug Administration for marketing only as a suppository;
Chlorhexadol;
Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act;
Ketamine, its salts, isomers, and salts of isomers (some other names for ketamine: [±] -2-[2-chlorophenyl]-2-[methylamino]-cyclohexanone);
Lysergic acid;
Lysergic acid amide;
Methyprylon;
Sulfondiethylmethane;
Sulfonethylmethane;
Sulfonmethane;

Tiletamine - zolazepam or any salt thereof;
Nalorphine.
2. Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;
Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3. 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:
Benzphetamine;
Chlorphentermine;
Clortermine;
Phendimetrazine.
4. The Board may except by regulation any compound, mixture, or preparation containing any stimulation or depressant substance listed in subdivision 1 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein 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.
5. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:
Anabolic steroids, including, but not limited to:
Boldenone (Dehydrotestosterone);
Clostebol (4-Chlorotestosterone) (Chlorotestosterone);
Dromostanolone (Drostanolone);
Ethylestrenol;
Fluoxymesterone;
Formyldienolone (Formebolone);
Mesterolone;

Methandriol (methylandrostenediol);
Methandrostenolone (Methandienone) (Dehydromethyltestosterone);
Methenolone;
17-Methyltestosterone (Methyltestosterone);
Mibolerone;
Nandrolone (19-Nortestosterone);
Norethandrolone;
Oxandrolone;
Oxymesterone (Oxymestrone);
Oxymetholone (Anasterone);
Stanolone (4-Dihydrotestosterone) (Dihydrotestosterone);
Stanozolol (Androstanazole);
Testolactone (1-Dehydrotestololactone);
Testosterone;
Trenbolone (Trienbolone) (Trienolone); and
Any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. However, such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the United States Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes any such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision.
6. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.

§ 54.1-3451. Placement of substance in Schedule IV.

The Board shall place a substance in Schedule IV if it finds that:
1. The substance has a low potential for abuse relative to substances in Schedule III;
2. The substance has 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 substances in Schedule III.

§ 54.1-3452. Schedule IV.

The controlled substances listed in this section are included in Schedule IV unless specifically excepted or listed in another schedule:
1. 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:
Alprazolam;
Barbital;
Bromazepam;
Camazepam;
Chloral betaine;
Chloral hydrate;
Chlordiazepoxide;
Clobazam;
Clonazepam;
Clorazepate;
Clotiazepam;
Cloxazolam;

Delorazepam;
Diazepam;
Estazolam;
Ethchlorvynol;
Ethinamate;
Ethyl loflazepate;
Fludiazepam;
Flunitrazepam;
Flurazepam;
Halazepam;
Haloxazolam;
Ketazolam;
Loprazolam;
Lorazepam;
Lormetazepam;
Mebutamate;
Medazepam;
Methohexital;
Meprobamate;
Methylphenobarbital;
Midazolam;
Nimetazapam;
Nitrazepam;
Nordiazepam;
Oxazepam;
Oxazolam;
Paraldehyde;
Petrichloral;
Phenobarbital;
Pinazepam;
Prazepam;
Quazepam;
Temazepam;
Tetrazepam;
Triazolam;
Zaleplon;
Zolpidem.

2. Any compound, mixture or preparation which contains any quantity of the following substances including any salts or isomers thereof:
Fenfluramine.

3. 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:
Cathine (+)-norpseudoephedrine;
Diethylpropion;
Fencamfamin;
Fenproprex;

Mazindol;
Mefenorex;
Modafinil;
Phentermine;
Pemoline (including organometallic complexes and chelates thereof);
Pipradrol;
Sibutramine;
SPA (-)-1-dimethylamino-1,2-diphenylethane.
4. 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:
Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxy butane);
Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
5. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts:
Butorphanol (including its optical isomers);
Pentazocine.
6. The Board may except by regulation any compound, mixture, or preparation containing any depressant substance listed in subdivision 1 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein 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.

§ 54.1-3453. Placement of substance in Schedule V.

The Board shall place a substance in Schedule V if it finds that:
1. The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;
2. The substance has currently accepted medical use in treatment in the United States; and
3. The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

§ 54.1-3454. Schedule V.

The controlled substances listed in this section are included in Schedule V:
1. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:
Buprenorphine.
2. 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:
Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

The Board may except by regulation any compound, mixture or preparation containing any depressant substance listed in subdivision 2 from the application of all or any part of this chapter and such substances so excepted may be dispensed pursuant to § 54.1-3416.
3. Unless specifically excepted or 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:
Pyrovalerone.

§ 54.1-3455. Schedule VI.

The following classes of drugs and devices shall be controlled by Schedule VI:
1. Any compound, mixture, or preparation containing any stimulant or depressant drug exempted from Schedules III, IV or V and designated by the Board as subject to this section.
2. Every drug, not included in Schedules I, II, III, IV or V, or device, which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts qualified by scientific training and experience to evaluate its safety and efficacy as safe for use except by or under the supervision of a practitioner licensed to prescribe or administer such drug or device.
3. Any drug, not included in Schedules I, II, III, IV or V, required by federal law to bear on its label prior to dispensing, at a minimum, the symbol "Rx only," or which bears the legend "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: Federal Law Restricts This Drug To Use By Or On The Order Of A Veterinarian" or any device which bears the legend "Caution: Federal Law Restricts This Device To Sales By Or On The Order Of A _____ ." (The blank should be completed with the word "Physician," "Dentist," "Veterinarian," or with the professional designation of any other practitioner licensed to use or order such device.)

§ 54.1-3456. Designer drugs.

Any drug not listed on Schedule I or II in this chapter, which is privately compounded, with the specific intent to circumvent the provisions of this chapter, to emulate or simulate the effects of another drug or class of drugs listed on Schedule I or II in this chapter through chemical changes such as the addition, subtraction or rearranging of a radical or the addition, subtraction or rearranging of a substituent, shall be considered to be listed on the same schedule as the drug or class of drugs which it imitates in the same manner as any isomer, ester, ether, salts of isomers, esters and ethers of such drug or class of drugs.

Article 6.
Misbranded and Adulterated Drugs and Cosmetics.

§ 54.1-3457. Prohibited acts.

The following acts shall be prohibited:
1. The manufacture, sale, or delivery, holding or offering for sale of any drug, device, or cosmetic that is adulterated or misbranded.
2. The adulteration or misbranding of any drug, device, or cosmetic.
3. The receipt in commerce of any drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.
4. The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of § 54.1-3421.
5. The dissemination of any false advertisement.
6. The refusal to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record.
7. The giving of a false guaranty or undertaking.
8. The removal or disposal of a detained article in violation of § 54.1-3459.

9. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.
10. The forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter or of the federal act.
11. The using by any person to his own advantage, or revealing, other than to the Board or its authorized representative or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection.
12. The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under § 54.1-3421, or that such drug complies with the provisions of such section.
13. In the case of a drug distributed or offered for sale in this Commonwealth, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. This subdivision shall not be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter.
14. Placing or causing to be placed upon any drug or device or container, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or selling, dispensing, disposing of or causing to be sold, dispensed or disposed of, or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by this section or making, selling, disposing of, or causing to be made, sold or disposed of, or keeping in possession, control or custody, or concealing 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 such drug a counterfeit drug.
15. The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.
16. Dispensing or causing to be dispensed, except as provided in § 32.1-87 relating to the Virginia Voluntary Formulary, a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the permission of the person ordering or prescribing.

§ 54.1-3458. Violations.

A. Any person who violates any of the provisions of § 54.1-3457 shall be guilty of a Class 2 misdemeanor.
B. No person shall be subject to the penalties of this section for having violated subdivisions 1 and 3 of § 54.1-3457 if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in this Commonwealth from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this chapter.
C. No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section for the dissemination of such false advertisement, unless he has refused, on the request of the Board, to furnish the Board the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in this Commonwealth who caused him to disseminate such advertisement.

§ 54.1-3459. Tagging of adulterated or misbranded drugs, devices, or cosmetics; condemnation; destruction; expenses.

A. Whenever a duly authorized agent of the Board finds, or has probable cause to believe, that any drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter or is in violation of § 54.1-3457, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded or in violation of § 54.1-3457 and has been detained. The tag shall also warn all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by an authorized agent or the court. It shall be unlawful for any person to remove or dispose of such detained article by sale or otherwise without permission.

B. When an article is adulterated or misbranded or is in violation of § 54.1-3421, the Board may petition the circuit court in whose jurisdiction the article is detained for condemnation of such article. When an authorized agent finds that an article which has been detained is not adulterated or misbranded, or in violation of § 54.1-3421, he shall remove the tag or other marking.

C. If the court finds that a detained article is adulterated or misbranded, or in violation of § 54.1-3421, such article shall, after entry of the decree, be destroyed at the expense of the claimant, under the supervision of an authorized agent, and all court costs and fees, and storage and other proper expenses, shall be levied against the claimant or his agent. When the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court shall order the article to be properly labeled or processed. The expense of the supervision shall be paid by the claimant. The article shall be returned to the claimant and the bond shall be discharged on the representation to the court by the Board that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid.

§ 54.1-3460. Poisonous or deleterious substance, or color additive.

Any added poisonous or deleterious substance, or any color additive, shall with respect to any particular use or intended use be deemed unsafe with respect to any drug, device, or cosmetic, unless there is a regulation allowing limited use of a quantity of such substance, and the use or intended use of such substance conforms to the terms prescribed by regulation. While such regulations relating to such substance are in effect, a drug or cosmetic shall not, by reason of bearing or containing such substance in accordance with the regulations, be considered adulterated.

