## STATE OF NEW YORK

2814

2017-2018 Regular Sessions

## IN SENATE

January 17, 2017

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to criminal diversion of prescription medications and prescriptions, establishing the offense of fraudulent prescription, dispensing and procurement of non-controlled substance prescription medications and devices, and establishing the offense of unlawful possession of non-controlled substance prescription medications and devices

## The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 178.00 of the penal law, as added by chapter 81 of 2 the laws of 1995, is amended to read as follows: 3 § 178.00 Criminal diversion of prescription medications and 4 prescriptions; definitions. 5 The following definitions are applicable to this article: б 1. "Prescription medication or device" means any article for which a prescription is required in order to be lawfully sold, delivered or 7 distributed by any person authorized by law to engage in the practice of 8 9 the profession of pharmacy. 10 2. "Prescription" means a direction or authorization by means of a 11 written prescription form, electronic prescription or an oral prescription which permits a person to lawfully obtain a prescription 12 13 medication or device from any person authorized to dispense such prescription medication or device. 14 15 3. "Prescription form" means an official state prescription form 16 authorized by a state for use by health practitioners authorized to 17 write prescriptions. 18 4. "Criminal diversion act" means an act or acts in which a person 19 knowingly:

EXPLANATION--Matter in <u>italics</u> (underscored) is new; matter in brackets [-] is old law to be omitted.

