

No. _____

**In the
Supreme Court of the United States**

◆

DONOVAN DAVE DIXON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI**

Raymond C. Tarlton
Counsel of Record
209 Fayetteville Street
Suite 105
Raleigh, NC 27601
(919) 948-6464
rtarlton@tarltonpolk.com

Counsel for Petitioner

*Gibson*Moore Appellate Services, LLC
206 East Cary Street ♦ Richmond, VA 23219
804-249-7770 ♦ www.gibsonmoore.net

TABLE OF CONTENTS
Appendix

	Page:
Opinion	
United States Court of Appeals	
For The Fourth Circuit	
entered December 20, 2019.....	1a
 Judgment	
United States Court of Appeals	
For The Fourth Circuit	
entered December 20, 2019.....	7a
 21 CFR 1306.04.....	8a
 21 USCS § 802	10a
 21 USCS § 829	43a
 21 USCS § 841, Part 1 of 6.....	48a
 Excerpts of	
Transcript of Trial Proceedings Before	
The Honorable James C. Dever, III (Day 4)	
on April 16, 2018	67a

[ENTERED DECEMBER 20, 2019]

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4936

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DONOVAN DAVE DIXON,

Defendant - Appellant.

Appeal from the United States District Court for the
Eastern District of North Carolina, at Wilmington.
James C. Dever III, District Judge. (7:16-cr-00030-D-1)

Submitted: December 12, 2019

Decided: December 20, 2019

Before AGEE and THACKER, Circuit Judges, and
TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Raymond C. Tarlton, TARLTON POLK PLLC,
Raleigh, North Carolina, for Appellant. Brian A.

Benczkowski, Assistant Attorney General, Matthew S. Miner, Deputy Assistant Attorney General, Finnuala K. Tessier, Appellate Section, Criminal Division, U.S. DEPARTMENT OF JUSTICE, Washington, D.C.; Robert J. Higdon, Jr., United States Attorney, Jennifer May-Parker, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

A jury convicted Donovan Dave Dixon of conspiracy to unlawfully dispense and distribute oxycodone, oxymorphone, methadone, and alprazolam, in violation of 21 U.S.C. §§ 841(b)(1)(C), 846 (2018), and unlawfully dispensing and distributing oxycodone, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) (2018). The district court sentenced Dixon to 240 months' imprisonment. On appeal, Dixon contends that the court's jury instructions on the substantive counts were erroneous; that the Controlled Substances Act ("CSA"), 21 U.S.C. §§ 801-904 (2018), is void for vagueness as applied to physicians; and that his sentence is procedurally unreasonable. We affirm.

A jury instruction is not erroneous if, "in light of the whole record, [it] adequately informed the jury of the controlling legal principles without misleading or confusing the jury to the prejudice of the objecting party." *United States v. Miltier*, 882 F.3d 81, 89 (4th Cir.) (internal quotation marks omitted), *cert. denied*,

139 S. Ct. 130 (2018). In reviewing a challenge to the jury instructions, “we do not view a single instruction in isolation,” but instead “consider whether taken as a whole and in the context of the entire charge, the instructions accurately and fairly state the controlling law.” *United States v. Blankenship*, 846 F.3d 663, 670-71 (4th Cir. 2017) (internal quotation marks omitted).

Where, as here, the defendant failed to object to the district court’s jury instructions, we review only for plain error. *United States v. Cowden*, 882 F.3d 464, 475 (4th Cir. 2018). To succeed on his claim, Dixon “has the burden to show that: (1) there was error; (2) the error was plain; and (3) the error affected his substantial rights.” *Id.* If Dixon makes this showing, “we may exercise our discretion to correct the error only if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (brackets and internal quotation marks omitted).

