

**CRIMINAL SALE OF A PRESCRIPTION FOR A
CONTROLLED SUBSTANCE . . . BY A PRACTITIONER . . .**

Penal Law § 220.65(1)

(Committed on or after Nov. 1, 1986)

(Revised April 2003 & Dec 2023)¹

The (specify) count is Criminal Sale of a Prescription for a Controlled Substance by a Practitioner.

Under our law, a person is guilty of Criminal Sale of a Prescription for a Controlled Substance by a Practitioner when, being a practitioner,² that person knowingly and unlawfully sells a prescription for a controlled substance.

The following terms used in that definition have a special meaning:

The term PRACTITIONER includes (specify definition set forth in Public Health Law 3302).

The term CONTROLLED SUBSTANCE includes (specify).³

SELL means to sell, exchange, give or dispose of to another.

[Note: Add if appropriate: Sell also includes an offer or agreement to sell even if actual delivery does not occur, provided that, at the time of the offer or agreement, the person has the intent and ability to make the sale. An intent is a conscious objective or purpose. Thus, a person acts with intent to sell when that person's conscious

¹ The 2003 revision was for the purpose of re-defining the term “sale” as it applied to an offer or agreement to sell.

The 2023 revision was for the purpose of defining “good faith.”

² At this point the statute continues: “as that term is defined in section thirty-three hundred two of the public health law.”

³ See Penal Law § 220.00(5).

objective or purpose is to sell.]⁴

A Practitioner KNOWINGLY sells a prescription for a controlled substance when the Practitioner is aware that he or she is selling such a prescription.⁵

A Practitioner UNLAWFULLY sells a prescription for a controlled substance when the Practitioner does so other than in good faith in the course of his or her professional practice.⁶ A practitioner acts in good faith when THE PRACTITIONER sells a prescription for a genuine medical purpose in the course of THE PRACTITIONER'S professional practice.⁷

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both of the following two elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), being a practitioner, sold a prescription for (specify); and
2. That the defendant did so knowingly and unlawfully.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

⁴ See Penal Law § 220.00(1); *People v. Samuels*, 99 N.Y.2d 20 (2002).

⁵ See Penal Law § 15.05(2). An expanded definition of "knowingly" is available in the General Charges section under Culpable Mental States.

⁶ Penal Law § 220.65(1) second sentence.

⁷ *People v Dias*, 197 AD2d 387, 388-89 [1st Dept 1993] ["The court's charge adequately defined the statute's requirement that a person unlawfully sells a prescription "when he does so other than in good faith in the course of his professional practice" (Penal Law § 220.65). The court charged that " 'Good faith' requires the physician to have acted for a bona fide medical purpose in prescribing the drugs in question." As to each count, the court also charged that "the defendants must have acted 'knowingly', which the court defined as 'when he is aware that he is selling a prescription and that he is not doing so in good faith in the course of his professional practice.'"]

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.