

FELONIOUSLY DISPENSING A CONTROLLED SUBSTANCE (PRACTITIONER OR REGISTRANT)¹--LESSER INCLUDED OFFENSE. G.S. 90-108(a)(2) and (b); 90-106. FELONY; MISDEMEANOR.

NOTE WELL: Use this instruction where there is evidence that the defendant transferred a controlled substance, and there was some order, but the substance was not prescribed within the normal course of the professional practice of the person who gave the order. Use this instruction also when there is evidence that the defendant only prescribed the substance and did not handle it at all.

The defendant has been charged with feloniously dispensing (name substance), a controlled substance.

For you to find the defendant guilty of this offense, the state must prove five things beyond a reasonable doubt:

First, that the defendant was a [licensed (describe type of practitioner, e.g., physician)] [a registered (describe type of registrant, e.g., scientific investigator)].

Second, that the defendant prescribed some controlled substance to [(name person)] [a person whose name is not known].

Third, that the substance which the defendant prescribed was (name substance). (Name substance) is a controlled substance.

Fourth, that the defendant's prescribing (name substance)

¹"Practitioners" and "registrants" are punished under G.S. 108(a)(2), but only when they "distribute" a controlled substance without a written order, or when they "dispense" a controlled substance outside the normal course of their profession. S v. Best, 292 N.C. 294 (1977).

FELONIOUSLY DISPENSING A CONTROLLED SUBSTANCE (PRACTITIONER OR REGISTRANT)--LESSER INCLUDED OFFENSE. G.S. 90-108(a)(2) and (b); 90-106. FELONY; MISDEMEANOR. (Continued.)

[to] [for] [(*name person*)] [the unknown person] was outside the normal course of the professional practice of a (*name defendant's occupation*) within North Carolina and was not for a legitimate medical or scientific purpose.

And Fifth, the state must prove beyond a reasonable doubt that the defendant's violation was committed intentionally.²

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant was a [licensed (*name type of practitioner*)] [registered (*name type of registrant*)] and that the defendant dispensed (*name substance*), a controlled substance, [to] [for] [(*name person*)] [an unknown person] and that this was done intentionally and that doing so under these circumstances was outside the normal course of the professional practice of a (*describe profession*) in this State and was not for a legitimate medical or scientific purpose, it would be your duty to return a verdict of guilty of feloniously dispensing a controlled substance. If you do not so find, or if you have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty of feloniously dispensing a controlled substance, but would consider whether the defendant is guilty of misdemeanor dispensing a controlled substance. Misdemeanor

²For a definition of intent see N.C.P.I.--Crim. 120.10.

FELONIOUSLY DISPENSING A CONTROLLED SUBSTANCE (PRACTITIONER OR REGISTRANT)--LESSER INCLUDED OFFENSE. G.S. 90-108(a)(2) and (b); 90-106. FELONY; MISDEMEANOR. (Continued.)

dispensing a controlled substance differs from feloniously dispensing a controlled substance only in that the State need not prove that the defendant acted intentionally.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant was a [licensed (*name type of practitioner*)] [registered (*name type of registrant*)] and that the defendant dispensed (*name substance*), a controlled substance, [to] [for] [(*name person*)] [an unknown person] and that doing so under these circumstances was outside the normal course of the professional practice of a (*describe occupation*) in this State and was not for a legitimate medical or scientific purpose, it would be your duty to return a verdict of guilty of misdemeanor dispensing a controlled substance. If you do not so find, or if you have a reasonable doubt as to one or more of these things, you would return a verdict of not guilty.