§ 54.1-3461. Adulterated drug or device.

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

1. If it consists in whole or in part of any filth, putrid or decomposed substance;

2. If it has been produced, prepared, packed, or held under insanitary conditions whereby it has been contaminated with filth, or whereby it has been rendered injurious to health;

3. If it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter;

4. If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

5. If it is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or § 54.1-3460; or

6. It is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act or § 54.1-3460.

B. A drug or device shall be deemed to be adulterated if it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination of strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the

absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity set forth in such compendium, if the difference in strength, quality, or purity from such standard is plainly stated on its label.
Whenever a drug is recognized in both the United States Pharmacopoeia National Formulary and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia National Formulary unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia National Formulary.
C. A drug or device shall be deemed to be adulterated if it is not subject to the provisions of subsection B of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.
D. A drug or device shall be deemed to be adulterated if it is a drug and any substance has been (i) mixed or packed with it so as to reduce its quality or strength or (ii) substituted wholly or in part for it.

§ 54.1-3462. Misbranded drug or device.

A drug or device shall be deemed to be misbranded:
1. If its labeling is false or misleading in any particular.
2. If its package does not bear a label containing the name and place of business of the manufacturer, packer, or distributor. However, all prescription drugs intended for human use and devices shall bear a label containing the name and place of business of the manufacturer of the final dosage form of the drug and, if different, the name and place of business of the packer or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count. Reasonable variations shall be permitted, and exemptions for small packages shall be allowed in accordance with regulations of the Board.
3. If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed with such conspicuousness, as compared with other words, statements, designs or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
4. If it is for use by man and contains any quantity of the narcotic or hypnotic substances alpha-eucaine, barbituric acid, beta-eucaine, bromal, carbromal, chloral, coca, cocaine, codeine, morphine, opium, paraldehyde, or sulfonmethane, or any chemical derivative of such substances, which derivative, after investigation has been found to be and designated as, habit forming, by regulations issued by the Board under this chapter, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning - May Be Habit Forming."
5. If it is a drug, unless its label bears, to the exclusion of any other nonproprietary name, except the applicable systematic chemical name or the chemical formula, the established name of the drug, and in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol, and the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances. However, the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subdivision, shall apply only to prescription drugs. Any prescription drug shall have the established name of the drug or ingredient printed on its label prominently and in type at least half as large as that used for any proprietary name or designation for such drug or ingredient. Exemptions may be allowed under regulations of the Board.
As used in this subdivision, the term "established name," with respect to a drug or ingredient, means the applicable official name designated pursuant to § 508 of the federal act, or if there is no such name and

such drug, or such ingredient, is an article recognized in an official compendium, then the official title in such compendium or if neither exists, then the common or usual name, if any, of such drug or of such ingredient. Whenever, an article is recognized in the United States Pharmacopoeia National Formulary and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia National Formulary shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply.

6. Unless its labeling bears adequate directions for use and such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users. The Board shall promulgate regulations exempting such drug or device from such requirements when these requirements are not necessary to protect the public health and the articles are also exempted under regulations issued under § 502(f) of the federal act.

7. If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed. The method of packing may be modified with the consent of the Board, or if consent is obtained under the federal act. Whenever a drug is recognized in both the United States Pharmacopoeia National Formulary and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia National Formulary with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia National Formulary. However, in the event of inconsistency between the requirements of this subdivision and those of subdivision 5 as to the name by which the drug or its ingredients shall be designated, the requirements of subdivision 5 shall prevail.

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

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

10. If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative, unless it is from a batch, for which a certificate or release has been issued pursuant to § 507 of the federal act, and such certificate or release is in effect for such drug. This subdivision shall not apply to any drug or class of drugs exempted by regulations promulgated under § 507(c) or (d) of the federal law. For the purpose of this subdivision the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by microorganisms and which has the capacity to inhibit or destroy microorganisms in dilute solution, including, the chemically synthesized equivalent of any such substance.

11. If it is a color additive, the intended use of which in or on drugs is for coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of the federal act.

12. In the case of any prescription drug distributed or offered for sale in this Commonwealth, unless the manufacturer, packer, or distributor includes in all advertisements and other descriptive printed matter a true statement of (i) the established name, as defined in this section, printed prominently and in type at least half as large as that used for any trade or brand name, (ii) the formula showing quantitatively each ingredient of such drug to the extent required for labels under this section, and (iii) such other information in brief summary relating to side effects, contraindications, and effectiveness as are required in regulations issued under the federal act.

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

Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this chapter if such drugs and devices are being delivered, manufactured, processed, labeled, repacked or otherwise held in compliance with regulations issued by the Board.

§ 54.1-3463. Exemption of drugs dispensed by filling or refilling prescription.

A. Any drug dispensed by filling or refilling a written or oral prescription of a prescriber shall be exempt from the requirements of § 54.1-3462 except subdivisions 1, 9, and 10, and the packaging requirements of subdivision 7, if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber and the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription.

B. This section shall not be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marijuana as defined in the applicable federal and state laws relating to narcotic drugs and marijuana.

§ 54.1-3464. Adulterated cosmetics.

A cosmetic shall be deemed to be adulterated:

1. If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement, or under such conditions of use as are customary or usual. This provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution - This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purpose of this subdivision and subdivision 5, the term "hair dye" shall not include eyelash or eyebrow dyes;
2. If it consists in whole or in part of any filthy, putrid, or decomposed substance;
3. If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;
4. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;
5. If it is not a hair dye, and it is or it bears or contains a color additive which is unsafe within the meaning of the federal act or § 54.1-3460.

§ 54.1-3465. Misbranded cosmetics.

A cosmetic shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular;
2. If in package form unless it bears a label containing the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count. However, reasonable variations shall be permitted, and exemptions for small packages shall be established by the Board;
3. If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
4. If its container is so made, formed or filled as to be misleading;

5. If it is a color additive, unless its packaging and labeling are in conformity with packaging and labeling requirements applicable to such color additive under the provisions of the federal act. This subdivision shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes.

A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter while it is in transit in commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all applicable provisions of this chapter.

Article 7.
Controlled Paraphernalia.

§ 54.1-3466. Possession or distribution of controlled paraphernalia; meaning of controlled paraphernalia; evidence; exceptions.

Except as authorized in this chapter, it shall be a misdemeanor for any person to possess or distribute controlled paraphernalia which shall mean a hypodermic syringe, needle or other instrument or implement or combination thereof adapted for the administration of controlled dangerous substances by hypodermic injections under circumstances which reasonably indicate an intention to use such controlled paraphernalia for purposes of illegally administering any controlled drug, or gelatin capsules, glassine envelopes or any other container suitable for the packaging of individual quantities of controlled drugs in sufficient quantity to and under circumstances which reasonably indicate an intention to use any such item for the illegal manufacture, distribution, or dispensing of any such controlled drug. Evidence of such circumstances shall include, but not be limited to, close proximity of any such controlled paraphernalia to any adulterants or equipment commonly used in the illegal manufacture and distribution of controlled drugs including, but not limited to, scales, sieves, strainers, measuring spoons, staples and staplers, or procaine hydrochloride, mannitol, lactose, quinine, or any controlled drug or any machine, equipment, instrument, implement, device or combination thereof which is adapted for the production of controlled drugs under circumstances which reasonably indicate an intention to use such item or combination thereof to produce, sell, or dispense any controlled drug in violation of the provisions of this chapter.

The provisions of this section shall not apply to persons who have acquired possession and control of controlled paraphernalia in accordance with the provisions of this article or to any person who owns or is engaged in breeding or raising livestock, poultry or other animals to which hypodermic injections are customarily given in the interest of health, safety, or good husbandry; or to hospitals, physicians, pharmacists, dentists, podiatrists, veterinarians, funeral directors and embalmers, persons to whom a permit has been issued, manufacturers, wholesalers or their authorized agents or employees when in the usual course of their business, if the controlled paraphernalia lawfully obtained continues to be used for the legitimate purposes for which they were obtained.

§ 54.1-3467. Distribution of hypodermic needles or syringes, gelatin capsules, quinine or any of its salts.

Distribution by any method, of any hypodermic needles or syringes, gelatin capsules, quinine or any of its salts, in excess of one-fourth ounce shall be restricted to licensed pharmacists or to others who have received a license or a permit from the Board.

§ 54.1-3468. Conditions to dispensing device, item, or substance; records.

In dispensing any device, item or substance, the pharmacist or other licensed or permitted person referred to in § 54.1-3467 shall:

1. Require the person requesting such device, item or substance to furnish suitable identification, including proof of age when appropriate;
2. Require the person requesting such item, device or substance to furnish written legitimate purposes for which such item, device or substance is being purchased, except in cases of telephone orders for such item, device or substance from customers of known good standing;
3. At the time of dispensing, make and keep a record showing the date of dispensing, the name and quantity of the device, item or substance, the price at which it was sold, the name and address of the person to whom the device, item or substance was dispensed, the reason for its purchase and enter his initials thereon.

No such devices, substances or items shall be sold or distributed to persons under the age of sixteen years except by a physician for legitimate purposes or upon his prescription. Records shall be maintained pursuant to this chapter and the Board's regulations and shall be made available for inspection to any law-enforcement officer or agent of the Board. Persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

§ 54.1-3469. Storage, usage, and disposition of controlled paraphernalia.

