

HEALTH CARE CLAIMS FRAUD: KNOWING/RECKLESS PRACTITIONER¹
(N.J.S.A. 2C:21-4.3a/b)

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

A practitioner is guilty of a crime. . . if that person knowingly commits health care claims fraud in the course of providing professional services.

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

- 1) that he/she is a practitioner
 - 2) that he/she committed health care claims fraud
 - 3) that he/she committed the fraud in the course of providing professional services
- and
- 4) that he/she acted knowingly.

The first element that the State must prove beyond a reasonable doubt is that defendant is a practitioner.² A practitioner is [**choose one**]

- 1) a person licensed in this State to practice medicine and surgery, chiropractic, podiatry, dentistry, optometry, psychology, pharmacy, nursing, physical therapy or law.

OR

- 2) a person licensed, registered or certified by a State agency to practice

¹ Ordinarily, a charge on 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 N.J.S.A. 2C:21-4.2.

his/her profession or occupation in the State of New Jersey.

OR

- 3) a person licensed to practice medicine and surgery, chiropractic, podiatry, dentistry, optometry, psychology, pharmacy, nursing, physical therapy, or law in another jurisdiction [or a person licensed, registered or certified to practice his/her profession or occupation in another jurisdiction].

The second element 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 attempted³ 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 pay or reimburse for the health care services.⁴

The third element that the State must prove beyond a reasonable doubt is that _____ committed the fraud in the course of providing professional services. That is, the State must prove beyond a reasonable doubt that he/she committed the health care fraud in connection with the performance of his/her occupation or profession as _____ (specify type of practitioner).

The fourth element that the State must prove beyond a reasonable doubt is that defendant

³ If attempt is charged, the mental state is purposeful. See attempt charge. N.J.S.A. 2C:5-1.

⁴ 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).

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 #1⁵

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 he/she or 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.

⁵ 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 #2⁶

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.

INFERENCE #3⁷

If you find that _____ signed or initialed a record, bill, claim or other document, then you may infer that he/she read and reviewed the record, bill, claim or other document.

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 an inference 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 an inference. You alone decide whether the facts and circumstances shown by the evidence support an inference and you are always free to draw or not to draw an inference. If you draw an inference, you should weigh it in connection with all the other evidence in the case keeping in mind that the burden of proof is upon the State to prove all the elements of the crime beyond a reasonable doubt.

If you find that the State has proven beyond a reasonable doubt each of the four elements, that is, that defendant is a practitioner, that he committed health care claims fraud, that he/she

⁶ N.J.S.A. 2C:21-4.3f(2). Absent some evidence that a non-medical practitioner, such as a lawyer, 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 practitioners.

⁷ N.J.S.A. 2C:21-4.3f(3). An instruction regarding this statutory inference may be given only with respect to a practitioner.

committed the health care claims fraud in the course of providing professional services 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 any of these elements beyond a reasonable doubt, then you must find defendant not guilty.

If, however, after consideration of all of the evidence, you find the first three elements are proven beyond a reasonable doubt but you are not convinced beyond a reasonable doubt that the defendant knowingly committed health care claims fraud, you must find the defendant not guilty of knowing health care claims fraud and go on to consider 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 evidence adduced at trial].

Therefore, if you find that the State has proven beyond a reasonable doubt each of the four elements, that is, that defendant is a practitioner, that he/she committed health care claims fraud, that he/she committed the health care claims fraud in the course of providing professional services and that he/she acted recklessly, then you must find defendant guilty of the crime of

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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.