

**OBTAINING A CONTROLLED DANGEROUS SUBSTANCE BY FRAUD**

**(N.J.S.A. 2C:35-13)**

The defendant is charged with obtaining a controlled dangerous substance by fraud. The applicable statute reads in pertinent part:

It shall be unlawful for any person to acquire or obtain possession of a controlled dangerous substance . . . by misrepresentation, fraud, forgery, deception or subterfuge.<sup>1</sup>

To obtain a conviction on this charge the State must prove each of the following elements beyond a reasonable doubt:

- (1) That defendant acquired or obtained possession of a controlled dangerous substance;
- (2) That defendant did so by misrepresentation, fraud, forgery, deception or subterfuge; and
- (3) That defendant acted knowingly.<sup>2</sup>

Possession is a knowing intentional control of a designated thing, accompanied by a knowledge of its character. Controlled dangerous substances are defined by statute and specifically include \_\_\_\_\_.

Misrepresentation means a false or incorrect account, explanation or presentation. Fraud is an intentional deception designed to cause a person to give up property or some other lawful right. Forgery is the intentional and unauthorized alteration, change, creation, completion, execution, authentication, issuance or transfer of any writing. Deception is the purposeful creation or reinforcement of a false impression, or the prevention of another from acquiring information which would affect that person's judgment of a transaction, or the failure to correct a false impression which was previously created or reinforced. Subterfuge is any plan or action, device or artifice used to evade the truth.

A person acts knowingly with respect to the nature of (his/her) conduct or the attendant

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<sup>1</sup> By its terms, the statute also applies to any "controlled substance analog." This should be incorporated into the charge in appropriate cases. A definition for a "controlled substance analog" can be found in N.J.S. 2C:35-2.

It should be noted that the statute also makes it unlawful "for any person to acquire or obtain possession of a forged or fraudulent certificate of destruction required pursuant to N.J.S. 2C:35-21. "This Model Charge is not intended to cover such a situation.

<sup>2</sup> N.J.S.A. 2C:2-2c(3).

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circumstances if the person is aware that (his/her) conduct is of that nature, or that such circumstances exist, or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of (his/her) conduct if the person is aware that it is practically certain that (his/her) conduct will cause such a result.

Thus, a conviction for the crime of obtaining a controlled dangerous substance by fraud would require proof beyond a reasonable doubt that the defendant acquired or obtained possession of a controlled dangerous substance, that (he/she) did so by fraudulent means, and that (he/she) acted knowingly, as I have defined these terms for you.

If you find that the State has failed to prove anyone or more of these elements of the crime beyond a reasonable doubt, then you must find the defendant Not Guilty of obtaining a controlled dangerous substance by fraud. On the other hand, if you find that the State has proved all of the elements of the crime beyond a reasonable doubt, then you must find the defendant Guilty as charged.