Each person, association or corporation which has lawfully obtained possession of any of the controlled paraphernalia mentioned in § 54.1-3467 shall exercise reasonable care in the storage, usage and disposition of such devices or substances to ensure that they are not diverted for reuse for any purposes other than those for which they were lawfully obtained. Any person who permits or causes, directly or indirectly, such controlled paraphernalia to be used for any other purpose than that for which it was lawfully obtained shall be guilty of a Class 1 misdemeanor.

§ 54.1-3470. Obtaining controlled paraphernalia by fraud, etc.

A. No person shall obtain or attempt to obtain any item, device or substance referred to in § 54.1-3467 by fraud, deceit, misrepresentation, or subterfuge or by giving a false name or a false address.

B. No person shall furnish false or fraudulent information in or omit any information from, or willfully make a false statement in obtaining or attempting to obtain any of the instruments or substances referred to in § 54.1-3467.

C. No person shall, for the purpose of obtaining any such instrument or substance, falsely claim to be a manufacturer, wholesaler, pharmacist, practitioner of the healing arts, funeral director, embalmer or veterinarian.

Persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

§ 54.1-3471. Issuance of permits to certain persons other than registered pharmacists.

The Board shall, upon written application, on a form furnished by the Board, issue a permit to any person other than a licensed pharmacist who in the usual course of business sells any item referred to in § 54.1-3467 as a wholesale distributor or distributes at retail to any persons who own or breed or raise livestock, poultry, or other animals to which such items, devices or substances are customarily given to or used upon in the interest of health, safety, or good husbandry. This permit shall not authorize the sale or distribution of these items, devices or substances for human use and the permitted person shall exercise reasonable diligence to assure that the items distributed are not for the purpose of human consumption.

§ 54.1-3472. Article inapplicable to certain persons.

The provisions of this article shall not apply to legitimate distribution by or possession of controlled paraphernalia by physicians, dentists, podiatrists, veterinarians, funeral directors and embalmers.

Title 32.1.
Health.

Chapter 3.
Medical Care Services.

Article 3.
Virginia Voluntary Formulary.

§ 32.1-79. Definitions.

As used in this article:

"Formulary Board" means the Virginia Voluntary Formulary Board.

"Drug" shall have the same meaning as provided in § 54.1-3401.

"Drug product" means a specific drug in dosage form from a known source of manufacture, whether by brand or established name.

"Formulary" and "Voluntary Formulary" mean the Virginia Voluntary Formulary prepared in accordance with the provisions of this article.

"Narrow therapeutic index drugs" means those pharmaceuticals having a more defined range between risk and benefit. Such drugs are known to have less than a two-fold difference in the minimum toxic concentration and minimum effective concentration in the blood.

"Therapeutic index of a drug" means the range between benefit and risk of the drug.

§ 32.1-80. Virginia Voluntary Formulary Council continued as Virginia Voluntary Formulary Board; members; officers; quorum; meetings; record of proceedings.

A. The Virginia Voluntary Formulary Council in the Department is continued and shall hereafter be known as the Virginia Voluntary Formulary Board. The Formulary Board shall have twelve members consisting of four physicians, two pharmacists, one biopharmaceutist, one dentist, the chairman of clinical pharmacology at Virginia Commonwealth University, the administrator of Consumer Affairs of the Department of Agriculture and Consumer Services, the Attorney General of Virginia or his designee who shall serve as an ex officio member without vote, and a member of the public whose background and experience will enable him to represent the interests of consumers.

B. Eight of the members of the Formulary Board shall be appointed by the Governor from lists of two names submitted for each appointment to be made, the lists for four positions to be submitted by the Medical Society of Virginia, for two by the Virginia Pharmaceutical Association, for one, the biopharmaceutist, by the dean of the School of Pharmacy of Virginia Commonwealth University and for one by the Virginia State Dental Association. The public member of the Formulary Board shall be appointed by the Governor from among the citizens of the Commonwealth. All appointed members of the Formulary Board shall serve at the pleasure of the Governor, and vacancies on the Formulary Board shall be filled in the same manner as the original appointment.

C. The Formulary Board shall elect from among its members a chairman, a vice-chairman and secretary who shall hold office for a term of one year, and shall have authority to administer oaths in matters before the Formulary Board. Officers may be elected to successive terms.

D. A quorum for action by the Formulary Board shall be seven members. The Formulary Board shall meet at least once every three months, and, in addition, upon call of any two of its officers or the Commissioner.

E. The secretary of the Formulary Board shall keep a full record of the proceedings of the Formulary Board, which record shall at all reasonable times be open to public inspection.

§ 32.1-81. Amendments to the Formulary.

A. The Formulary Board shall, upon application, review, a determination of acceptability by the Formulary Board, and approval by the Commissioner, include drug products in the Formulary if such drugs have been approved by the federal Food and Drug Administration (FDA) with an A (therapeutically equivalent) category rating.

B. The Formulary Board shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 9-6.14:1 et seq.) when adding or deleting drug products from the Formulary. The Formulary Board shall, however, conduct public hearings prior to listing any drug products which are not approved by the FDA with an A (therapeutically equivalent) category rating or any proposed, nonemergency deletions from the Formulary. The Formulary Board shall give thirty days' written notice by mail of the time and place of its hearings to any manufacturer or other supplier who would be aggrieved by the Formulary Board's proposed recommendations and to those manufacturers and other suppliers who request the Formulary Board in writing that they be informed of such hearings. In addition, the Formulary Board shall give thirty days' notice of such public hearings to the public by publishing its intention to conduct hearings in the Calendar of Events of the Virginia Register of Regulations and a newspaper of general circulation located in Richmond. Following the public hearing and, upon approval of the Commissioner, the Formulary Board may amend the Formulary.

C. Upon notification from the Federal Drug Administration that a drug product's therapeutic equivalence evaluation has been changed from an A (therapeutically equivalent) category rating to any B category rating indicating therapeutic inequivalence or questionable equivalence, the Formulary Board may recommend to the Commissioner, pursuant to § 32.1-20, that the Formulary be summarily amended to delete the drug product simultaneously with the institution of proceedings for a public hearing. In acting on the Formulary Board's recommendations, the Commissioner need not conduct further proceedings under the Administrative Process Act.

§ 32.1-82. Composition of Formulary.

The Formulary shall consist of (i) a list by established name of drugs of accepted therapeutic value which are available from more than one manufacturer or distributor and (ii) for each such drug, two or more drug products determined to be therapeutically and chemically interchangeable. In preparing such list, the Formulary Board may consider formularies of other states, hospitals, and agencies and departments of the United States.

§ 32.1-83. Inclusion and exclusion of drug products and vendors; protection of trade secret information.

A. The selection of drug products and vendors to be included in the Formulary shall be based upon (i) information from the federal Food and Drug Administration; (ii) scientific data; (iii) clinical experience of prescribers; (iv) professional judgments of pharmacists; (v) adequacy and quality of manufacturer facilities; and (vi) other pertinent information bearing on the objective of the Formulary.

B. The Formulary Board may require of the manufacturer or other supplier of a drug product information specified in subsection A of this section as well as assurance that the drug product, if included in the Formulary, will continue to be generally available for use within the Commonwealth. The failure or refusal of a manufacturer or other supplier under whose name a drug product is marketed to provide such information or assurance required by the Formulary Board shall constitute grounds for the exclusion of the drug product from the Formulary or deletion from the Formulary of a drug product previously included.

C. Any drug product which is not generally available for use within the Commonwealth or which, because of differing prices charged by the manufacturer or other supplier on a discriminatory basis or discriminatory refusal to sell by the manufacturer or other supplier or for both reasons, is not available on the same terms and conditions to all providers of prescription drugs within the Commonwealth may be excluded or deleted from the Formulary. Nothing in this section shall be construed to apply to quantity or other

nondiscriminatory discounts available on the same terms and conditions to all providers of prescription drugs; to sales by competitive bidding to federal, state or local governmental agencies or nonprofit health care facilities; or to sales to wholesalers so long as the manufacturer does not require or induce the wholesalers to make the drug available other than on the same terms and conditions to all providers of prescription drugs.

D. Trade secret information obtained by the Formulary Board or the State Board of Health pursuant to the provisions of this article shall not be subject to the provisions of Chapter 21 (§ 2.1-340 et seq.) of Title 2.1. The State Board of Health shall establish by regulation the means by which such trade secret information shall be protected.

§ 32.1-84. Petition by manufacturers, etc., for inclusion of drug products.

Any manufacturer or other supplier of a drug product may petition the Formulary Board for inclusion of a drug product in the Formulary. The form of petition and information required shall be as specified by the State Board of Health, which may require that all such information be verified by affidavit or oath. The provisions of § 32.1-83 shall govern inclusion of such drug product in the Formulary.

§ 32.1-85. Adoption.

A formulary of another state or of any agency of the United States, a formulary in use at the University of Virginia Hospital or the Virginia Commonwealth University Health System Authority or any combination of such formularies may be adopted for use as the Virginia Voluntary Formulary pending the adoption of an original Formulary. Not later than July 1, 1981, the Council shall commence to compile an original Formulary.

§ 32.1-86. Duties of the Board; Formulary fee.

The Board shall make the Formulary available to professional and institutional providers of health care in the Commonwealth, and other persons who in its judgment may benefit from the use of the Formulary and may establish a reasonable fee to be charged for each copy of the Formulary. The Board may also prepare and disseminate information to encourage appropriate use of the Formulary by professional and institutional providers of health care in the Commonwealth.