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1	(a) transfers or delivers, in exchange for anything of pecuniary
2	value, a prescription medication or device with knowledge or reasonable
3	grounds to know that the recipient has no medical need for it; or
4	(b) receives, in exchange for anything of pecuniary value, a
5	prescription medication or device with knowledge or reasonable grounds
б	to know that the seller or transferor is not authorized by law to sell
7	or transfer such prescription medication or device; or
8	(c) <u>receives</u> , in exchange for anything of pecuniary value, a
9	prescription medication or device, prescription, or prescription form
10	from a law enforcement officer acting in an undercover capacity or his
11	or her agent, believing or having reasonable ground to believe that the
12	officer or his or her agent is someone who is not authorized by law to
13	sell or transfer such prescription medication or device, prescription,
14	or prescription form; or
15	(d) transfers or delivers a prescription <u>or prescription form</u> in
16	exchange for anything of pecuniary value; or
17	[(d)] (e) receives a prescription <u>or prescription form</u> in exchange for
18	anything of pecuniary value.
19	§ 2. Paragraph (c) of subdivision 1 of section 178.05 of the penal
20	law, as added by chapter 81 of the laws of 1995, is amended and two new
	paragraphs (d) and (e) are added to read as follows:
21	
22	(c) a person acting in good faith who is seeking [treatment for a
23	medical condition or assisting another person to obtain treatment for a
24	medical condition to obtain a prescription, prescription medication or
25	device that has been lawfully prescribed to him or her, and for which he
26	or she has a medical need; or
27	(d) a person acting in good faith, who reasonably believes that he or
20	she is essisting enother newson to obtain a nuclearintian prosperintion
28	she is assisting another person to obtain a prescription, prescription
29	medication or device that has been lawfully prescribed to that other
29 30	medication or device that has been lawfully prescribed to that other person; or
29 30 31	<pre>medication or device that has been lawfully prescribed to that other person; or   (e) a duly registered manufacturer or wholesaler of drugs, as defined</pre>
29 30 31 32	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good</pre>
29 30 31 32 33	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business.</pre>
29 30 31 32 33 34	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the</pre>
29 30 31 32 33 34 35	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows:</pre>
29 30 31 32 33 34 35 36	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and</pre>
29 30 31 32 33 34 35 36 37	<pre>medication or device that has been lawfully prescribed to that other person; or   (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business.   § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows:   § 178.10 Criminal diversion of prescription medications and</pre>
29 30 31 32 33 34 35 36 37 38	<pre>medication or device that has been lawfully prescribed to that other person; or   (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business.   § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows:   § 178.10 Criminal diversion of prescription medications and</pre>
29 30 31 32 33 34 35 36 37 38 39	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree. A person is guilty of criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree when he or she commits a</pre>
29 30 31 32 33 34 35 36 37 38 39 40	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree. A person is guilty of criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree when he or she commits a criminal diversion act.</pre>
29 30 31 32 33 34 35 36 37 38 39 40 41	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree. A person is guilty of criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree when he or she commits a criminal diversion act. Criminal diversion of prescriptions and prescriptions in</pre>
29 30 31 32 33 34 35 36 37 38 39 40 41 42	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree. A person is guilty of criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree when he or she commits a criminal diversion act. Criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree and prescriptions in the [fourth] fifth degree is a class A misdemeanor.</pre>
29 30 31 32 33 34 35 36 37 38 39 40 41 42 43	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree. A person is guilty of criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree when he or she commits a criminal diversion act. Criminal diversion of prescriptions and prescriptions in the [fourth] fifth degree is a class A misdemeanor. § 4. Section 178.15 of the penal law, as added by chapter 81 of the</pre>
29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and</pre>
29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45	<pre>medication or device that has been lawfully prescribed to that other person: or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and</pre>
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$\begin{array}{c} 29\\ 30\\ 31\\ 32\\ 33\\ 34\\ 35\\ 36\\ 37\\ 38\\ 39\\ 40\\ 42\\ 43\\ 44\\ 45\\ 46\\ 47\\ \end{array}$	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and</pre>
$\begin{array}{c} 29\\ 30\\ 31\\ 32\\ 33\\ 34\\ 35\\ 36\\ 37\\ 38\\ 39\\ 40\\ 42\\ 43\\ 445\\ 46\\ 47\\ 48\end{array}$	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and</pre>
$\begin{array}{c} 2  9 \\ 3  0 \\ 3  1 \\ 3  2 \\ 3  3 \\ 3  4 \\ 3  5 \\ 3  7 \\ 3  8 \\ 3  9 \\ 4  1 \\ 4  2 \\ 4  4 \\ 4  5 \\ 4  6 \\ 4  7 \\ 4  8 \\ 4  9 \end{array}$	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and</pre>
$\begin{array}{c} 29\\ 30\\ 31\\ 32\\ 33\\ 34\\ 35\\ 36\\ 37\\ 38\\ 39\\ 40\\ 42\\ 43\\ 445\\ 46\\ 47\\ 48\end{array}$	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and</pre>
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$\begin{array}{c} 2  9 \\ 3  0 \\ 3  1 \\ 3  2 \\ 3  3 \\ 3  4 \\ 3  5 \\ 3  7 \\ 3  3 \\ 3  9 \\ 4  1 \\ 4  2 \\ 4  4 \\ 4  5 \\ 4  7 \\ 4  9 \\ 5  1 \\ 5  2 \end{array}$	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and</pre>
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$\begin{array}{c} 2  9 \\ 3  0 \\ 3  1 \\ 3  2 \\ 3  3 \\ 3  4 \\ 3  5 \\ 3  7 \\ 3  3 \\ 3  9 \\ 4  1 \\ 4  2 \\ 4  4 \\ 4  5 \\ 4  7 \\ 4  9 \\ 5  1 \\ 5  2 \end{array}$	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree. A person is guilty of criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree when he or she commits a criminal diversion act. Criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree is a class A misdemeanor. § 4. Section 178.15 of the penal law, as added by chapter 81 of the law of 1995, is amended to read as follows: § 178.15 Criminal diversion of prescription medications and prescriptions in the [third] fourth degree. A person is guilty of criminal diversion of prescription medications and prescriptions in the [third] fourth degree. A person is guilty of criminal diversion of prescription medications and prescriptions in the [third] fourth degree. A person is guilty of criminal diversion of prescription medications and prescriptions in the [third] fourth degree when he or she: 1. commits a criminal diversion act, and the value of the benefit exchanged is in excess of one thousand dollars; or 2. commits the crime of criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree, and has previously been convicted of [the orime of criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree.] an offense defined in this</pre>
$\begin{array}{c} 2  9 \\ 3  0 \\ 3  1 \\ 3  2 \\ 3  3 \\ 3  4 \\ 3  5 \\ 3  7 \\ 3  3 \\ 3  9 \\ 4  1 \\ 4  2 \\ 4  4 \\ 4  5 \\ 5  1 \\ 5  2 \\ 5  3 \end{array}$	<pre>medication or device that has been lawfully prescribed to that other person; or (e) a duly registered manufacturer or wholesaler of drugs, as defined in article one hundred thirty-seven of the education law, acting in good faith in the lawful course of his or her business. § 3. Section 178.10 of the penal law, as added by chapter 81 of the laws of 1995, is amended to read as follows: § 178.10 Criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree. A person is guilty of criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree when he or she commits a criminal diversion of prescription and prescriptions in the [fourth] fifth degree is a class A misdemeanor. § 4. Section 178.15 of the penal law, as added by chapter 81 of the law of 1995, is amended to read as follows: § 178.15 Criminal diversion of prescription medications and prescriptions in the [third] fourth degree. A person is guilty of criminal diversion of prescription medications and prescriptions in the [third] fourth degree. A person is guilty of criminal diversion of prescription medications and prescriptions in the [third] fourth degree. A person is guilty of criminal diversion of prescription medications and prescriptions in the [third] fourth degree. A person is guilty of criminal diversion of prescription medications and prescriptions in the [third] fourth degree when he or she: 1. commits a criminal diversion act, and the value of the benefit exchanged is in excess of one thousand dollars; or 2. commits the crime of criminal diversion of prescription medications and prescriptions in the [fourth] fifth degree, and has previously been convicted of [the orime of oriminal diversion of prescription medications</pre>

