

**CRIMINAL SALE . . . OF A CONTROLLED SUBSTANCE BY
A PRACTITIONER OR PHARMACIST
Penal Law § 220.65(2)
(Committed on or after June 23, 2014)
(Revised Dec. 2023)¹**

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

Under our law, a person is guilty of Criminal Sale of a Controlled Substance by a Practitioner or Pharmacist when, being a

Select appropriate alternative:

practitioner
pharmacist,²

he or she, acting other than in good faith, while purporting to act within the scope of the power, authority and privileges of his or her license,³ knowingly and unlawfully sells a controlled substance.

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

Select appropriate alternative:

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

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

¹ The 2023 revision was primarily for the purpose of defining “good faith.”

² At this point, the statute continues: “as those terms are defined in section thirty-three hundred two of the public health law.”

³ At this point, the statute continues: “as that term is defined in section thirty-three hundred two of the public health law.”

The term CONTROLLED SUBSTANCE includes (specify).⁴

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 objective or purpose is to sell.]⁵

A [Practitioner / Pharmacist] KNOWINGLY sells a controlled substance when the [Practitioner / Pharmacist] is aware that he or she is selling such controlled substance.⁶

A [Practitioner / Pharmacist] UNLAWFULLY sells a controlled substance when the [Practitioner / Pharmacist] does so other than in good faith, while purporting to act with the scope of the power, authority and privileges of his or her license.⁷

A [Practitioner / Pharmacist] acts in good faith when he or she sells a controlled substance for a genuine medical purpose.⁸

⁴ See Penal Law § 220.00(5).

⁵ See Penal Law § 220.00(1); *People v. Samuels*, 99 NY2d 20 (2002).

⁶ See Penal Law § 15.05(2). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

⁷ See Penal Law § 220.65(1)(last sentence).

⁸ *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.’”]

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

Select appropriate alternative:

practitioner,
pharmacist,

acting other than in good faith, while purporting to act within the scope of the power, authority and privileges of his or her license, sold a controlled substance.

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.

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.