§ 32.1-87. Use of Formulary.

A. Use of the Voluntary Formulary by professional and institutional providers of health care shall be voluntary. The prescription form shall include two boxes, one labelled "Voluntary Formulary Permitted" and the other labelled "Dispense As Written." A prescriber may indicate his permission for the dispensing of a drug product included in the Formulary upon signing a prescription form and marking the box labelled "Voluntary Formulary Permitted." A Voluntary Formulary product shall be dispensed if the prescriber fails to indicate his preference. Whenever a pharmacist dispenses a Voluntary Formulary product when a prescription is written for a brand name product, the pharmacist shall label the drug with the generic name followed by the words "generic for" followed by the brand name of the drug for which the prescription is written. If no Voluntary Formulary product is immediately available, or if the patient objects to the dispensing of a generic drug, the pharmacist may dispense a brand name drug.

On and after July 1, 1993, printed prescription forms shall provide:

" [] Dispense As Written
[] Voluntary Formulary Permitted

.....
Signature of prescriber

If neither box is marked, a Voluntary Formulary product must be dispensed."

If a prescriber orders a drug listed in the Formulary by its generic name, the pharmacist shall dispense a drug product from among those listed in the Formulary.
In the case of an oral prescription, the prescriber's oral dispensing instructions shall be followed. If the pharmacist dispenses a drug product other than the brand name prescribed, he shall so apprise the purchaser and shall indicate, unless otherwise directed by the prescriber, on both his permanent record and the prescription label the brand name or, in the case of a generic drug product, the name of the manufacturer or distributor.
B. When a pharmacist dispenses a drug product other than the drug product prescribed under the provisions of subsection A hereof pursuant to the Formulary, the drug product dispensed shall be at a lower retail price than that of the drug product prescribed. Such retail price shall not exceed the usual and customary retail price charged by the pharmacist for such generic or equivalent drug product dispensed. The selection of such drug product shall be the responsibility of the pharmacist dispensing the product and no employer, agent or other person may require the dispensing of a particular drug product which in the professional judgment of the dispensing pharmacist is not in the best interest of the patient.
C. Narrow therapeutic index drugs include: carbamazepine, digoxin, levothyroxine, phenytoin, theophylline sustained release, and warfarin. A pharmacist shall not substitute or interchange a narrow therapeutic index drug, as defined in § 32.1-79 and identified in this subsection, without the documented consent of the patient's prescriber to the substitution or interchange to the extent required by regulations promulgated by the Board of Pharmacy consistent with its regulatory powers and with the advice of the Voluntary Formulary Board.
Other drugs identified hereinafter by the Food and Drug Administration as having narrow therapeutic indices may be designated by the Voluntary Formulary Board as such narrow therapeutic index drugs and shall be subject to the provisions of this subsection.

§ 32.1-88. Immunity of State Board of Health and Formulary Board members, prescribers and pharmacists.

A. The members of the Formulary Board and State Board of Health shall be immune, individually and jointly, from any claim, suit, liability, damages or any other recourse, civil or criminal, arising from an act or acts performed in good faith by any such members of the Formulary Board or State Board of Health acting individually or jointly in carrying out the responsibilities and authority, duties, powers and privileges of a member of the Formulary Board or State Board of Health under the provisions of this article.
B. The prescriber shall be immune from any liability, civil or criminal, resulting from the substitution by a pharmacist of another drug product for the drug product prescribed, and a pharmacist shall be immune from any liability, civil or criminal, resulting from his substitution in good faith, pursuant to the provisions of this article, of a drug product approved by the Formulary Board.

Title 18.2.
Crimes and Offenses Generally.

Chapter 7.
Crimes Involving Health and Safety.

Article 1.
Drugs.

§ 18.2-247. Use of terms "controlled substances," "marijuana," "Schedules I, II, III, IV, V and VI" and "imitation controlled substance" in Title 18.2.

A. Wherever the terms "controlled substances" and "Schedules I, II, III, IV, V and VI" are used in Title 18.2, such terms refer to those terms as they are used or defined in the Drug Control Act (§ 54.1-3400 et seq.).

B. The term "imitation controlled substance" when used in this article means a pill, capsule, tablet, or substance in any form whatsoever which is not a controlled substance subject to abuse, and:

1. Which by overall dosage unit appearance, including color, shape, size, marking and packaging or by representations made, would cause the likelihood that such a pill, capsule, tablet, or substance in any other form whatsoever will be mistaken for a controlled substance unless such substance was introduced into commerce prior to the initial introduction into commerce of the controlled substance which it is alleged to imitate; or

2. Which by express or implied representations purports to act like a controlled substance as a stimulant or depressant of the central nervous system and which is not commonly used or recognized for use in that particular formulation for any purpose other than for such stimulant or depressant effect, unless marketed, promoted, or sold as permitted by the United States Food and Drug Administration.

C. In determining whether a pill, capsule, tablet, or substance in any other form whatsoever, is an "imitation controlled substance," there shall be considered, in addition to all other relevant factors, comparisons with accepted methods of marketing for legitimate nonprescription drugs for medicinal purposes rather than for drug abuse or any similar nonmedicinal use, including consideration of the packaging of the drug and its appearance in overall finished dosage form, promotional materials or representations, oral or written, concerning the drug, and the methods of distribution of the drug and where and how it is sold to the public.

D. The term "marijuana" when used in this article means any part of a plant of the genus Cannabis, whether growing or not, its seeds or resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or its resin. Marijuana shall not include any oily extract containing one or more cannabinoids unless such extract contains less than twelve percent of tetrahydrocannabinol by weight, or the mature stalks of such plant, fiber produced from such stalk, oil or cake made from the seed of such plant, unless such stalks, fiber, oil or cake is combined with other parts of plants of the genus Cannabis.

§ 18.2-248. Manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance prohibited; penalties.

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it shall be unlawful for any person to manufacture, sell, give, distribute, or possess with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance.

B. In determining whether any person intends to manufacture, sell, give or distribute an imitation controlled substance, the court may consider, in addition to all other relevant evidence, whether any distribution or attempted distribution of such pill, capsule, tablet or substance in any other form whatsoever

included an exchange of or a demand for money or other property as consideration, and, if so, whether the amount of such consideration was substantially greater than the reasonable value of such pill, capsule, tablet or substance in any other form whatsoever, considering the actual chemical composition of such pill, capsule, tablet or substance in any other form whatsoever and, where applicable, the price at which over-the-counter substances of like chemical composition sell.

C. Any person who violates this section with respect to a controlled substance classified in Schedule I or II shall upon conviction be imprisoned for not less than five nor more than forty years and fined not more than $500,000. Upon a second or subsequent conviction of such a violation, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than five years and be fined not more than $500,000.

When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment or information that he has been before convicted of two or more such offenses or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period of not less than five years, three years of which shall be a mandatory, minimum term of imprisonment not to be suspended in whole or in part and to be served consecutively with any other sentence and shall be fined not more than $500,000.

D. If such person proves that he gave, distributed or possessed with intent to give or distribute a controlled substance classified in Schedule I or II only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility or state correctional facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, he shall be guilty of a Class 5 felony.

E. If the violation of the provisions of this article consists of the filling by a pharmacist of the prescription of a person authorized under this article to issue the same, which prescription has not been received in writing by the pharmacist prior to the filling thereof, and such written prescription is in fact received by the pharmacist within one week of the time of filling the same, or if such violation consists of a request by such authorized person for the filling by a pharmacist of a prescription which has not been received in writing by the pharmacist and such prescription is, in fact, written at the time of such request and delivered to the pharmacist within one week thereof, either such offense shall constitute a Class 4 misdemeanor.

F. Any person who violates this section with respect to a controlled substance classified in Schedule III, IV or V or an imitation controlled substance which imitates a controlled substance classified in Schedule III, IV or V, except for an anabolic steroid classified in Schedule III constituting a violation of § 18.2-248.5, shall be guilty of a Class 1 misdemeanor.

G. Any person who violates this section with respect to an imitation controlled substance which imitates a controlled substance classified in Schedule I or II shall be guilty of a Class 6 felony. In any prosecution brought under this subsection, it is not a defense to a violation of this subsection that the defendant believed the imitation controlled substance to actually be a controlled substance.

H. Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell, give or distribute the following:

1. 1.0 kilograms or more of a mixture or substance containing a detectable amount of heroin;

2. 5.0 kilograms or more of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;
3. 2.5 kilograms or more of a mixture or substance described in subdivision 2 which contains cocaine base;
4. 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana; or
5. 100 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 200 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers

shall be guilty of a felony punishable by a fine of not more than one million dollars and imprisonment for twenty years to life, twenty years of which shall be a mandatory, minimum sentence which shall be served with no suspension in whole or in part. Such mandatory, minimum sentence shall not be applicable if the court finds that (i) the person does not have a prior conviction for an offense listed in subsection C of § 17.1-805, (ii) the person did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or induce another participant in the offense to do so, (iii) the offense did not result in death or serious bodily injury to any person, (iv) the person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I of this section, and (v) not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

H1. Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise shall be guilty of a felony if (i) the enterprise received at least $100,000 but less than $250,000 in gross receipts during any twelve-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any twelve-month period of its existence:

1. At least 1.0 kilograms but less than 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;
2. At least 5.0 kilograms but less than 10 kilograms of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. At least 2.5 kilograms but less than 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine base;
4. At least 100 kilograms but less than 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or
5. At least 100 grams but less than 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 200 grams but less than 1.0 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

A conviction under this section shall be punishable by a fine of not more than one million dollars and imprisonment for twenty years to life, twenty years of which shall be a mandatory, minimum sentence which shall be served with no suspension in whole or in part.

