

UNLICENSED PRACTICE OF MEDICINE AND SURGERY OR PODIATRY
HOLDING OUT TO PUBLIC AS ELIGIBLE TO PRACTICE
(N.J.S.A. 2C:21-20c)

Count ____ of the indictment in this case charges the defendant with holding himself/herself out to the public or any person as being eligible to engage in the 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 holds himself out to the public or any person as being eligible to engage 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 held himself/herself out to the public or any person as being eligible to engage in that practice.

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 that the defendant knowingly held himself/herself out to the public or any person as being eligible to engage in that practice. Here, the State alleges that the 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.]

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.

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.")