

HEALTH CARE CLAIMS FRAUD: KNOWING/RECKLESS NONPRACTITIONER¹
(N.J.S.A. 2C:21-4.3c)

The defendant is charged in count _____ of the indictment with health care claims fraud.

Our statutes provide that

A person is guilty of a crime. . . if that person
knowingly commits health care claims fraud.

In order to convict defendant, the State must prove beyond a reasonable doubt the following elements:

- 1) that he/she committed health care claims fraud
- 2) that he/she acted knowingly.

The first element that the State must prove beyond a reasonable doubt is that defendant committed health care claims fraud. Health care claims fraud means making or causing to be made a false, fictitious, fraudulent or misleading statement of material fact in a record, bill, claim or other document. It also includes omitting a material fact or causing a material fact to be omitted from a record, bill, claim or other document. The statement or omission may be made in writing, electronically or in any other form. The defendant must have submitted or attempted² to submit or caused to be submitted or attempted to cause to be submitted the statement or omission of material fact for payment or reimbursement for health care services.

The statement of fact or omitted fact is material if it could have affected the decision to

¹ This provision applies only to non-practitioners and should not be charged in cases involving only practitioners unless there is a factual dispute over whether the defendant is, in fact, a practitioner.

Ordinarily, the lesser offense of reckless health care claims fraud should be given as a lesser offense of knowing health care claims fraud, so long as the facts at trial justify the lesser offense. N.J.S.A. 2C:1-8; State v. Brent, 137 N.J. 107 (1994). If only knowing, or only reckless, health care claims fraud is to be charged, read only the appropriate individual charge, infra.

² If attempt is charged, the mental state is purposeful. See attempt charge. N.J.S.A. 2C:5-1.

pay or reimburse for the health care services.³

The second element that the State must prove beyond a reasonable doubt is that defendant acted knowingly. A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result. "Knowing," "with knowledge," or equivalent terms have the same meaning. Knowingly is a state of mind and cannot be seen and can only be determined by inference from conduct, words or acts. Therefore, it is not necessary that witnesses be produced by the State to testify that a defendant said that he/she knowingly did something. His/her knowledge may be gathered from his/her acts and his/her conduct and from all he/she said and did at the particular time and place and from all the surrounding circumstances reflected in the testimony [and evidence adduced at trial].

[CHARGE IF APPLICABLE]

INFERENCE #1⁴

If you find that defendant submitted, attempted to submit, caused to be submitted or attempted to cause to be submitted any record, bill, claim or other document for treatment or procedure without his/her associate having performed the assessment of the physical [or mental] condition of the patient or client that would be necessary to determine the appropriate course of treatment, then you may infer that the statement of facts in the record, bill, claim or document submitted for payment or reimbursement for treatment or procedure was false, fraudulent or misleading.

³ This definition has been adapted from the definition of materiality found in the perjury model jury charge. See Model Jury Charges, Criminal, Perjury, N.J.S.A. 2C:28-1b (approved March 30, 1993).

⁴ N.J.S.A. 2C:21-4.3f(1). In a case where the inference is applicable only to one defendant but not another, a limiting instruction must be given to the jury.

INFERENCE #2⁵

If you find that _____ submitted, attempted to submit, caused to be submitted or attempted to cause to be submitted records, bills, claims or other documents for more treatments or procedures than can be performed during the time in which the treatments or procedures were represented to have been performed, then you may infer that the statement of facts in the record, bill, claim or document submitted for payment or reimbursement for treatment or procedure was false, fraudulent or misleading.

An inference is a deduction of fact that may be drawn logically and reasonably from another fact or group of facts established by the evidence. Whether or not inferences should be drawn is for you to decide using your own common sense, knowledge and everyday experience. Ask yourselves is it probable, logical and reasonable. However, you are never required or compelled to draw this inference. It is your exclusive province to determine whether the facts and circumstances shown by the evidence support any inference and you are always free to accept or reject any inference.

If you find that the State has proven beyond a reasonable doubt each of the elements, that is, that defendant committed health care claims fraud and that he/she acted knowingly, then you must find defendant guilty of the crime of health care claims fraud. If the State has failed to prove either of these elements beyond a reasonable doubt, then you must find defendant not guilty.

[CHARGE IF THE INDICTMENT CONTAINS A SECOND DEGREE COUNT]

If you find defendant guilty of the offense of knowing health care claims fraud, then you must further determine whether the pecuniary benefit obtained or sought to be obtained was at least \$1,000 and whether defendant knowingly committed five or more acts of health care claims

⁵ N.J.S.A. 2C:21-4.3f(2). Absent some evidence that a nonpractitioner had knowledge of the number of procedures or treatments being claimed and the time during which they were claimed to have been performed, as well as how long it should take to perform such procedures or treatments, this inference should not be charged with respect to such persons.

fraud. The pecuniary benefits obtained or sought to be obtained and the number of acts of health care claims fraud committed must be proven by the State beyond a reasonable doubt. You must indicate whether you find that the State has proven beyond a reasonable doubt that defendant committed five or more acts of health care claims fraud and whether the pecuniary benefit obtained or sought to be obtained was at least \$1,000. The amounts obtained or sought to be obtained during each separate act of health care claims fraud may be aggregated or added together to determine whether the pecuniary benefit is at least \$1,000.⁶

If, however, after consideration of all of the evidence, you find that _____ committed health care claims fraud, but you are not convinced beyond a reasonable doubt that he/she did so knowingly, you must find the defendant not guilty of knowing health care claims fraud and go on to consider whether the defendant should be convicted of reckless health care claims fraud.

A person is guilty of reckless health care claims fraud if he/she acted recklessly. A person acts recklessly with respect to the result of his/her conduct if he/she consciously disregards a substantial and unjustifiable risk that the result will occur from his/her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. One is said to act recklessly if one acts with scorn for the consequences, heedlessly or fool-hardily. Recklessness is a state of mind and cannot be seen and can only be determined by inference from conduct, words or acts. Therefore, it is not necessary that witnesses be produced by the State to testify that a defendant said that he/she recklessly did something. His/her recklessness may be gathered from his/her acts and his/her conduct and from all he/she said and did at the particular time and place and from all the surrounding circumstances reflected in the testimony [and

⁶

A verdict sheet should be submitted which will allow the jury to set forth its findings on whether the State has proven beyond a reasonable doubt 1) that defendant committed five or more acts of health care claims fraud and 2) that the pecuniary gain obtained or sought to be obtained was at least \$1,000.

evidence adduced at trial].

Therefore, if you find that the State has proven beyond a reasonable doubt both of the elements, that is, that ____ committed health care claims fraud and that he/she acted recklessly, then you must find defendant guilty of the crime of reckless health care claims fraud. If the State has failed to prove any of these elements beyond a reasonable doubt, then you must find defendant not guilty.