H2. Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise if (i) the enterprise received $250,000 or more in gross receipts during any twelve-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any twelve-month period of its existence:

1. At least 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;
2. At least 10 kilograms of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. At least 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine base;
4. At least 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or
5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than one million dollars and imprisonment for life, which shall be served with no suspension in whole or in part. Such punishment shall be made to run consecutively with any other sentence. However, the court may impose a mandatory, minimum sentence of forty years if the court finds that the defendant substantially cooperated with law-enforcement authorities.

I. For purposes of this section, a person is engaged in a continuing criminal enterprise if (i) he violates any provision of this section, the punishment for which is a felony and (ii) such violation is a part of a continuing series of violations of this section which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and from which such person obtains substantial income or resources.

§ 18.2-248.1. Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana.

Except as authorized in the Drug Control Act, Chapter 34 of Title 54.1, it shall be unlawful for any person to sell, give, distribute or possess with intent to sell, give or distribute marijuana.

(a) Any person who violates this section with respect to:

(1) Not more than one-half ounce of marijuana is guilty of a Class 1 misdemeanor;

(2) More than one-half ounce but not more than five pounds of marijuana is guilty of a Class 5 felony;

(3) More than five pounds of marijuana is guilty of a felony punishable by imprisonment of not less than five nor more than thirty years.

If such person proves that he gave, distributed or possessed with intent to give or distribute marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the marijuana to use or become addicted to or dependent upon such marijuana, he shall be guilty of a Class 1 misdemeanor.

(b) Any person who gives, distributes or possesses marijuana as an accommodation and not with intent to profit thereby, to an inmate of a state or local correctional facility as defined in § 53.1-1, or in the custody of an employee thereof shall be guilty of a Class 4 felony.

(c) Any person who manufactures marijuana, or possesses marijuana with the intent to manufacture such substance, not for his own use is guilty of a felony punishable by imprisonment of not less than five nor more than thirty years and a fine not to exceed $10,000.
(d) When a person is convicted of a third or subsequent felony offense under this section and it is alleged in the warrant, indictment or information that he has been before convicted of two or more felony offenses under this section or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment or information, he shall be sentenced to imprisonment for life or for any period not less than five years, three years of which shall be a minimum, mandatory term of imprisonment not to be suspended in whole or in part and to be served consecutively with any other sentence and shall be fined not more than $500,000.

§ 18.2-248.2. Repealed.

§ 18.2-248.3. Professional use of imitation controlled substances.
No civil or criminal liability shall be imposed by virtue of this article on any person licensed under the Drug Control Act, Chapter 34 of Title 54.1, who manufactures, sells, gives or distributes an imitation controlled substance for use as a placebo by a licensed practitioner in the course of professional practice or research.

§ 18.2-248.4. Advertisement of imitation controlled substances prohibited; penalty.
It shall be a Class 1 misdemeanor for any person knowingly to sell or display for sale, or to distribute, whether or not any charge is made therefor, any book, pamphlet, handbill or other printed matter which he knows is intended to promote the distribution of an imitation controlled substance.

§ 18.2-248.5. Illegal stimulants and steroids; penalty.
A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), Chapter 34 of Title 54.1, it shall be unlawful for any person to knowingly manufacture, sell, give, distribute or possess with intent to manufacture, sell, give or distribute any anabolic steroid.
A violation of subsection A shall be punishable by a term of imprisonment of not less than one year nor more than ten years or, in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months or a fine of not more than $20,000, either or both. Any person violating the provisions of this subsection shall, upon conviction, be incarcerated for a minimum, mandatory term of six months which shall not be suspended in whole or in part and shall be served consecutively with any other sentence.
B. It shall be unlawful for any person to knowingly sell or otherwise distribute, without prescription, to a minor any pill, capsule or tablet containing any combination of caffeine and ephedrine sulfate.
A violation of this subsection B shall be punishable as a Class 1 misdemeanor.

§§ 18.2-248.6, 18.2-248.7. Repealed

§ 18.2-249. Seizure of property used in connection with or derived from illegal drug transactions.
A. The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of this article: (i) all money, medical equipment, office equipment, laboratory equipment, motor vehicles, and all other personal and real property of any kind or character, used in substantial connection with (a) the illegal manufacture, sale or distribution of controlled substances or possession with intent to sell or distribute controlled substances in violation of § 18.2-248, (b) the sale or distribution of marijuana or possession with intent to distribute marijuana in violation of subdivisions (a) (2), (a) (3) and (c) of § 18.2-248.1, or (c) a drug-related offense in violation of § 18.2-474.1; (ii) everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of § 18.2-248 or for marijuana

in violation of § 18.2-248.1 or for a controlled substance or marijuana in violation of § 18.2-474.1; and (iii) all moneys or other property, real or personal, traceable to such an exchange, together with any interest or profits derived from the investment of such money or other property. Under the provisions of clause (i), real property shall not be subject to lawful seizure unless the minimum prescribed punishment for the violation is a term of not less than five years.

B. All seizures and forfeitures under this section shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.

§ 18.2-250. Possession of controlled substances unlawful.

A. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or 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 Drug Control Act (§ 54.1-3400 et seq.).

Upon the prosecution of a person for a violation of this section, ownership or occupancy of premises or vehicle upon or in which a controlled substance was found shall not create a presumption that such person either knowingly or intentionally possessed such controlled substance.

(a) Any person who violates this section with respect to any controlled substance classified in Schedule I or II of the Drug Control Act shall be guilty of a Class 5 felony.

(b) Any person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of an employee thereof, who violates this section with respect to a controlled substance classified in Schedule III shall be guilty of a Class 1 misdemeanor.

(b1) Violation of this section with respect to a controlled substance classified in Schedule IV shall be punishable as a Class 2 misdemeanor.

(b2) Violation of this section with respect to a controlled substance classified in Schedule V shall be punishable as a Class 3 misdemeanor.

(c) Violation of this section with respect to a controlled substance classified in Schedule VI shall be punishable as a Class 4 misdemeanor.

B. The provisions of this section shall not apply to members of state, federal, county, city or town law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of dogs trained in the detection of controlled substances when possession of a controlled substance or substances is necessary in the performance of their duties.

§ 18.2-250.1. Possession of marijuana unlawful.

A. It is unlawful for any person knowingly or intentionally to possess marijuana unless the substance was obtained directly from, or 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 Drug Control Act (§ 54.1-3400 et seq.).

Upon the prosecution of a person for violation of this section, ownership or occupancy of the premises or vehicle upon or in which marijuana was found shall not create a presumption that such person either knowingly or intentionally possessed such marijuana.

Any person who violates this section shall be guilty of a misdemeanor, and be confined in jail not more than thirty days and a fine of not more than $500, either or both; any person, upon a second or subsequent conviction of a violation of this section, shall be guilty of a Class 1 misdemeanor.

B. The provisions of this section shall not apply to members of state, federal, county, city or town law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of dogs trained in the detection of controlled substances when possession of marijuana is necessary for the performance of their duties.

§ 18.2-251. Persons charged with first offense may be placed on probation; conditions; screening, assessment and education programs; drug tests; costs and fees; violations; discharge.

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250 or to possession of marijuana under § 18.2-250.1, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions.

As a term or condition, the court shall require the accused to undergo a substance abuse assessment pursuant to § 18.2-251.01 and enter a treatment and/or education program, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment. This program may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, by a similar program which is made available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of twelve months or less, by a similar program available through a local or regional jail, a community corrections program established pursuant to § 53.1-180, or an ASAP program certified by the Commission on VASAP.

The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, assessment, testing, and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

As a condition of probation, the court shall require the accused (i) to successfully complete the treatment or education program, (ii) to remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free, (iii) to make reasonable efforts to secure and maintain employment, and (iv) to comply with a plan of at least 100 hours of community service. Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

The court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

Notwithstanding any other provision of this section, whenever a court places an individual on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of §§ 18.2-259.1 and 46.2-390.1, and the driver's license forfeiture provisions of those sections shall be imposed. The provisions of this paragraph shall not be applicable to any offense for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same offense.

§ 18.2-251.01. Substance abuse screening and assessment for felony convictions.

A. When a person is convicted of a felony, not a capital offense, committed on or after January 1, 2000, he shall be required to undergo a substance abuse screening and, if the screening indicates a substance abuse or dependence problem, an assessment by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Corrections or by an agency employee under the supervision of such counselor. If the person is determined to have a substance abuse problem, the court shall require him to

enter a treatment and/or education program, if available, which, in the opinion of the court, is best suited to the needs of the person. This program may be located in the judicial district in which the conviction was had or in any other judicial district as the court may provide. The treatment and/or education program shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or shall be a similar program which is made available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of twelve months or less, by a similar program available through a local or regional jail, a community corrections program established pursuant to § 53.1-180, or an ASAP program certified by the Commission on VASAP. The program may require the person entering such program under the provisions of this section to pay a fee for the education and treatment component, or both, based upon the defendant's ability to pay.
B. As a condition of any suspended sentence and probation, the court shall order the person to undergo periodic testing and treatment for substance abuse, if available, as the court deems appropriate based upon consideration of the substance abuse assessment.

