

**CRIMINAL SALE OF A PRESCRIPTION FOR A CONTROLLED  
SUBSTANCE [OR OF A CONTROLLED SUBSTANCE] BY A  
PRACTITIONER [OR PHARMACIST]**

**Penal Law § 220.65(1)  
(Committed on or after Nov. 1, 1986)  
(Revised April 4, 2003)<sup>1</sup>**

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 by a Practitioner for a Controlled Substance by a Practitioner when, being a practitioner,<sup>2</sup> 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).<sup>3</sup>

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

[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.]<sup>4</sup>

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<sup>1</sup> The revision was for the purpose of re-defining the term "sale" as it applied to an offer or agreement to sell.

<sup>2</sup> At this point the statute continues: "as that term is defined in section thirty-three hundred two of the public health law."

<sup>3</sup> See Penal Law § 220.00(5).

<sup>4</sup> See Penal Law § 220.00(1); *People v. Samuels*, 90 N.Y.2d 20 (2002).

A person KNOWINGLY sells a prescription for a controlled substance when that person is aware that he or she is selling such a prescription.<sup>5</sup>

A person UNLAWFULLY sells a prescription for a controlled substance when that person does so other than in good faith in the course of his or her professional practice.<sup>6</sup>

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.

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.

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<sup>5</sup>See Penal Law § 15.05(2). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

<sup>6</sup>See Penal Law § 220.65(1).