1	3. commits the crime of criminal diversion of prescription medications
2	and prescriptions in the fifth degree on two or more occasions over a
3	thirty-five day period.
4	Criminal diversion of prescription medications and prescriptions in
5	the [third] fourth degree is a class E felony.
б	§ 5. Section 178.20 of the penal law, as added by chapter 81 of the
7	laws of 1995, is amended to read as follows:
8	§ 178.20 Criminal diversion of prescription medications and
9	prescriptions in the [second] third degree.
10	A person is guilty of criminal diversion of prescription medications
11	and prescriptions in the [second] third degree when he or she:
12	<u>1.</u> commits a criminal diversion act, and the value of the benefit
13	exchanged is in excess of three thousand dollars; or
14	2. commits the crime of criminal diversion of prescription medications
15	and prescriptions in the fifth degree on four or more occasions over a
16	thirty-five day period; or
17	<u>3. commits the crime of criminal diversion of prescription medica-</u>
18	tions and prescriptions in the fifth degree, and is:
19	(a) a physician or other person authorized to issue a prescription; or
20	(b) a pharmacist or other person authorized to dispense prescription
20	medications and devices.
22	Criminal diversion of prescription medications and prescriptions in
23	the [second] third degree is a class D felony.
24	§ 6. Section 178.25 of the penal law, as added by chapter 81 of the
25	laws of 1995, is amended to read as follows:
26	§ 178.25 Criminal diversion of prescription medications and
20	prescriptions in the [first] second degree.
28	A person is guilty of criminal diversion of prescription medications
29	and prescriptions in the [first] second degree when he or she:
30	<u>1.</u> commits a criminal diversion act, and the value of the benefit
31	exchanged is in excess of fifty thousand dollars; or
32	2. commits the crime of criminal diversion of prescription medications
33	and prescriptions in the fifth degree on six or more occasions over a
34	thirty-five day period; or
35	<u>3. commits the crime of criminal diversion of prescription medications</u>
36	and prescriptions in the fifth degree on two or more occasions over a
37	ninety day period, and is:
38	(a) a physician or other person authorized to issue a prescription; or
39	(b) a pharmacist or other person authorized to dispense prescription
40	medications and devices.
41	Criminal diversion of prescription medications and prescriptions in
42	the [first] second degree is a class C felony.
43	§ 7. The penal law is amended by adding a new section 178.30 to read
44	as follows:
45	§ 178.30 Criminal diversion of prescription medications and
46	prescriptions in the first degree.
40 47	<u>A person is quilty of criminal diversion of prescription medications</u>
48	and prescriptions in the first degree when he or she commits the crime
49	of criminal diversion of prescription medications or prescriptions in
50	the fifth degree on five or more occasions over a ninety day period, and
50	is:
52	(a) a physician or other person authorized to issue a prescription; or
52 53	(b) a pharmacist or other person authorized to issue a prescription; of
53 54	medications and devices.
55	<u>Criminal diversion of prescription medications and prescriptions in</u>
56	the first degree is a class B felony.
	<u></u>

