

**SCHEME TO DEFRAUD THE STATE
BY UNLAWFULLY SELLING PRESCRIPTIONS
Penal Law § 190.70
(Committed on or after April 2, 1992)**

The (*specify*) count is Scheme to Defraud the State by Unlawfully Selling Prescriptions.

Under our law, a person is guilty of Scheme to Defraud the State by Unlawfully Selling Prescriptions when he or she engages, with intent to defraud the state, in a scheme constituting a systematic, ongoing course of conduct¹ to make, sell, deliver for sale or offer for sale one or more prescriptions.

Select appropriate alternative:

and so obtains goods or services from the state with a value in excess of one thousand dollars or

causes the state to reimburse another in excess of one thousand dollars for the delivery of such goods or services

The following term used in that definition has a special meaning:

INTENT means conscious objective or purpose. Thus, a person acts with intent to defraud the state when that person's conscious objective or purpose is to do so.²

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,

¹ The term "course of conduct" is used in other statutes. As used in the crimes of "stalking," it has been held that it was not error to decline to define the term. See *People v Dickson*, 82 AD3d 1289, 1291 (3d Dept. 2011). On the other hand, *People v Ubbink*, 120 AD3d 1574, 1575-76 (4th Dept. 2014), noted, and a court may wish to charge, that "course of conduct" constitutes "a series of acts 'evidencing a continuity of purpose'" (*quoting People v Payton*, 161 Misc 2d 170, 174 (Crim Ct., Kings County, 1994)). See also *People v Murray*, 167 Misc2d 857 (Crim. Ct., N.Y. County, 1995); *People v Monroe*, 183 Misc2d 374 (Crim. Ct., N.Y. County, 2000). For an example of facts constituting a "course of conduct" for a stalking crime, see *People v Stuart*, 100 NY2d 412 (2003).

² See Penal Law § 15.05(1).

beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name) engaged in a scheme constituting a systematic, ongoing course of conduct to make, sell, deliver for sale or offer for sale one or more prescriptions;
2. That the defendant did so with intent to defraud the state; and
3. Select appropriate alternative:

That the defendant thereby obtained goods or services from the state with a value in excess of one thousand dollars (\$1000).

That the defendant thereby caused the state to reimburse another in excess of one thousand dollars (\$1000) for the delivery of such goods or services.

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

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