§ 18.2-251.02. Drug Offender Assessment Fund.
There is hereby established in the state treasury the Drug Offender Assessment Fund which shall consist of moneys received from fees imposed on certain drug offense convictions pursuant to subdivisions A 10 and A 11 of § 17.1-275 and § 16.1-69.48:3. All interest derived from the deposit and investment of moneys in the Fund shall be credited to the Fund. Any moneys not appropriated by the General Assembly shall remain in the Drug Offender Assessment Fund and shall not be transferred or revert to the general fund at the end of any fiscal year. All moneys in the Fund shall be subject to annual appropriation by the General Assembly to the Department of Corrections, the Department of Juvenile Justice and the Commission on VASAP to implement and operate the offender substance abuse screening and assessment program.

§ 18.2-251.1. Possession or distribution of marijuana for medical purposes permitted.
A. No person shall be prosecuted under § 18.2-250 or § 18.2-250.1 for the possession of marijuana or tetrahydrocannabinol when that possession occurs pursuant to a valid prescription issued by a medical doctor in the course of his professional practice for treatment of cancer or glaucoma.
B. No medical doctor shall be prosecuted under § 18.2-248 or § 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol for medical purposes when such action occurs in the course of his professional practice for treatment of cancer or glaucoma.
C. No pharmacist shall be prosecuted under §§ 18.2-248 to 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol to any person who holds a valid prescription of a medical doctor for such substance issued in the course of such doctor's professional practice for treatment of cancer or glaucoma.

§ 18.2-251.2. Possession and distribution of flunitrazepam; enhanced penalty.
Notwithstanding the provisions of §§ 54.1-3446 and 54.1-3452, the drug flunitrazepam shall be deemed to be listed on Schedule I for the purposes of penalties for violations of the Drug Control Act (§ 54.1-3400 et seq.). Any person knowingly manufacturing, selling, giving, distributing or possessing the drug flunitrazepam shall be punished under the penalties prescribed for such violations in accordance with §§ 18.2-248 and 18.2-250.

§ 18.2-251.3. Possession and distribution of gamma-butyrolactone; 1, 4 - butanediol; enhanced penalty.
Any person who knowingly manufactures, sells, gives, distributes or possesses with the intent to distribute the substances gamma-butyrolactone; or 1, 4 - butanediol, when intended for human consumption shall be guilty of a Class 3 felony.

§ 18.2-252. Suspended sentence conditioned upon substance abuse screening, assessment, testing, and treatment or education.

The trial judge or court trying the case of any person found guilty of violating any law concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances and like substances, shall condition any suspended sentence by first requiring such person to agree to undergo a substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be conducted by the supervising probation agency or by personnel of any program or agency approved by the supervising probation agency. The cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the costs of such criminal proceedings. The judge or court shall order the person, as a condition of any suspended sentence, to undergo such treatment or education for substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, by a similar program available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of twelve months or less, by a similar program available through a local or regional jail, a community corrections program established pursuant to § 53.1-180, or an ASAP program certified by the Commission on VASAP.

§ 18.2-253. Disposal of seized substances.

A. All controlled substances, imitation controlled substances, marijuana or paraphernalia the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer or have been seized in connection with violations of this chapter, shall be forfeited and disposed of as follows:

1. Upon written application by the Division of Forensic Science the court may order the forfeiture of any such substance or paraphernalia to the Division for research and training purposes and for destruction pursuant to regulations of the United States Department of Justice Drug Enforcement Administration and of the Board of Pharmacy once these purposes have been fulfilled.

2. In the event no application is made under subdivision 1 of this subsection, the court shall order the destruction of all such substances or paraphernalia which order shall state the existence and nature of the substance or paraphernalia, the quantity thereof, the location where seized, the person or persons from whom the substance or paraphernalia was seized, if known, and the manner whereby such item shall be destroyed. A return under oath, reporting the time, place and manner of destruction shall be made to the court and to the Board of Pharmacy by the officer to whom the order is directed. A copy of the order and affidavit shall be made a part of the record of any criminal prosecution in which the substance or paraphernalia was used as evidence and shall, thereafter, be prima facie evidence of its contents. In the event a law enforcement agency recovers, seizes, finds, is given or otherwise comes into possession of any such substances or paraphernalia which are not evidence in a trial in the Commonwealth, the chief law-enforcement officer of the agency may, with the written consent of the appropriate attorney for the Commonwealth, order destruction of same; provided that, a statement under oath, reporting a description of the substances and paraphernalia destroyed, and the time, place and manner of destruction is made to the chief law-enforcement officer and to the Board of Pharmacy by the officer to whom the order is directed.

B. No such substance or paraphernalia used or to be used in a criminal prosecution under this chapter shall be disposed of as provided by this section until all rights of appeal have been exhausted, except as provided in § 18.2-253.1.

§ 18.2-253.1. Destruction of seized substances prior to trial.

Where seizures of controlled substances or marijuana are made in excess of ten pounds in connection with any prosecution or investigation under this chapter, the appropriate law-enforcement agency may retain ten pounds of the substance randomly selected from the seized substance for representative purposes as evidence and destroy the remainder of the seized substance.
Before any destruction is carried out under this section, the law-enforcement agency shall cause the material seized to be photographed with identification case numbers or other means of identification and shall prepare a report identifying the seized material. It shall also notify the accused, or other interested party, if known, or his attorney, at least five days in advance that the photography will take place and that they may be present. Prior to any destruction under this section, the law-enforcement agency shall also notify the accused or other interested party, if known, and his attorney at least seven days prior to the destruction of the time and place the destruction will occur. Any notice required under the provisions of this section shall be by first class mail to the last known address of the person required to be notified. In addition to the substance retained for representative purposes as evidence, all photographs and records made under this section and properly identified shall be admissible in any court proceeding for any purposes for which the seized substance itself would have been admissible.

§ 18.2-253.2. Judge may order law-enforcement agency to maintain custody of controlled substances.

Upon request of the clerk of any court, a judge of the court may order a law-enforcement agency to take into its custody or to maintain custody of substantial quantities of any controlled substances, imitation controlled substances, chemicals, marijuana or paraphernalia used or to be used in a criminal prosecution under this chapter. The court in its order may make provision for ensuring integrity of these items until further order of the court.

§ 18.2-254. Commitment of convicted person for treatment for drug or alcohol abuse.

A. Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in § 18.2-251, is found guilty of violating any law concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances and like substances, the judge or court shall require such person to undergo a substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. The cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the costs of the criminal proceedings. The judge or court shall also order the person to undergo such treatment or education for substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or by a similar program available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of twelve months or less, by a similar program available through a local or regional jail, a community corrections program established pursuant to § 53.1-180, or an ASAP program certified by the Commission on VASAP.
B. The court trying the case of any person alleged to have committed any offense designated by this article or by the Drug Control Act (§ 54.1-3400 et seq.) or in any other criminal case in which the commission of the offense was motivated by, or closely related to, the use of drugs and determined by the court, pursuant to a substance abuse screening and assessment to be in need of treatment for the use of drugs may commit, based upon a consideration of the substance abuse assessment, such person, upon his conviction, to any facility for the treatment of persons for the intemperate use of narcotic or other controlled substances, licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment

specified as the penalty for conviction of such offense or, if sentence was determined by a jury, not in excess of the term of imprisonment as set by such jury. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The court may revoke such commitment, at any time, and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

C. The court trying a case in which commission of the offense was related to the defendant's habitual abuse of alcohol and in which the court determines, pursuant to a substance abuse screening and assessment, that such defendant is an alcoholic as defined in § 37.1-1 and in need of treatment, may commit, based upon a consideration of the substance abuse assessment, such person, upon his conviction, to any facility for the treatment of alcoholics licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The court may revoke such commitment, at any time, and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

§ 18.2-255. Distribution of certain drugs to persons under eighteen prohibited; penalty.

A. Except as authorized in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, it shall be unlawful for any person who is at least eighteen years of age to knowingly or intentionally (i) distribute any drug classified in Schedule I, II, III or IV or marijuana to any person under eighteen years of age who is at least three years his junior or (ii) cause any person under eighteen years of age to assist in such distribution of any drug classified in Schedule I, II, III or IV or marijuana. Any person violating this provision shall upon conviction be imprisoned in a state correctional facility for a period not less than ten nor more than fifty years, and fined not more than $100,000. Five years of the sentence imposed shall not be suspended, in whole or in part for a conviction under this section involving a Schedule I or II controlled substance or one ounce or more of marijuana. Two years of the sentence imposed shall not be suspended, in whole or in part, for a conviction involving less than one ounce of marijuana.

B. It shall be unlawful for any person who is at least eighteen years of age to knowingly or intentionally (i) distribute any imitation controlled substance to a person under eighteen years of age who is at least three years his junior or (ii) cause any person under eighteen years of age to assist in such distribution of any imitation controlled substance. Any person violating this provision shall be guilty of a Class 6 felony.

§ 18.2-255.1. Distribution, sale or display of printed material advertising instruments for use in administering marijuana or controlled substances to minors; penalty.

It shall be a Class 1 misdemeanor for any person knowingly to sell, distribute, or display for sale to a minor any book, pamphlet, periodical or other printed matter which he knows advertises for sale any instrument, device, article, or contrivance for advertised use in unlawfully ingesting, smoking, administering, preparing or growing marijuana or a controlled substance.