1	$\S$ 8. The penal law is amended by adding a new article 178-A to read as
2	follows:
3	ARTICLE 178-A
4	FRAUDULENT PRESCRIPTION, DISPENSING AND PROCUREMENT OF
5	NON-CONTROLLED SUBSTANCE PRESCRIPTION MEDICATIONS AND DEVICES
6	Section 178.50 Definitions.
7	178.55 Fraudulent prescription, dispensing and procurement of
8	non-controlled substance prescription medications and
9	devices in the third degree.
10	178.60 Fraudulent prescription, dispensing and procurement of
11	non-controlled substance prescription medications and
12	devices in the second degree.
13	178.65 Fraudulent prescription, dispensing and procurement of
14	non-controlled substance prescription medications and
15	devices in the first degree.
16	§ 178.50 Definitions.
17	The following definitions are applicable to this article:
18	1. "Prescription medication or device" means any article for which a
19	prescription is required in order to be lawfully sold, delivered or
20	distributed by any person authorized by law to engage in the practice of
21	the profession of pharmacy.
22	2. "Prescription" means a direction or authorization by means of a
23	written prescription form, an electronic prescription or an oral
24	prescription which permits a person to lawfully obtain a prescription
25	medication or device from any person authorized to dispense such
26	prescription medication or device.
27	3. "Controlled substance" means any substance listed in schedule I,
28	II, III, IV or V of section thirty-three hundred six of the public
29	health law other than marihuana, but including concentrated cannabis as
30	defined in paragraph (a) of subdivision four of section thirty-three
31	hundred two of such law.
32	4. "Dispensing" and "dispenses" refer to the dispensing of a
33 34	prescription medication or device from or within a pharmacy, hospital,
34 35	physician's office, clinic or other pharmaceutical or medical facility. § 178.55 Fraudulent prescription, dispensing and procurement of non-
35 36	<u>controlled substance prescription medications and devices in</u>
30 37	the third degree.
38	<u>A person is guilty of fraudulent prescription, dispensing and procure-</u>
30 39	ment of non-controlled substance prescription medications and devices in
40	the third degree when he or she:
40 41	<u>1. issues a written, electronic or oral prescription for a non-cont-</u>
42	rolled substance prescription medication or device, and is not a duly
43	licensed physician or other person authorized to issue such
44	prescription; or
45	2. dispenses a non-controlled substance prescription medication or
46	device, with knowledge or reasonable grounds to know that:
47	(a) the person for whom the medication or device has been prescribed
48	has no medical need for such medication or device; or
49	(b) no prescription for such medication or device was issued by a duly
50	licensed physician or other person authorized to issue such
51 51	prescription; or
52	(c) the prescription for such medication or device was forged; or
53	(d) the prescription for such medication or device was issued by a
54	<u>duly licensed physician or other person authorized to issue such</u>
55	prescription who was acting other than in good faith in the lawful
56	course of his or her professional practice; or

3. presents or submits a prescription for a non-controlled substance 1 prescription medication or device to, or receives a non-controlled 2 substance prescription medication or device from, a duly licensed phar-3 4 macist or other person authorized to dispense such prescription medica-5 tion or device, with knowledge or reasonable grounds to know that: б (a) the person for whom the medication or device has been prescribed 7 has no medical need for such medication or device; or 8 (b) the prescription for such medication or device was not issued by a 9 duly licensed physician or other person authorized to issue such 10 prescription; or 11 (c) the prescription for such medication or device was forged; or (d) the prescription for such medication or device was issued by a 12 duly licensed physician or other person authorized to issue such 13 14 prescription who was acting other than in good faith in the lawful course of his or her professional practice. 15 16 Fraudulent prescription, dispensing and procurement of non-controlled 17 substance prescription medications and devices in the third degree is a <u>class D felony.</u> 18 19 § 178.60 Fraudulent prescription, dispensing and procurement of non-20 controlled substance prescription medications and devices in 21 the second degree. 22 A person is guilty of fraudulent prescription, dispensing and procurement of non-controlled substance prescription medications and devices in 23 24 the second degree when he or she: 25 1. being a duly licensed physician or other person authorized to issue 26 a prescription, issues a written, electronic or oral prescription for a 27 non-controlled substance prescription medication or device, or dispenses a non-controlled substance prescription medication or device: 28 29 (a) with knowledge or reasonable grounds to know that the person for 30 whom the prescription is issued, or to whom the medication is dispensed, 31 has no medical need for the medication or device that is being 32 prescribed; or 33 (b) other than in good faith in the lawful course of his or her professional practice; or 34 35 2. being a duly licensed pharmacist or other person authorized to dispense a prescription medication or device, dispenses a non-controlled 36 substance prescription medication or device: 37 38 (a) with knowledge or reasonable grounds to know that: 39 (i) the person for whom the medication or device has been prescribed has no medical need for such medication or device; or 40 (ii) the prescription for such medication or device was not issued by 41 42 duly licensed physician or other person authorized to issue such а 43 prescription; or 44 (iii) the prescription for such medication or device was forged; or 45 (iv) the prescription for such medication or device was issued by а 46 duly licensed physician or other person authorized to issue such 47 prescription who was acting other than in good faith in the lawful 48 course of his or her professional practice; or (b) other than in good faith, in the course of his or her lawful 49 professional practice. 50 51 Fraudulent prescription, dispensing and procurement of non-controlled 52 substance prescription medications and devices in the second degree is a 53 class C felony. § 178.65 Fraudulent prescription, dispensing and procurement of non-54 55 controlled substance prescription medications and devices in 56 the first degree.

