

6100 OBTAINING A PRESCRIPTION DRUG BY FRAUD — § 450.11(7)**Statutory Definition of the Crime**

Section 450.11(7) of the Wisconsin Statutes is violated by one who obtains a prescription drug by willful misrepresentation.¹

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant obtained a prescription drug.

A prescription drug is a drug intended for use by humans or animals that is available only on the prescription of a practitioner licensed to administer that drug.²

2. The defendant knew or believed that the substance was a prescription drug.³
3. The defendant obtained the prescription drug by a willful misrepresentation.

This requires that the defendant intended to deceive (name person) and intended to induce (name person) to rely and act on the misrepresentation.

This element also requires that (name person) was deceived by the misrepresentation. (Name person) must have been induced to and must have in

fact parted with possession of the prescription drug in reliance upon the misrepresentation.

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent or knowledge. Intent and knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 6100 was originally published in 1996. This revision was approved by the Committee in June 2004 and involved adoption of a new format and revisions in the Comment.

This instruction is for one type of violation defined in § 450.11(7)(a), which reads as follows:

No person may obtain or attempt to obtain a prescription drug, or procure or attempt to procure the administration of a prescription drug, by fraud, deceit or willful misrepresentation or by forgery or alteration of a prescription order; or by willful concealment of a material fact; or by use of a false name or address.

A similar violation relating to controlled substances is defined in § 961.43(1)(a). See Wis JI-Criminal 6038.

Violations of § 450.11(7) are punishable by a fine of not more than \$500 or imprisonment for not more than 6 months, or both. § 450.11(9)(a). Violations resulting in delivery, or possession with intent to manufacture or deliver, are punishable as a Class H felony. For an instruction on offenses involving possession with intent to deliver, adding the fourth element of Wis JI-Criminal 6035 to this instruction should provide a usable model.

1. This statement of the offense selects from the various alternatives presented by the statute. See the Comment preceding this footnote. The statute prohibits obtaining or attempting to obtain a prescription drug and procuring or attempting to procure the administration of a prescription drug by fraud, deceit, willful misrepresentation, forgery, alteration of a prescription order, concealment of a material fact, or use of a false name or address.

2. Section 450.01(20)(a) provides that "prescription drug" means "any drug, drug product or drug-containing preparation which is subject to 21 USC 353(b) or 21 CFR 201.105." Sub. (20)(b) of the same statute provides that for purposes of other subsections of § 450.11 certain controlled substances may be considered prescription drugs, but sub. (7) is not one of those subsections.

21 USC 353(b) reads as follows:

- (1) A drug intended for use by man which C
 - (A) is a habit-forming drug to which 21 USC § 351(d) applies; or
 - (B) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or
 - (C) is limited by an approved application under 21 USC § 355 to use under the professional supervision of a practitioner licensed by law to administer such drug, shall be dispensed only (i) upon a written prescription of a practitioner licensed by law to administer such drug, or (ii) upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or (iii) by refilling any such a written or oral prescription if such refilling is authorized by the prescriber . . .

21 CFR 201.105 Veterinary Drugs, reads as follows:

A drug subject to the requirement of section 504(f)(1) of the act shall be exempt from section 502(f) of the act if all the following conditions are met:

- (a) The drug is:
 - (1)(I) In the possession of a person (or his agents or employees) regularly and lawfully engaged in the manufacture, transportation, storage, or wholesale distribution of drugs that are to be used only by or on the prescription or other order of a licensed veterinarian; or . . .

In the Committee's judgment, these definitions boil down to the one suggested in the instruction: "a drug intended for use by humans or animals that is available only on the prescription of a practitioner licensed to administer that drug."

3. This element is based on Wis JI-Criminal 6038, Acquiring Possession Of A Controlled Substance By Misrepresentation. A knowledge element like this is added to all the controlled substance instructions because of case law. See, for example, State v. Sartin, 200 Wis.2d 47, 547 N.W.2d 449 (1996).