We conclude that the district court did not plainly err in instructing the jury. The court’s instructions were consistent with our precedents, as well as cases from other Courts of Appeals. *See, e.g., United States v. Schneider*, 704 F.3d 1287, 1296 (10th Cir. 2013); *United States v. Hurwitz*, 459 F.3d 463, 475-77, 479 (4th Cir. 2006); *United States v. Singh*, 54 F.3d 1182, 1187 (4th Cir. 1995); *United States v. Tran Trong Cuong*, 18 F.3d 1132, 1137-39 (4th Cir. 1994); *United States v. Rosen*, 582 F.2d 1032, 1036 (5th Cir. 1978). While Dixon relies on the Supreme Court’s decision in *Gonzales v. Oregon*, 546 U.S. 243 (2006), several Courts of Appeals have determined that *Gonzales* imposed no new requirements to establish a violation of the CSA. *See United States v. Volkman*, 797 F.3d

377, 385-86 (6th Cir. 2015) (collecting cases). Accordingly, Dixon cannot establish plain error. *See United States v. Harris*, 890 F.3d 480, 491 (4th Cir. 2018) (“At a minimum, courts of appeals cannot correct an error pursuant to plain error review unless the error is clear under current law.” (brackets and internal quotation marks omitted)); *United States v. Rouse*, 362 F.3d 256, 263 (4th Cir. 2004) (recognizing, in the absence of Supreme Court or Fourth Circuit authority, “decisions by other circuit courts of appeals are pertinent to the question of whether an error is plain” (internal quotation marks omitted)). However, even if the district court plainly erred, we conclude that the evidence overwhelmingly established that Dixon’s prescription practices were not legitimate. *See United States v. Nicolaou*, 180 F.3d 565, 570 (4th Cir. 1999) (holding, on plain error review, “in order for the defense to establish that the jury misinstruction altered the outcome of the trial, it had to show that the proper instruction, on the same evidence, would have resulted in acquittal, or at the very least a hung jury.”).

Dixon also contends that the CSA is unconstitutional as applied to physicians. We review unpreserved constitutional claims for plain error. *United States v. Jackson*, 706 F.3d 264, 270 n.2 (4th Cir. 2013). “We consider whether a statute is vague as applied to the particular facts at issue, for a [defendant] who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.” *United States v. Jaensch*, 665 F.3d 83, 89 (4th Cir. 2011) (brackets and internal quotation marks omitted). Given Dixon’s flagrant conduct in this case, we conclude that Dixon cannot establish that the CSA is

vague as applied to him. Moreover, we have previously rejected a similar as-applied challenge, as have several other Courts of Appeals. *See, e.g., United States v. Orta-Rosario*, 469 F. App'x 140, 143-44 (4th Cir. 2012) (No. 10-4684); *United States v. Birbragher*, 603 F.3d 478, 488-89 (8th Cir. 2010); *United States v. Lovern*, 590 F.3d 1095, 1103 (10th Cir. 2009); *United States v. DeBoer*, 966 F.2d 1066, 1068-69 (6th Cir. 1992); *United States v. Rosenberg*, 515 F.2d 190, 197-98 (9th Cir. 1975); *United States v. Collier*, 478 F.2d 268, 270-72 (5th Cir. 1973). Thus, Dixon cannot establish plain error. *See Rouse*, 362 F.3d at 263; *see also United States v. Garcia-Lagunas*, 835 F.3d 479, 496 (4th Cir. 2016) (noting that unpublished Fourth Circuit case contradicting appellant's argument "suggests that even if the district court erred, such error was not plain").

Finally, Dixon argues that his sentence is procedurally unreasonable because the district court relied on a clearly erroneous fact—the Government's assertion that Dixon's conduct killed someone. We review a defendant's sentence "under a deferential abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007). Under the *Gall* standard, a sentence is reviewed for both procedural and substantive reasonableness. *Id.* at 51. In determining procedural reasonableness, we consider whether the district court properly calculated the defendant's advisory Sentencing Guidelines range, gave the parties an opportunity to argue for an appropriate sentence, considered the 18 U.S.C. § 3553(a) (2018) factors, relied on any clearly erroneous facts, and sufficiently explained the selected sentence. *Id.* at 49-51.