1	A person is guilty of fraudulent prescription, dispensing and procure-
2	ment of non-controlled substance prescription medications and devices in
3	the first degree when he or she, being either a duly licensed physician
4	or other person authorized to issue a prescription, or a duly licensed
5	pharmacist or other person authorized to dispense a prescription medica-
6	tion or device, commits the crime of fraudulent prescription, dispensing
7	and procurement of non-controlled substance prescription medications and
8	devices in the second degree on two or more occasions within a ninety
9	day period.
10	Fraudulent prescription, dispensing and procurement of non-controlled
11	substance prescription medications and devices in the first degree is a
12	<u>class B felony.</u>
13	§ 9. Title M of the penal law is amended by adding a new article 219
14	to read as follows:
15	ARTICLE 219
16	UNLAWFUL POSSESSION OF NON-CONTROLLED SUBSTANCE PRESCRIPTION
17	MEDICATIONS AND DEVICES
18	Section 219.00 Definitions.
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30	prescription medications and devices in the second
31	degree.
32	219.30 Unlawful possession of non-controlled substance
33	prescription medications and devices in the first
34	degree.
35	<u>§ 219.00 Definitions.</u>
36	The following definitions are applicable to this article:
37	1. "Prescription medication or device" means any article for which a
38	prescription is required in order to be lawfully sold, delivered or
39	distributed by any person authorized by law to engage in the practice of
40	the profession of pharmacy.
41	2. "Prescription" means a direction or authorization by means of a
42	written prescription form, an electronic prescription or an oral
43	prescription which permits a person to lawfully obtain a prescription
44	medication or device from any person authorized to dispense such
45	prescription medication or device.
46	3. "Controlled substance" means any substance listed in schedule I,
47	II, III, IV or V of section thirty-three hundred six of the public
48	health law other than marihuana, but including concentrated cannabis as
49	defined in paragraph (a) of subdivision four of section thirty-three
50	hundred two of such law.
51	4. The value of a prescription medication or device shall be equiv-
52	alent to the fair market value of such medication or device on the
53	lawful retail market, at about the time and place that the crime is
54	committed.

