Date: October 3, 1973

From: Office of the University Counsel
and Vice Chancellor for Legal Affairs

Subject: Narcotic Drug Legislation

On February 26, 1973, this office sent a Memorandum to Presidents (copy attached) concerning the New York State Controlled Substances Act. That Act, Article 33 of the Public Health Law, became effective on April 1, 1973. As of September 1, 1973, there are new reasons to be concerned with drug legislation.

I. The New Penal Law


While Article 220 does not of itself create any new provisions affecting the licensing and registration requirements summarized in our February Memorandum, it does give reason to emphasize again the importance of compliance by our institutions with the Controlled Substances Act. The new Penal Law Article defines unlawful use of controlled substances in terms of Article 33 of the Public Health Law. A person who has failed to comply fully with the licensing and registration requirements of Article 33 of the Public Health Law could be liable to the stringent penalties prescribed in the new provisions of the Penal Law.

It seems appropriate, therefore, to remind those on campus who may be using controlled substances in connection with research (animal or human), instructional or chemical analysis programs or who may be dispensing such substances to ultimate users in the campus health center that the law requires licensure by the State Commissioner of Health and the federal government. A list of the Controlled Substances covered by the law is attached. The application process should be initiated by writing directly to the Department of Health, Bureau of Narcotic Control, 846 Central Avenue, Albany, New York 12206. The Department of Health will supply the full details of the legal requirements and make available information on federal licensing procedures. A copy of all applications
should also be sent to the Office of the Provost for Health Sciences, a change in the instructions in the February Memorandum.

II. The Education Law

Although not mentioned in the new legislation, it is worth recalling that any person on campus who for any reason other than for purely medical purposes may wish to "purchase, acquire, have under control, possess and use hypodermic syringes and needles for instructional or other educational purposes" must be registered with the Commissioner of Education and with the Department of Health pursuant to Section 811 of Article 17 of the Education Law. The duty to register rests with the institution by which such person is employed. The law has been in effect since July 15, 1965, and clearly sets out what must be contained in such a registration statement.

III. Confidentiality of Records

Article 33, Title VI of the Public Health Law deals with records and reports. Section 3372 of this Title requires that every "practitioner", (which includes both physicians and licensed scientific investigators) is required to report to the Health Commissioner the name and address of any person found to be an addict or habitual user of any narcotic drug.

Such information, apparently, is confidential and available only for the uses of the Department of Health in connection with research or statistical and epidemiological studies. Nevertheless, Sections 3371 and 3372 recite circumstances in which a judicial subpoena or other court order may require the disclosure of information of this kind.

The implications of these provisions as regards campus clinics or drug related research programs, if any, bear careful consideration. Campuses may wish to advise those concerned that an addict or habitual user's name must, by law, be reported to the Health Department when such knowledge comes to the attention of the campus physician or other "practitioner". There is no privileged communication between doctor and patient in this situation. Further, while such reports are limited to the institutional purposes of the Health Department, the same or similar information may be liable to subpoena under circumstances not now defined in comprehensive detail by the courts.
Any request for such information by an officer other than the Commissioner of Health or his designee should be referred to us for specific advice.

Walter J. Relihan, Jr.

Attachment

cc: Chancellor Boyer

This memorandum addressed to:
President, State-operated Campuses

Copies for information only sent to:
President, Community Colleges
Dean, Statutory Colleges
Chancellor Kibbee
Dean McGrath
Vice Provost Risley
President Miles
TO: Presidents, State University of New York

FROM: Walter J. Relihan, Jr.

SUBJECT: Control of drugs on campus

Comprehensive statutory changes regarding dangerous drugs were enacted by the 1972 Legislature effective on and after April 1, 1973.

New Article 33 of the Public Health Law, popularly called the New York State Controlled Substances Act, prohibits the possession, manufacture, sale, prescription, distribution, administration, control, abandonment or transportation of defined substances except as expressly permitted by the Act.

Title III dealing with "Research, Instructional Activities, and Chemical Analysis..." and Title IV captioned "Dispensing to Ultimate Users" bear particularly upon University activities and concerns, the latter affecting campus health practitioners.

Any campus desiring licensure of a Title III program involving the use of controlled substances for purposes of scientific research, instruction, or chemical analysis must submit a statement to the State Commissioner of Health which includes the following information:

1. the qualifications of persons within the institution who will approve specific projects;

2. a description of the system within the institution for approving, supervising and evaluating such projects;

3. a description of each approved project;

4. the names and qualifications of the individuals working on the project;