We discern no procedural error. The Government admitted that it did not introduce any evidence in the record specifically linking Dixon to any deaths. However, the expert witness testified that the dosage of oxycodone that Dixon prescribed could have killed an individual who did not have an opioid tolerance. The district court relied on this specific testimony in stating that Dixon's conduct could have resulted in someone dying. While Dixon argues that the fact that his sentence matches the mandatory minimum for a controlled substance offense resulting in death demonstrates the district court was persuaded by the Government's argument, his sentence (within the advisory Guidelines range) was also the statutory maximum sentence on Count 1. Thus, we conclude that the length of Dixon's sentence does not show that his sentence was influenced by the Government's argument.

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

[ENTERED DECEMBER 20, 2019]
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4936
(7:16-cr-00030-D-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DONOVAN DAVE DIXON

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

21 CFR 1306.04

This document is current through the May 11, 2020 issue of the Federal Register with the exception of the amendments appearing at 85 FR 27650 and 85 FR 27810. Title 3 is current through May 8, 2020.

***Code of Federal Regulations > TITLE 21 – FOOD
AND DRUGS > CHAPTER II – DRUG
ENFORCEMENT ADMINISTRATION,
DEPARTMENT OF JUSTICE > PART 1306 –
PRESCRIPTIONS > GENERAL INFORMATION***

§ 1306.04 Purpose of issue of prescription.

(a) A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

(b) A prescription may not be issued in order for an individual practitioner to obtain controlled substances for supplying the individual

practitioner for the purpose of general dispensing to patients.

(c)A prescription may not be issued for "detoxification treatment" or "maintenance treatment," unless the prescription is for a Schedule III, IV, or V narcotic drug approved by the Food and Drug Administration specifically for use in maintenance or detoxification treatment and the practitioner is in compliance with requirements in § 1301.28 of this chapter.

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

21 U.S.C. 821, 829, 831, 871(b).

History

[36 FR 7799, Apr. 24, 1971. Redesignated at 38 FR 26609, Sept. 24, 1973, and amended at 39 FR 37986, Oct. 25, 1974; 70 FR 36338, 36343, June 23, 2005]

LEXISNEXIS' CODE OF FEDERAL REGULATIONS

Copyright © 2020, by Matthew Bender & Company, a member of the LexisNexis Group. All rights reserved.

21 USCS § 802

Current through Public Law 116-140,
approved April 28, 2020.

***United States Code Service > TITLE 21. FOOD
AND DRUGS (Chs. 1 — 28) > CHAPTER 13.
DRUG ABUSE PREVENTION AND CONTROL
(§§ 801 — 971) > CONTROL AND
ENFORCEMENT (§§ 801 — 904) >
INTRODUCTORY PROVISIONS (§§ 801 — 803)***

§ 802. Definitions

As used in this title:

(1)The term “addict” means any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.

(2)The term “administer” refers to the direct application of a controlled substance to the body of a patient or research subject by—

(A)a practitioner (or, in his presence, by his authorized agent), or

(B)the patient or research subject at the direction and in the presence of the practitioner, whether such application be by injection, inhalation, ingestion, or any other means.

(3)The term “agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser; except that such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or

warehouseman, when acting in the usual and lawful course of the carrier's or warehouseman's business.

(4)The term “Drug Enforcement Administration” means the Drug Enforcement Administration in the Department of Justice.

(5)The term “control” means to add a drug or other substance, or immediate precursor, to a schedule under part B of this title, whether by transfer from another schedule or otherwise.

(6)The term “controlled substance” means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title [21 *USCS* § 812]. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954 [26 *USCS* §§ 5001 et seq.].

(7)The term “counterfeit substance” means a controlled substance 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.

(8)The terms “deliver” or “delivery” mean the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not there exists an agency relationship.

