

CHAPTER 205

AN ACT concerning prescription legend drugs and amending N.J.S.2C:35-2 and P.L.1999, c.90.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.2C:35-2 is amended to read as follows:

Definitions.

2C:35-2. Definitions. As used in this chapter:

"Administer" means the direct application of a controlled dangerous substance or controlled substance analog, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by: (1) a practitioner (or, in his presence, by his lawfully authorized agent), or (2) the patient or research subject at the lawful direction and in the presence of the practitioner.

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser but does not include a common or contract carrier, public warehouseman, or employee thereof.

"Controlled dangerous substance" means a drug, substance, or immediate precursor in Schedules I through V, any substance the distribution of which is specifically prohibited in N.J.S.2C:35-3, in section 3 of P.L.1997, c.194 (C.2C:35-5.2) or in section 5 of P.L.1997, c. 194 (C.2C:35-5.3) and any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance in the human body. When any statute refers to controlled dangerous substances, or to a specific controlled dangerous substance, it shall also be deemed to refer to any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance or the specific controlled dangerous substance, and to any substance that is an immediate precursor of a controlled dangerous substance or the specific controlled dangerous substance. The term shall not include distilled spirits, wine, malt beverages, as those terms are defined or used in R.S.33:1-1 et seq., or tobacco and tobacco products. The term, wherever it appears in any law or administrative regulation of this State, shall include controlled substance analogs.

"Controlled substance analog" means a substance that has a chemical structure substantially similar to that of a controlled dangerous substance and that was specifically designed to produce an effect substantially similar to that of a controlled dangerous substance. The term shall not include a substance manufactured or distributed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1052 (21 U.S.C. s.355).

"Counterfeit substance" means a controlled dangerous substance or controlled substance analog which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled dangerous substance or controlled substance analog, whether or not there is an agency relationship.

"Dispense" means to deliver a controlled dangerous substance or controlled substance analog to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery. "Dispenser" means a practitioner who dispenses.

"Distribute" means to deliver other than by administering or dispensing a controlled dangerous substance or controlled substance analog. "Distributor" means a person who distributes.

"Drugs" means (a) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (c) substances (other than food) intended to affect the structure or any function of the body of man or other animals; and (d) substances intended for use as a component of any article specified in subsections (a), (b) and

(c) of this section; but does not include devices or their components, parts or accessories.

"Drug or alcohol dependent person" means a person who as a result of using a controlled dangerous substance or controlled substance analog or alcohol has been in a state of psychic or physical dependence, or both, arising from the use of that controlled dangerous substance or controlled substance analog or alcohol on a continuous or repetitive basis. Drug or alcohol dependence is characterized by behavioral and other responses, including but not limited to a strong compulsion to take the substance on a recurring basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

"Hashish" means the resin extracted from any part of the plant Genus Cannabis L. and any compound, manufacture, salt, derivative, mixture, or preparation of such resin.

"Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled dangerous substance or controlled substance analog, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled dangerous substance or controlled substance analog by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled dangerous substance: (1) by a practitioner as an incident to his administering or dispensing of a controlled dangerous substance or controlled substance analog in the course of his professional practice, or (2) by a practitioner (or under his supervision) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

"Marijuana" means all parts of the plant Genus Cannabis L., whether growing or not; the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, except those containing resin extracted from such plant; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium, coca leaves, and opiates;

(b) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;

(c) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in subsections (a) and (b), except that the words "narcotic drug" as used in this act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecogine.

"Opiate" means any dangerous substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled pursuant to the provisions of section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

"Opium poppy" means the plant of the species Papaver somniferum L., except the seeds thereof.

"Person" means any corporation, association, partnership, trust, other institution or entity or one or more individuals.

"Plant" means an organism having leaves and a readily observable root formation, including, but not limited to, a cutting having roots, a rootball or root hairs.

"Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

"Practitioner" means a physician, dentist, veterinarian, scientific investigator, laboratory,

pharmacy, hospital or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled dangerous substance or controlled substance analog in the course of professional practice or research in this State.

(a) "Physician" means a physician authorized by law to practice medicine in this or any other state and any other person authorized by law to treat sick and injured human beings in this or any other state.

(b) "Veterinarian" means a veterinarian authorized by law to practice veterinary medicine in this State.

(c) "Dentist" means a dentist authorized by law to practice dentistry in this State.

(d) "Hospital" means any federal institution, or any institution for the care and treatment of the sick and injured, operated or approved by the appropriate State department as proper to be entrusted with the custody and professional use of controlled dangerous substances or controlled substance analogs.

(e) "Laboratory" means a laboratory to be entrusted with the custody of narcotic drugs and the use of controlled dangerous substances or controlled substance analogs for scientific, experimental and medical purposes and for purposes of instruction approved by the State Department of Health and Senior Services.

"Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled dangerous substance or controlled substance analog.