55 <u>§ 219.05 Limitations on application of article.</u>

1	The provisions of this article restricting the unlawful possession of
2	non-controlled substance prescription medications and devices shall not
3	apply:
4	1. to common carriers or to warehousemen, while engaged in lawfully
5	transporting or storing such non-controlled substance prescription medi-
6	cations and devices, or to any employee of the same acting within the
7	scope of his or her employment; or
8	2. to public officers or their employees in the lawful performance of
9	their official duties requiring the possession or control of such non-
10	controlled substance prescription medications and devices; or
11	3. to temporary incidental possession by employees or agents of
12	persons lawfully entitled to possess such non-controlled substance
13	prescription medications and devices, or by persons whose possession is
14	for the purpose of aiding public officers in performing their official
15	duties; or
16	4. to a duly licensed physician, duly licensed pharmacist or other
17	person authorized to possess or dispense such non-controlled substance
18	prescription medications and devices, acting in good faith in the lawful
19	course of his or her profession; or
20	5. to temporary incidental possession by a person acting in good faith
21	who reasonably believes that he or she is assisting another person to
22	obtain a non-controlled substance prescription medication or device that
23	has been lawfully prescribed to that other person.
	§ 219.10 Unlawful possession of non-controlled substance prescription
24 25	
25	medications and devices in the fifth degree.
26	A person is guilty of unlawful possession of non-controlled substance
27	prescription medications and devices in the fifth degree when such
28	person knowingly possesses one or more non-controlled substance
29	prescription medications or devices which were not lawfully prescribed
29 30	prescription medications or devices which were not lawfully prescribed to him or her, under circumstances evincing an intent to sell the same;
30	to him or her, under circumstances evincing an intent to sell the same;
30 31	to him or her, under circumstances evincing an intent to sell the same; and
30 31 32	to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription
30 31 32 33	to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or
30 31 32 33 34 35	to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices.
30 31 32 33 34 35 36	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica-</pre>
30 31 32 33 34 35 36 37	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor.</pre>
30 31 32 33 34 35 36 37 38	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription</pre>
30 31 32 33 34 35 36 37 38 39	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree.</pre>
30 31 32 33 34 35 36 37 38 39 40	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance</pre>
30 31 32 33 34 35 36 37 38 39 40 41	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance prescription medications and devices in the fourth degree when he or she</pre>
30 31 32 33 34 35 36 37 38 39 40 41 42	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance prescription medications and devices in the fourth degree when he or she knowingly and unlawfully possesses one or more non-controlled substance</pre>
30 31 32 33 34 35 36 37 38 39 40 41 42 43	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance prescription medications and devices in the fourth degree when he or she knowingly and unlawfully possesses one or more non-controlled substance prescription medications and devices which were not lawfully prescribed</pre>
30 31 32 33 34 35 36 37 38 39 40 41 42 43 44	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance prescription medications and devices in the fourth degree when he or she knowingly and unlawfully possesses one or more non-controlled substance prescription medications and devices which were not lawfully prescribed to him or her; and</pre>
30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance prescription medications and devices in the fourth degree when he or she knowingly and unlawfully possesses one or more non-controlled substance prescription medications and devices which were not lawfully prescribed to him or her; and 1. The aggregate value of such non-controlled substance prescription</pre>
30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance prescription medications and devices in the fourth degree when he or she knowingly and unlawfully possesses one or more non-controlled substance prescription medications and devices which were not lawfully prescribed to him or her; and 1. The aggregate value of such non-controlled substance prescription medications and devices five hundred dollars; or</pre>
30 31 32 33 35 36 37 38 39 40 41 42 43 445 46 47	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance prescription medications and devices in the fourth degree when he or she knowingly and unlawfully possesses one or more non-controlled substance prescription medications and devices which were not lawfully prescribed to him or her; and 1. The aggregate value of such non-controlled substance prescription medications and devices five hundred dollars; or 2. He or she possesses fifty or more pills, tablets or capsules of</pre>
30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance prescription medications and devices in the fourth degree when he or she knowingly and unlawfully possesses one or more non-controlled substance prescription medications and devices which were not lawfully prescribed to him or her; and 1. The aggregate value of such non-controlled substance prescription medications and devices five hundred dollars; or 2. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medicat</pre>
30 31 32 33 35 36 37 38 39 40 41 42 43 445 46 47	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance prescription medications and devices in the fourth degree when he or she knowingly and unlawfully possesses one or more non-controlled substance prescription medications and devices which were not lawfully prescribed to him or her; and 1. The aggregate value of such non-controlled substance prescription medications and devices five hundred dollars; or 2. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses a non-controlled substance prescription medication</pre>
30 31 32 33 35 36 37 38 39 40 41 42 43 445 46 47 48	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance prescription medications and devices in the fourth degree when he or she knowingly and unlawfully possesses one or more non-controlled substance prescription medications and devices which were not lawfully prescribed to him or her; and 1. The aggregate value of such non-controlled substance prescription medications and devices five hundred dollars; or 2. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medicat</pre>
30 31 32 33 35 36 37 38 40 41 42 43 45 46 47 48 49	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance prescription medications and devices in the fourth degree when he or she knowingly and unlawfully possesses one or more non-controlled substance prescription medications and devices which were not lawfully prescribed to him or her; and 1. The aggregate value of such non-controlled substance prescription medications and devices five hundred dollars; or 2. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses a non-controlled substance prescription medication</pre>
30 312 334 35 36 37 39 41 423 445 467 489 50	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance prescription medications and devices in the fourth degree when he or she knowingly and unlawfully possesses one or more non-controlled substance prescription medications and devices which were not lawfully prescribed to him or her; and 1. The aggregate value of such non-controlled substance prescription medications and devices five hundred dollars; or 2. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses a non-controlled substance prescription medications and devices; or 3. He or she possesses a non-controlled substance prescription medication medications and devices; or 3. He or she possesses a non-controlled substance prescription medication medication medications and devices; or 3. He or she possesses a non-controlled substance prescription medication medication function medication medications and devices; or 3. He or she possesses a non-controlled substance prescription medica- tion or device with an intent to sell it; or</pre>
30 312 33 35 36 37 38 40 412 435 46 47 489 50 51	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance prescription medications and devices in the fourth degree when he or she knowingly and unlawfully possesses one or more non-controlled substance prescription medications and devices which were not lawfully prescribed to him or her; and 1. The aggregate value of such non-controlled substance prescription medications and devices five hundred dollars; or 2. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses a non-controlled substance prescription medica- tion or device with an intent to sell it; or 4. He or she commits the crime of unlawful possession of non-cont-</pre>
30 312 334 35 36 3739 412 434 456 4789 512 52	<pre>to him or her, under circumstances evincing an intent to sell the same; and 1. The aggregate value of such non-controlled substance prescription medications and devices exceeds two hundred dollars; or 2. He or she possesses twenty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices. Unlawful possession of non-controlled substance prescription medica- tions and devices in the fifth degree is a class A misdemeanor. § 219.15 Unlawful possession of non-controlled substance prescription medications and devices in the fourth degree. A person is guilty of unlawful possession of non-controlled substance prescription medications and devices in the fourth degree when he or she knowingly and unlawfully possesses one or more non-controlled substance prescription medications and devices which were not lawfully prescribed to him or her; and 1. The aggregate value of such non-controlled substance prescription medications and devices five hundred dollars; or 2. He or she possesses fifty or more pills, tablets or capsules of such non-controlled substance prescription medications and devices; or 3. He or she possesses a non-controlled substance prescription medica- tion or device with an intent to sell it; or 4. He or she commits the crime of unlawful possession of non-cont- rolled prescription medications and devices in the fifth degree, and has</pre>