(9)The term “depressant or stimulant substance” means—

(A)a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid; or

(B)a drug which contains any quantity of (i) amphetamine or any of its optical isomers; (ii) any salt of amphetamine or any salt of an optical isomer of amphetamine; or (iii) any substance which the Attorney General, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; or

(C)lysergic acid diethylamide; or

(D)any drug which contains any quantity of a substance which the Attorney General, after investigation, has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

- (10)** The term “dispense” means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery. The term “dispenser” means a practitioner who so delivers a controlled substance to an ultimate user or research subject.
- (11)** The term “distribute” means to deliver (other than by administering or dispensing) a controlled substance or a listed chemical. The term “distributor” means a person who so delivers a controlled substance or a listed chemical.

- (12) The term “drug” has the meaning given that term by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act [21 USCS § 321(g)(1)].
- (13) The term “felony” means any Federal or State offense classified by applicable Federal or State law as a felony.
- (14) The term “isomer” means the optical isomer, except as used in schedule I(c) and schedule II(a)(4). As used in schedule I(c), the term “isomer” means any optical, positional, or geometric isomer. As used in schedule II(a)(4), the term “isomer” means any optical or geometric isomer.
- (15) The term “manufacture” means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly 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 such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. The term “manufacturer” means a person who manufactures a drug or other substance.
- (16)
- (A) Subject to subparagraph (B), the term “marihuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof;

the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.

(B)The term “marihuana” does not include—

- (i)** hemp, as defined in section 297A of the Agricultural Marketing Act of 1946 [7 USCS § 1639o]; or
- (ii)** 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 (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(17)The term “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, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

(B)Poppy straw and concentrate of poppy straw.

(C)Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(D)Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(E) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(F) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraphs (A) through (E).

- (16) The term “opiate” or “opioid” means any drug or other 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.
- (17) The term “opium poppy” means the plant of the species *Papaver somniferum* L., except the seed thereof.
- (18) The term “poppy straw” means all parts, except the seeds, of the opium poppy, after mowing.
- (19) The term “practitioner” means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.
- (20) The term “production” includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.
- (21) The term “immediate precursor” means a substance—
- which the Attorney General has found to be and by regulation designated as being the principal

compound used, or produced primarily for use, in the manufacture of a controlled substance;

- which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and
- the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

(22) The term “Secretary,” unless the context otherwise indicates, means the Secretary of Health and Human Services.

(23) The term “serious bodily injury” means bodily injury which involves—

(A) a substantial risk of death;

(iii) protracted and obvious disfigurement; or

(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(26) The term “State” means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(27) The term “ultimate user” means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.

(28) The term “United States”, when used in a geographic sense, means all places and waters, continental or insular, subject to the jurisdiction of the United States.

(29) The term “maintenance treatment” means the dispensing, for a period in excess of twenty-one days,

of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

(30) The term “detoxification treatment” means the dispensing, for a period not in excess of one hundred and eighty days, of a narcotic drug in decreasing doses to an individual in order to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period.

(31) The term “Convention on Psychotropic Substances” means the Convention on Psychotropic Substances signed at Vienna, Austria, on February 21, 1971; and the term “Single Convention on Narcotic Drugs” means the Single Convention on Narcotic Drugs signed at New York, New York, on March 30, 1961.

(32)

(A) Except as provided in subparagraph (C), the term “controlled substance analogue” means a substance—

(i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;

(ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or

(iii) with respect to a particular person, which such person represents or intends to have a stimulant,

depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

(B)The designation of gamma butyrolactone or any other chemical as a listed chemical pursuant to paragraph (34) or (35) does not preclude a finding pursuant to subparagraph (A) of this paragraph that the chemical is a controlled substance analogue.

(C)Such term does not include—

(i)a controlled substance;

(ii)any substance for which there is an approved new drug application;

(iii)with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act (*21 U.S.C. 355*) to the extent conduct with respect to such substance is pursuant to such exemption; or

(iv)any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

(33)The term “listed chemical” means any list I chemical or any list II chemical.