"Immediate precursor" means a substance which the State Department of Health and Senior Services has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled dangerous substance or controlled substance analog, the control of which is necessary to prevent, curtail, or limit such manufacture.

"Residential treatment facility" means any facility licensed and approved by the Department of Health and Senior Services and which is approved by any county probation department for the inpatient treatment and rehabilitation of drug or alcohol dependent persons.

"Schedules I, II, III, IV, and V" are the schedules set forth in sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-8) and in section 4 of P.L.1971, c.3 (C.24:21-8.1) and as modified by any regulations issued by the Commissioner of Health and Senior Services pursuant to his authority as provided in section 3 of P.L.1970, c.226 (C.24:21-3).

"State" means the State of New Jersey.

"Ultimate user" means a person who lawfully possesses a controlled dangerous substance or controlled substance analog for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

"Prescription legend drug" means any drug which under federal or State law requires dispensing by prescription or order of a licensed physician, veterinarian or dentist and is required to bear the statement "Rx only" or similar wording indicating that such drug may be sold or dispensed only upon the prescription of a licensed medical practitioner and is not a controlled dangerous substance or stramonium preparation.

"Stramonium preparation" means a substance prepared from any part of the stramonium plant in the form of a powder, pipe mixture, cigarette, or any other form with or without other ingredients.

"Stramonium plant" means the plant *Datura Stramonium* Linne, including *Datura Tatula* Linne.

2. Section 8 of P.L.1999, c.90 (C.2C:35-10.5) is amended to read as follows:

Prescription legend drugs.

8. Prescription legend drugs. a. A person who knowingly:

(1) distributes a prescription legend drug or stramonium preparation in an amount of four or fewer dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is a disorderly person;

(2) distributes for pecuniary gain or possesses or has under his control with intent to

distribute for pecuniary gain a prescription legend drug or stramonium preparation in an amount of four or fewer dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is guilty of a crime of the fourth degree;

(3) distributes or possesses or has under his control with intent to distribute a prescription legend drug or stramonium preparation in an amount of at least five but fewer than 100 dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is guilty of a crime of the third degree. Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$200,000 may be imposed; or

(4) distributes or possesses or has under his control with intent to distribute a prescription legend drug or stramonium preparation in an amount of 100 or more dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is guilty of a crime of the second degree. Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$300,000 may be imposed.

Notwithstanding the above, a violation of paragraph (1) or (3) of this subsection shall be deemed a de minimis infraction subject to dismissal pursuant to N.J.S. 2C:2-11 if the person demonstrates that the conduct involved no more than six dosage units distributed within a 24 hour period, that the prescription legend drug or stramonium preparation was lawfully prescribed for or administered to that person by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication, and that the person intended for the amount he distributed to be solely for the recipient's personal use.

b. A person who uses any prescription legend drug or stramonium preparation for a purpose other than treatment of sickness or injury as lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is a disorderly person.

c. A defendant may be convicted for a violation of subsection b. if the State proves that the defendant manifested symptoms or reactions caused by the use of prescription legend drugs or stramonium preparation. The State need not prove which specific prescription legend drug or stramonium preparation the defendant used.

d. A person who obtains or attempts to obtain possession of a prescription legend drug or stramonium preparation by forgery or deception is guilty of a crime of the fourth degree. Nothing in this section shall be deemed to preclude or limit a prosecution for theft as defined in chapter 20 of Title C of the New Jersey Statutes.

e. A person who knowingly possesses, actually or constructively:

(1) a prescription legend drug or stramonium preparation in an amount of four or fewer dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is a disorderly person; or

(2) a prescription legend drug or stramonium preparation in an amount of five or more dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is guilty of a crime of the fourth degree.

Notwithstanding the above, a violation of this subsection shall be deemed a de minimis infraction subject to dismissal pursuant to N.J.S. 2C:2-11 if the person demonstrates that he unlawfully received no more than six dosage units within a 24-hour period, that the prescription legend drug or stramonium preparation was lawfully prescribed for or administered to the person from whom he had received it, and that the person possessed the prescription legend drug or stramonium preparation for solely for his personal use.

f. Where the degree of the offense for violation of this section depends on the number of dosage units of the prescription legend drug or stramonium preparation, the number of dosage units involved shall be determined by the trier of fact. Where the indictment or accusation so provides, the number of dosage units involved in individual acts of distribution or possession with intent to distribute may be aggregated in determining the grade of the offense, whether distribution is to the same person or several persons, provided that each individual act of

distribution or possession with intent to distribute was committed within the applicable statute of limitations.

g. Subsections a. and e. of this section shall not apply to: a licensed pharmacy, licensed pharmacist, researcher, wholesaler, distributor, manufacturer, warehouseman or his representative acting within the line and scope of his employment; a physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication; a nurse acting under the direction of a physician; or a common carrier or messenger when transporting such prescription legend drug or stramonium preparation in the same unbroken package in which the prescription legend drug or stramonium preparation was delivered to him for transportation.

3. This act shall take effect immediately.

Approved August 24, 2005.