1	§ 219.20 Unlawful possession of non-controlled substance prescription
2	medications and devices in the third degree.
3	A person is guilty of unlawful possession of non-controlled substance
4	prescription medications and devices in the third degree when he or she
5	knowingly and unlawfully possesses one or more non-controlled substance
6	prescription medications and devices which were not lawfully prescribed
7	to him or her; and
8	1. The aggregate value of such non-controlled substance prescription
9	medications and devices exceeds fifteen hundred dollars; or
10	2. He or she possesses one hundred fifty or more pills, tablets or
11	capsules of such non-controlled substance prescription medications and
12	devices.
13	Unlawful possession of non-controlled substance prescription medica-
14	tions and devices in the third degree is a class D felony.
15	§ 219.25 Unlawful possession of non-controlled substance prescription
16	medications and devices in the second degree.
17	A person is guilty of unlawful possession of non-controlled substance
18	prescription medications and devices in the second degree when he or she
19	knowingly and unlawfully possesses one or more non-controlled substance
20	prescription medications and devices which were not lawfully prescribed
21	to him or her; and
22	1. The aggregate value of such non-controlled substance prescription
23	medications and devices exceeds ten thousand dollars; or
24	2. He or she possesses one thousand or more pills, tablets or capsules
25	of such non-controlled substance prescription medications and devices.
26	Unlawful possession of non-controlled substance prescription medica-
27	tions and devices in the second degree is a class C felony.
28	§ 219.30 Unlawful possession of non-controlled substance prescription
29	medications and devices in the first degree.
30	A person is guilty of unlawful possession of non-controlled substance
31	prescription medications and devices in the first degree when he or she
32	knowingly and unlawfully possesses one or more non-controlled substance
33	prescription medications and devices which were not lawfully prescribed
34	to him or her; and
35	1. The aggregate value of such non-controlled substance prescription
36	medications and devices exceeds one hundred thousand dollars; or
37	2. He or she possesses ten thousand or more pills, tablets or capsules
38	of such non-controlled substance prescription medications and devices.
39	Unlawful possession of non-controlled substance prescription medica-
40	tions and devices in the first degree is a class B felony.
41	§ 10. This act shall take effect on the ninetieth day after it shall
42	have become a law.