§ 18.2-255.2. Prohibiting the sale of drugs on or near certain properties.

A. It shall be unlawful for any person to manufacture, sell or distribute or possess with intent to sell, give or distribute any controlled substance, imitation controlled substance or marijuana while (i) upon the property, including buildings and grounds, of any public or private elementary, secondary, or post secondary school, or any public or private two-year or four-year institution of higher education; (ii) upon public property or any property open to public use within 1,000 feet of such school property; (iii) on any school bus as defined in § 46.2-100; (iv) upon a designated school bus stop, or upon either public property or any property open to public use which is within 1,000 feet of such school bus stop, during the time when school children are waiting to be picked up and transported to or are being dropped off from school or a school-sponsored activity; (v) upon the property, including buildings and grounds, of any publicly owned or publicly operated recreation or community center facility or any public library; or (vi) upon the property of any state hospital as defined in § 37.1-1 or upon public property or property open to public use within 1,000 feet of such an institution. Nothing in this section shall prohibit the authorized distribution of controlled substances.

B. Violation of this section shall constitute a separate and distinct felony. Any person violating the provisions of this section shall, upon conviction, be imprisoned for a term of not less than one year nor more than five years and fined not more than $100,000. A second or subsequent conviction hereunder for an offense involving a controlled substance classified in Schedule I, II, or III of the Drug Control Act (§ 54.1-3400 et seq.) or more than one-half ounce of marijuana shall be punished by a minimum, mandatory term of imprisonment of one year which shall not be suspended in whole or in part and shall be served consecutively with any other sentence. However, if such person proves that he sold such controlled substance or marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance or marijuana to use or become addicted to or dependent upon such controlled substance or marijuana, he shall be guilty of a Class 1 misdemeanor.

C. If a person commits an act violating the provisions of this section, and the same act also violates another provision of law that provides for penalties greater than those provided for by this section, then nothing in this section shall prohibit or bar any prosecution or proceeding under that other provision of law or the imposition of any penalties provided for thereby.

§ 18.2-256. Conspiracy.

Any person who conspires to commit any offense defined in this article or in the Drug Control Act (§ 54.1-3400 et seq.) is punishable by imprisonment or fine or both which may not be less than the minimum punishment nor exceed the maximum punishment prescribed for the offense, the commission of which was the object of the conspiracy.

§ 18.2-257. Attempts.

(a) Any person who attempts to commit any offense defined in this article or in the Drug Control Act (§ 54.1-3400 et seq.) which is a felony shall be imprisoned for not less than one nor more than ten years; provided, however, that any person convicted of attempting to commit a felony for which a lesser punishment may be imposed may be punished according to such lesser penalty.

(b) Any person who attempts to commit any offense defined in this article or in the Drug Control Act which is a misdemeanor shall be guilty of a Class 2 misdemeanor; provided, however, that any person convicted of attempting to commit a misdemeanor for which a lesser punishment may be imposed may be punished according to such lesser penalty.

§ 18.2-258. Certain premises deemed common nuisance; penalty.

A. Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse, dwelling house, apartment, building of any kind, vehicle, vessel, boat, or aircraft, which with the knowledge of the owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or

tenant thereof, is frequented by persons under the influence of illegally obtained controlled substances or marijuana, as defined in § 54.1-3401, or for the purpose of illegally obtaining possession of, manufacturing or distributing controlled substances or marijuana, or is used for the illegal possession, manufacture or distribution of controlled substances or marijuana, shall be deemed a common nuisance. Any such owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or tenant who knowingly permits, establishes, keeps or maintains such a common nuisance is guilty of a Class 1 misdemeanor and, for a second or subsequent offense, a Class 6 felony. In addition, after due notice and opportunity to be heard on the part of any owner, lessor, or a lienholder not involved in the original offense, by a proceeding similar to that in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2 and upon proof of guilty knowledge, a court may order that such house, motor vehicle, aircraft, boat, vessel, or other premises, or any room or part thereof, be closed, but the court may, upon the owner or lessor giving bond in the penalty of not less than $500 and with security to be approved by the court, conditioned that the premises shall not be used for unlawful purposes, turn the same over to its owner or lessor; or proceeding may be had in equity as provided in § 18.2-258.01.

B. The penalties provided in this section shall be in addition to any other penalty provided by law, including immediate termination of a rental agreement as provided in § 55-248.31.

C. In no civil or in rem proceeding under the provisions of this section shall judgment be entered against the owner, lessor, or lienholder of property unless it is proved: (i) that he knew of the unlawful use of the property and (ii) that he had the right, because of such unlawful use, to enter and repossess the property.

§ 18.2-258.01. Enjoining nuisances involving illegal drug transactions.

The attorney for the Commonwealth, or any citizen of the county, city, or town, where such a nuisance as is described in § 18.2-258 exists, may, in addition to the remedies given in and punishment imposed by this chapter, maintain a suit in equity in the name of the Commonwealth to enjoin the same; provided, however, the attorney for the Commonwealth shall not be required to prosecute any suit brought by a citizen under this section. In every case where the bill charges, on the knowledge or belief of complainant, and is sworn to by two witnesses, that a nuisance exists as described in § 18.2-258, a temporary injunction may be granted as soon as the bill is presented to the court provided reasonable notice has been given. The injunction shall enjoin and restrain any owners, tenants, their agents, employees, and any other person from contributing to or maintaining the nuisance and may impose such other requirements as the court deems appropriate. If, after hearing, the court finds that the material allegations of the bill are true, although the premises complained of may not then be unlawfully used, it shall continue the injunction against such persons or premises for such period of time as it deems appropriate, with the right to dissolve the injunction upon a proper showing by the owner of the premises.

§ 18.2-258.02. Maintaining a fortified drug house; penalty.

Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse, dwelling house, apartment or building or structure of any kind which is (i) substantially altered from its original status by means of reinforcement with the intent to impede, deter or delay lawful entry by a law-enforcement officer into such structure, (ii) being used for the purpose of manufacturing or distributing controlled substances or marijuana, and (iii) the object of a valid search warrant, shall be considered a fortified drug house. Any person who maintains or operates a fortified drug house is guilty of a Class 5 felony.

§ 18.2-258.1. Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit or forgery.

A. It shall be unlawful for any person to obtain or attempt to obtain any drug or procure or attempt to procure the administration of any controlled substance or marijuana: (i) by fraud, deceit, misrepresentation, embezzlement, or subterfuge; or (ii) by the forgery or alteration of a prescription or of any written order;

or (iii) by the concealment of a material fact; or (iv) by the use of a false name or the giving of a false address.

B. It shall be unlawful for any person to furnish false or fraudulent information in or omit any information from, or willfully make a false statement in, any prescription, order, report, record, or other document required by Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1.

C. It shall be unlawful for any person to use in the course of the manufacture or distribution of a controlled substance or marijuana a license number which is fictitious, revoked, suspended, or issued to another person.

D. It shall be unlawful for any person, for the purpose of obtaining any controlled substance or marijuana, to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other authorized person.

E. It shall be unlawful for any person to make or utter any false or forged prescription or false or forged written order.

F. It shall be unlawful for any person to affix any false or forged label to a package or receptacle containing any controlled substance.

G. This section shall not apply to officers and employees of the United States, of this Commonwealth or of a political subdivision of this Commonwealth acting in the course of their employment, who obtain such drugs for investigative, research or analytical purposes, or to the agents or duly authorized representatives of any pharmaceutical manufacturer who obtain such drugs for investigative, research or analytical purposes and who are acting in the course of their employment; provided that such manufacturer is licensed under the provisions of the Federal Food, Drug and Cosmetic Act; and provided further, that such pharmaceutical manufacturer, its agents and duly authorized representatives file with the Board such information as the Board may deem appropriate.

H. Except as otherwise provided in this subsection, any person who shall violate any provision herein shall be guilty of a Class 6 felony.

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed, or reduced as provided in this section, pleads guilty to or enters a plea of not guilty to the court for violating this section, upon such plea if the facts found by the court would justify a finding of guilt, the court may place him on probation upon terms and conditions.

As a term or condition, the court shall require the accused to be evaluated and enter a treatment and/or education program, if available, such as, in the opinion of the court, may be best suited to the needs of the accused. This program may be located in the judicial circuit in which the charge is brought or in any other judicial circuit as the court may provide. The services shall be provided by a program certified or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, evaluation, testing and education, based upon the person's ability to pay unless the person is determined by the court to be indigent.

As a condition of supervised probation, the court shall require the accused to remain drug free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug free. Such testing may be conducted by the personnel of any screening, evaluation, and education program to which the person is referred or by the supervising agency.

Unless the accused was fingerprinted at the time of arrest, the court shall order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition, the court may enter an adjudication of guilt upon the felony and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court shall find the defendant guilty of a Class 1 misdemeanor.

§ 18.2-259. Penalties to be in addition to civil or administrative sanctions.

Any penalty imposed for violation of this article or of the Drug Control Act (§ 54.1-3400 et seq.) shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

§ 18.2-259.1. Forfeiture of driver's license for violations of article.

