

UNLICENSED PRACTICE OF MEDICINE AND SURGERY OR PODIATRY
ENGAGING IN ACTIVITY FOR WHICH A LICENSE IS REQUIRED
(N.J.S.A. 2C:21-20d)

Count ____ of the indictment in this case charges the defendant with engaging in an activity for which a license or permit to practice medicine and surgery or podiatry is required.

(Read the count from the indictment)

That section of our statutes provides in pertinent part:

A person is guilty of a crime if he knowingly [Choose as appropriate: (does not possess a license or permit to practice medicine and surgery or podiatric medicine) **OR** (has had his license or permit to practice medicine and surgery or podiatric medicine suspended, revoked or otherwise limited by an order entered by the State Board of Medical Examiners)] and he engages in any activity for which such license or permit is a necessary prerequisite.

In order for defendant to be convicted of this offense, the State must prove the following elements beyond a reasonable doubt:

- 1) Defendant knowingly [**Choose as appropriate:** (did not possess a license or permit to practice medicine and surgery or podiatric medicine) **OR** (has had his/her license or permit to practice medicine and surgery or podiatric medicine suspended, revoked or otherwise limited by an order entered by the State Board of Medical Examiners)]; and
- 2) Defendant knowingly engaged in any activity for which such license or permit is a necessary prerequisite.

The first element the State must prove beyond a reasonable doubt is that the defendant knowingly [**Choose as appropriate:** (did not possess a license or permit to practice medicine and surgery or podiatric medicine) **OR** (has had the license or permit to practice medicine and surgery or podiatric medicine suspended, revoked or otherwise limited by an order entered by the State Board of Medical Examiners)].

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 if he/she is aware of a high probability of their existence. Knowledge is a condition of the mind that cannot be seen and that can often be determined only from inferences from

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conduct, words, or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference, which may arise from the nature of the defendant's acts and conduct, from all that he/she said and did at the particular time and place, and from all surrounding circumstances. The State need not prove it was defendant's intent to obtain a pecuniary benefit, nor to injure or defraud another, but only that defendant acted knowingly as I have defined that term for you.¹

The second element the State must prove beyond a reasonable doubt is that the defendant knowingly engaged in any activity for which such license or permit is a necessary prerequisite. I have already defined "knowingly" for you. Here, the State alleges that defendant [**Choose as appropriate:** (ordered a controlled dangerous substance or prescription legend drugs from a distributor or manufacturer²) **OR** (insert alleged activity)]. [**Add, if requested by the defendant:** The defendant claims [insert defendant's theory of the case.]

[If it is alleged that defendant ordered a controlled dangerous substance or prescription legend drug from a distributor or manufacturer, include the following definitions as appropriate:

What constitutes a "controlled dangerous substance" is defined in another part of our statute. [(**Name of CDS prohibited by statute**) is a dangerous substance prohibited by statute. AND/OR "Controlled dangerous substance" also includes "controlled substance analogs," which are substances which have a chemical structure substantially similar to that of a controlled dangerous substance and was specifically designed to produce an effect substantially similar to that of a controlled substance. In this case, the indictment alleges that the defendant ordered

¹ Cannel, N.J. Criminal Code Annotated, comment on N.J.S.A. 2C:21-20 (2016-17); see also Morris v. Muller, 113 N.J.L. 46, 49 (E. & A. 1934) ("But it is also the rule that when one holds himself out to the public as having professional skill, and offers his services to those who accept them on that supposition, he is responsible for want of the skill he pretends to, even when his services are rendered gratuitously.")

² This is the example contained in the statute, N.J.S.A. 2C:21-20d, but the statute is not limited to that activity.

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_____, which is an analog of the controlled dangerous substance _____.
Thus, to establish this element, the State must prove beyond a reasonable doubt that _____ has a substantially similar chemical structure to the controlled dangerous substance _____, and that _____ was specifically designed to produce an effect substantially similar to the controlled dangerous substance _____.³

"Prescription legend drug" is defined as any drug which under federal or State law requires dispensing by prescription or order of a licensed physician, veterinarian, or dentist and is required to bear the statement "Rx only" or similar wording indicating that such drug may be sold or dispensed only upon the prescription of a licensed medical practitioner and is not a controlled dangerous substance or stramonium preparation.⁴ **(Name of prescription legend drug prohibited by statute)** is a dangerous substance prohibited by statute.

"Distribute" means to deliver other than by administering or dispensing a controlled dangerous substance or controlled substance analog. "Distributor" means a person who distributes.⁵

"Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled dangerous substance or controlled substance analog, either directly or 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, except that this term does not include the preparation or compounding of a controlled dangerous substance or controlled substance analog by an individual for his/her own use or the preparation, compounding, packaging, or labeling of a controlled dangerous substance: (1) by a practitioner as an incident to his/her administering or dispensing of a controlled dangerous substance or controlled substance analog in the course of his/her professional practice, or (2) by a practitioner (or under his/her supervision) for the purpose of, or as an incident to, research, teaching, or

³ N.J.S.A. 2C:35-2.

⁴ N.J.S.A. 2C:35-2.

⁵ N.J.S.A. 2C:35-2.

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chemical analysis and not for sale.^{6]}

If you find that the State has proven each of these elements beyond a reasonable doubt, then you must find the defendant guilty. If, however, the State has failed to prove any element beyond a reasonable doubt, then you must find the defendant not guilty.

⁶ N.J.S.A. 2C:35-2.