

**CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS
AND PRESCRIPTIONS IN THE FOURTH DEGREE
Penal Law § 178.10
Committed on or after Nov. 1, 1995**

The (*specify*) count is Criminal Diversion of Prescription Medications and Prescriptions in the Fourth Degree.

Under our law, a person is guilty of criminal diversion of prescription medications and prescriptions in the fourth degree when he or she commits a criminal diversion act.

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

CRIMINAL DIVERSION ACT means an act or acts in which a person knowingly:

Select appropriate alternative(s):

(a) transfers or delivers, in exchange for anything of pecuniary value, a prescription medication or device with knowledge or reasonable grounds to know that the recipient has no medical need for it; or

(b) receives, in exchange for anything of pecuniary value, a prescription medication or device with knowledge or reasonable grounds to know that the seller or transferor is not authorized by law to sell or transfer such prescription medication or device; or

(c) transfers or delivers a prescription in exchange for anything of pecuniary value; or

(d) receives a prescription in exchange for anything of pecuniary value.¹

¹ Penal Law § 178.00 (3).

PRESCRIPTION MEDICATION OR DEVICE means any article for which a prescription is required in order to be lawfully sold, delivered or distributed by any person authorized by law to engage in the practice of the profession of pharmacy.²

PRESCRIPTION means a direction or authorization by means of a written prescription form or an oral prescription which permits a person to lawfully obtain a prescription medication or device from any person authorized to dispense such prescription medication or device.³

A person KNOWINGLY acts with respect to conduct or to a circumstance when that person is aware that his or her conduct is of such nature or that such circumstance exists.⁴

If one of the following is placed in issue, add appropriate provision:

The conduct prohibited by this law does not apply to

a duly licensed physician or other person authorized to issue a prescription acting in good faith in the lawful course of his or her profession;

a duly licensed pharmacist acting in good faith in the lawful course of the practice of pharmacy;

a person acting in good faith seeking treatment for a medical condition or assisting another person to obtain treatment for a medical condition.

In order for you to find the defendant guilty of this crime, the People are required to prove from all of the evidence in the case

² Penal Law § 178.00 (1).

³ Penal Law § 178.00 (2).

⁴ Penal Law § 15.05 (2).

beyond a reasonable doubt both of the following (two/three) elements:

1. That on or about (*date*) in the county of (*County*), the defendant (*defendant's name*), committed a criminal diversion act⁵; and

2. That the defendant did so knowingly.

If one of the following is placed in issue, add appropriate provision as element three.

3. The defendant was not

a duly licensed physician or other person authorized to issue a prescription acting in good faith in the lawful course of his or her profession;

a duly licensed pharmacist acting in good faith in the lawful course of the practice of pharmacy;

a person acting in good faith seeking treatment for a medical condition or assisting another person to obtain treatment for a medical condition.⁶

If you find the People have proven beyond a reasonable doubt (each / 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 / any one) or more of those elements, you must find the defendant not guilty of this crime.

⁵ Where a specific act of criminal diversion is alleged, a court may wish to add: "in that (*specify conduct*)" at the end of this sentence.

⁶ Penal Law § 178.05 (1).