A. In addition to any other sanction or penalty imposed for a violation of this article, the (i) judgment of conviction under this article or (ii) placement on probation following deferral of further proceedings under § 18.2-251 or subsection H of § 18.2-258.1 for any such offense shall of itself operate to deprive the person so convicted or placed on probation after deferral of proceedings under § 18.2-251 or subsection H of § 18.2-258.1 of the privilege to drive or operate a motor vehicle, engine, or train in the Commonwealth for a period of six months from the date of such judgment or placement on probation. Such license forfeiture shall be in addition to and shall run consecutively with any other license suspension, revocation or forfeiture in effect or imposed upon the person so convicted or placed on probation. However, a juvenile who has had his license suspended or denied pursuant to § 16.1-278.9 shall not have his license forfeited pursuant to this section for the same offense.

B. The court trying the case shall order any person so convicted or placed on probation to surrender his driver's license to be disposed of in accordance with the provisions of § 46.2-398 and shall notify the Department of Motor Vehicles of any such conviction entered and of the license forfeiture to be imposed.

C. In those cases where the court determines there are compelling circumstances warranting an exception, the court may provide that any individual be issued a restricted license to operate a motor vehicle for any or all of the following purposes: (i) travel to and from his place of employment; (ii) travel to a screening, evaluation and education program entered pursuant to § 18.2-251 or subsection H of § 18.2-258.1; (iii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a student, upon proper written verification to the court that such person is enrolled in a continuing program of education; or (v) such other medically necessary travel as the court deems necessary and proper upon written verification of need by a licensed health professional. No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license in accordance with the provisions of subsection B and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this subsection. This order shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify such person. The court shall also provide a copy of its order to such person who may operate a motor vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license, but only if the order provides for a restricted license for that period. A copy of the order and, after receipt thereof, the restricted license shall be carried at all times by such person while operating a motor vehicle. The court may require a person issued a restricted permit under the provisions of this subsection to be monitored by an alcohol safety action program during the period of license suspension. Any violation of the terms of the restricted license or of any condition set forth by the court related thereto, or any failure to remain drug-free during such period shall be reported forthwith to the court by such program. Any person who operates a motor vehicle in violation of any restriction imposed pursuant to this section shall be guilty of a violation of § 46.2-301.

§ 18.2-260. Prescribing, dispensing, etc., drug except as authorized in article and Drug Control Act; violations for which no penalty provided.

It shall be unlawful for any person to prescribe, administer or dispense any drug except as authorized in the Drug Control Act (§ 54.1-3400 et seq.) or in this article. Any person who violates any provision of the Drug Control Act or of this article, for which no penalty is elsewhere specified in this article or in Article 7 (§ 54.1-3466 et seq.) of the Drug Control Act, shall be guilty of a Class 1 misdemeanor.

§ 18.2-260.1. Falsifying patient records.

Any person who fraudulently falsifies any patient record shall be guilty of a Class 3 misdemeanor.

§ 18.2-261. Monetary penalty.

Any person licensed by the State Board of Pharmacy who violates any of the provisions of the Drug Control Act (§ 54.1-3400 et seq.) or of this article, and who is not criminally prosecuted, shall be subject to the monetary penalty provided in this section. If, by a majority vote, the Board shall determine that the respondent is guilty of the violation complained of, the Board shall proceed to determine the amount of the monetary penalty for such violation, which shall not exceed the sum of $1,000 for each violation. Such penalty may be sued for and recovered in the name of the Commonwealth.

§ 18.2-262. Witnesses not excused from testifying or producing evidence because of self-incrimination.

No person shall be excused from testifying or from producing books, papers, correspondence, memoranda or other records for the Commonwealth as to any offense alleged to have been committed by another under this article or under the Drug Control Act (§ 54.1-3400 et seq.) by reason of his testimony or other evidence tending to incriminate himself, but the testimony given and evidence so produced by such person on behalf of the Commonwealth when called for by the trial judge or court trying the case, or by the attorney for the Commonwealth, or when summoned by the Commonwealth and sworn as a witness by the court or the clerk and sent before the grand jury, shall be in no case used against him nor shall he be prosecuted as to the offense as to which he testifies. Any person who refuses to testify or produce books, papers, correspondence, memoranda or other records, shall be guilty of a Class 2 misdemeanor.

§ 18.2-263. Unnecessary to negative exception, etc.; burden of proof of exception, etc.

In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this article or of the Drug Control Act (§ 54.1-3400 et seq.), it shall not be necessary to negative any exception, excuse, proviso, or exemption contained in this article or in the Drug Control Act, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant.

§ 18.2-264. Inhaling drugs or other noxious chemical substances or causing, etc., others to do so.

A. It shall be unlawful, except under the direction of a practitioner as defined in § 54.1-3401, for any person deliberately to smell or inhale any drugs or any other noxious chemical substances including but not limited to fingernail polish or model airplane glue, containing any ketones, aldehydes, organic acetates, ether, chlorinated hydrocarbons or vapors, with the intent to become intoxicated, inebriated, excited, stupefied or to dull the brain or nervous system.

Any person violating the provisions of this subsection shall be guilty of a Class 1 misdemeanor.

B. It shall be unlawful for any person, other than one duly licensed, deliberately to cause, invite or induce any person to smell or inhale any drugs or any other noxious substances or chemicals containing any ketone, aldehydes, organic acetates, ether, chlorinated hydrocarbons or vapors with the intent to intoxicate, inebriate, excite, stupefy or to dull the brain or nervous system of such person.

Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

§ 18.2-264.01. Charges for forensic laboratory analysis.

In all cases where a person is found guilty of a violation of this article (§ 18.2-247 et seq.), a fee of $100 per case for any forensic laboratory analysis performed for use in prosecution of such violation shall be taxed as costs to the defendant and shall be paid into the general fund of the state treasury. For the purposes of this section, "guilty" includes any case where the defendant pleads guilty, receives a suspended imposition of sentence or is placed on probation without a judgment of guilt under § 18.2-251.

§ 18.2-264.1. Repealed.

§ 18.2-265. Repealed.

Article 1.1.
Drug Paraphernalia.

§ 18.2-265.1. Definition.

As used in this article, the term "drug paraphernalia" means all equipment, products, and materials of any kind which are either designed for use or which are intended by the person charged with violating § 18.2-265.3 for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, strength testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marijuana or a controlled substance. It includes, but is not limited to:

1. Kits intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of marijuana or any species of plant which is a controlled substance or from which a controlled substance can be derived;
2. Kits intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing marijuana or controlled substances;
3. Isomerization devices intended for use or designed for use in increasing the potency of marijuana or any species of plant which is a controlled substance;
4. Testing equipment intended for use or designed for use in identifying or in analyzing the strength or effectiveness of marijuana or controlled substances;
5. Scales and balances intended for use or designed for use in weighing or measuring marijuana or controlled substances;
6. Diluents and adulterants, such as quinine hydrochloride, mannitol, or mannite, intended for use or designed for use in cutting controlled substances;
7. Separation gins and sifters intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
8. Blenders, bowls, containers, spoons, and mixing devices intended for use or designed for use in compounding controlled substances;
9. Capsules, balloons, envelopes, and other containers intended for use or designed for use in packaging small quantities of marijuana or controlled substances;
10. Containers and other objects intended for use or designed for use in storing or concealing marijuana or controlled substances;
11. Hypodermic syringes, needles, and other objects intended for use or designed for use in parenterally injecting controlled substances into the human body;
12. Objects 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 or too short to be held in the hand;
f. Miniature cocaine spoons, and cocaine vials;
g. Chamber pipes;
h. Carburetor pipes;

i. Electric pipes;
j. Air-driven pipes;
k. Chillums;
l. Bongs;
m. Ice pipes or chillers.

§ 18.2-265.2. Evidence to be considered in cases under this article.

In determining whether an object is drug paraphernalia, the court may consider, in addition to all other relevant evidence, the following:
1. Constitutionally admissible statements by the accused concerning the use of the object;
2. The proximity of the object to marijuana or controlled substances, which proximity is actually known to the accused;
3. Instructions, oral or written, provided with the object concerning its use;
4. Descriptive materials accompanying the object which explain or depict its use;
5. National and local advertising within the actual knowledge of the accused concerning its use;
6. The manner in which the object is displayed for sale;
7. Whether the accused is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
8. Evidence of the ratio of sales of the objects defined in § 18.2-265.1 to the total sales of the business enterprise;
9. The existence and scope of legitimate uses for the object in the community;
10. Expert testimony concerning its use or the purpose for which it was designed;
11. Relevant evidence of the intent of the accused to deliver it to persons who he knows, or should reasonably know, intend to use the object with an illegal drug. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this article shall not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

§ 18.2-265.3. Penalties for sale, etc., of drug paraphernalia.

A. Any person who sells or possesses with intent to sell drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it is either designed for use or intended by such person for use to illegally 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 marijuana or a controlled substance, shall be guilty of a Class 1 misdemeanor.
B. Any person eighteen years of age or older who violates subsection A hereof by selling drug paraphernalia to a minor who is at least three years junior to the accused in age shall be guilty of a Class 6 felony.
C. Any person eighteen years of age or older who distributes drug paraphernalia to a minor shall be guilty of a Class 1 misdemeanor.

§ 18.2-265.4. Seizure and forfeiture of drug paraphernalia.

All drug paraphernalia as defined in this article shall be forfeited to the Commonwealth and may be seized and disposed of in the same manner as provided in § 18.2-253, subject to the rights of an innocent lienor, to be recognized as under § 4.1-343.

§ 18.2-265.5. Advertisement of drug paraphernalia prohibited; penalty.

It shall be unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement, knowing or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended by such

person for use as drug paraphernalia. A violation of this section shall be punishable as a Class 1 misdemeanor.