

OPERATING AS A MAJOR TRAFFICKER
(A-I Felony)
PENAL LAW 220.77(2)
(Profiteer - Sale)
(Committed on or after Nov. 1, 2009)

The _____ count is Operating as a Major Trafficker.

A person is guilty of Operating as a Major Trafficker when, as a profiteer, he or she knowingly and unlawfully sells, on one or more occasions within six months or less, a narcotic drug, and the proceeds collected or due from such sale or sales have a total aggregate value of seventy-five thousand dollars or more.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: “narcotic drug,” “sell,” “knowingly,” “unlawfully,” and “profiteer.”

The term NARCOTIC DRUG includes (*specify*).¹

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.]²

A person KNOWINGLY sells (*specify*) when that person is aware that he or she is selling a substance which contains (*specify*).³

A person UNLAWFULLY sells (*specify*) when that person has no legal right to sell that substance. Under our law, with certain exceptions not applicable here, a person has no legal right to sell (*specify*).⁴

¹ See Penal Law § 220.00(7).

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

³ See Penal Law § 15.05(2). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

⁴ See Penal Law § 220.00(2) and Public Health Law § 3396(1).

PROFITEER means a person who:

Select appropriate alternative(s):

is a director of a controlled substance organization;

is a member of a controlled substance organization and has managerial responsibility over one or more other members of that organization; or

arranges, devises or plans one or more transactions constituting a felony under this article so as to obtain profits or expected profits.

A person is not a profiteer if he or she is acting only as an employee; or if he or she is acting as an accommodation to a friend or relative; or if he or she is acting only under the direction and control of others and exercises no substantial, independent role in arranging or directing the transactions in question.⁵

[CONTROLLED SUBSTANCE ORGANIZATION means four or more persons sharing a common purpose to engage in conduct that constitutes or advances the commission of (specify.)]⁶

[DIRECTOR means a person who is the principal administrator, organizer, or leader of a controlled substance organization or one of several principal administrators, organizers, or leaders of a controlled substance organization.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 from (specify time period), in the county of (county)⁸, defendant, (defendant's name), as a profiteer, knowingly and

⁵ See Penal Law § 220.00(20).

⁶ See Penal Law § 220.00(18). The statute reads "a felony under this article," and the judge should insert here the appropriate crime(s), for example, "a knowing and unlawful sale of a controlled substance."

⁷ See Penal Law § 220.00(19).

⁸ With respect to the county wherein the crime is alleged to have been committed, if venue or jurisdiction is at issue, the trial judge is advised to charge the applicable Venue charge contained in the General Charges section.

unlawfully sold, on one or more occasions within six months or less, a narcotic drug; and

2. that the proceeds collected or due from such sale or sales had a total aggregate value of seventy-five thousand dollars or more.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Operating as a Major Trafficker as charged in the ____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Operating as a Major Trafficker as charged in the ____ count.