

UNLICENSED PRACTICE OF MEDICINE AND SURGERY OR PODIATRY
ENGAGING IN PRACTICE
(N.J.S.A. 2C:21-20a)

Count ____ of the indictment in this case charges the defendant with engaging in the unlicensed practice of medicine.

(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 that practice.

In order for the 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 the practice of medicine and surgery or podiatric medicine.

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 the defendant's intent to obtain a pecuniary benefit, nor to injure or defraud another, but only that the defendant acted knowingly as I have defined that term for you.¹

The second element the State must prove beyond a reasonable doubt is the defendant knowingly engaged in the practice of medicine and surgery or podiatric medicine. I have already defined "knowingly" for you. Here, the State alleges that defendant [insert State's theory of the case here]. **[Add, if requested by the defendant:** The defendant claims (insert defendant's theory of the case.)]

"The practice of medicine and surgery" includes the practice of any branch of medicine and/or surgery,² and any method of treatment of human ailment, disease, pain, injury, deformity, mental or physical condition.³

"Podiatric medicine" means the diagnosis or treatment of or the holding out of a right or ability to diagnose or treat any ailment of the human foot or ankle, including local manifestations of systemic diseases as they appear on the lower leg, foot or ankle but not treatment of systemic diseases of any other part of the body, or the holding out of a right or ability to treat the same by

¹ Cannel, N.J. Criminal Code Annotated, comment on N.J.S.A. 2C:21-20 (2016-2017); 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 The court and the parties should be aware that some branches of medicine may have specific definitions within the New Jersey Statutes. See, e.g., N.J.S.A. 54:32E-1b (defining "cosmetic surgery"). Where a statute may provide a more specific definition of the type of medicine at issue in your case, that definition should be used.

³ N.J.S.A. 45:9-5.1.

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any one or more of the following means: local medical, mechanical, surgical, manipulative and physio-therapeutic, including the application of any of the aforementioned means to the lower leg and ankle for the treatment of a foot or ankle ailment. Such means shall not be construed to include the amputation of the leg or foot.⁴

The practice of medicine and surgery or podiatric medicine includes conducting a medical examination⁵ and rendering a diagnosis. Rendering treatment, however, is not required to establish the defendant engaged in the practice of medicine and surgery or podiatric medicine.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.

⁴ N.J.S.A. 45:5-7.

⁵ The term “medical examination” is not defined in any New Jersey statute, case or regulation. There is a definition in the Merriam – Webster Medical Dictionary, which defines “medical examination” as “the act or process of inspecting or testing for evidence of disease or abnormality.” See <https://www.merriam-webster.com/dictionary/examination#medicalDictionary>.

⁶ See Pinkus v. MacMahon, 129 N.J.L. 367, 368–69 (Sup. Ct. 1943) (holding, under a predecessor statute, that an individual engaged in the unlicensed practice of medicine when he diagnosed ailments and conditions and gave advice as to diet). Pinkus distinguished State Board of Medical Examiners v. Maxwell, 13 N.J. Misc. 855 (Sup. Ct. 1935), where the court held that “preaching the triumph of mind over the ills of the body and the power of the will to drive out disease” did not violate the statute.