(34)The term “list I chemical” means a chemical specified by regulation of the Attorney General as a chemical that is used in manufacturing a controlled substance in violation of this title and is important to the manufacture of the controlled substances, and such term includes (until otherwise specified by regulation of the Attorney General, as considered

appropriate by the Attorney General or upon petition to the Attorney General by any person) the following:

- (A) Anthranilic acid, its esters, and its salts.
- (B) Benzyl cyanide.
- (C) Ephedrine, its salts, optical isomers, and salts of optical isomers.
- (D) Ergonovine and its salts.
- (E) Ergotamine and its salts.
- (F) N-Acetylanthranilic acid, its esters, and its salts.
- (G) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- (H) Phenylacetic acid, its esters, and its salts.
- (I) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.
- (J) Piperidine and its salts.
- (K) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- (L) 3,4-Methylenedioxyphenyl-2-propanone.
- (M) Methylamine.
- (N) Ethylamine.
- (O) Propionic anhydride.
- (P) Isosafrole.
- (Q) Safrole.
- (R) Piperonal.
- (S) N-Methylephedrine.
- (T) N-methylpseudoephedrine.
- (U) Hydriodic acid.

(V)Benzaldehyde.

(W)Nitroethane.

(X)Gamma butyrolactone.

(Y)Any salt, optical isomer, or salt of an optical isomer of the chemicals listed in subparagraphs (M) through (U) of this paragraph.

(35)The term “list II chemical” means a chemical (other than a list I chemical) specified by regulation of the Attorney General as a chemical that is used in manufacturing a controlled substance in violation of this title, and such term includes (until otherwise specified by regulation of the Attorney General, as considered appropriate by the Attorney General or upon petition to the Attorney General by any person) the following chemicals:

(A)Acetic anhydride.

(B)Acetone.

(C)Benzyl chloride.

(D)Ethyl ether.

(E)[Repealed]

(F)Potassium permanganate.

(G)2-Butanone (or Methyl Ethyl Ketone).

(H)Toluene.

(I)Iodine.

(J)Hydrochloric gas.

(36)The term “regular customer” means, with respect to a regulated person, a customer with whom the regulated person has an established business relationship that is reported to the Attorney General.

(37)The term “regular importer” means, with respect to a listed chemical, a person that has an established record as an importer of that listed chemical that is reported to the Attorney General.

(38)The term “regulated person” means a person who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine or who acts as a broker or trader for an international transaction involving a listed chemical, a tableting machine, or an encapsulating machine.

(39)The term “regulated transaction” means—

(A)a distribution, receipt, sale, importation, or exportation of, or an international transaction involving shipment of, a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical, a threshold amount, including a cumulative threshold amount for multiple transactions (as determined by the Attorney General, in consultation with the chemical industry and taking into consideration the quantities normally used for lawful purposes), of a listed chemical, except that such term does not include—

(i)a domestic lawful distribution in the usual course of business between agents or employees of a single regulated person;

(ii)a delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this

clause does not relieve a distributor, importer, or exporter from compliance with section 310 [*21 USCS § 830*];

(iii)any category of transaction or any category of transaction for a specific listed chemical or chemicals specified by regulation of the Attorney General as excluded from this definition as unnecessary for enforcement of this title or title III;

(iv)any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act, subject to clause (v), unless—

(I)the Attorney General has determined under section 204 [*21 USCS § 814*] that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(II)the quantity of the listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General;

(v)any transaction in a scheduled listed chemical product that is a sale at retail by a regulated seller or a distributor required to submit reports under section 310(b)(3) [*21 USCS § 830(b)(3)*]; or

(vi)any transaction in a chemical mixture which the Attorney General has by regulation designated as exempt from the application of this title and title III based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the

listed chemical or chemicals contained in the mixture cannot be readily recovered; and

(B)a distribution, importation, or exportation of a tableting machine or encapsulating machine.

(40)The term “chemical mixture” means a combination of two or more chemical substances, at least one of which is not a list I chemical or a list II chemical, except that such term does not include any combination of a list I chemical or a list II chemical with another chemical that is present solely as an impurity.

(41)

(A)The term “anabolic steroid” means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and includes—

(i)androstanediol—

(I)3 β ,17 β -dihydroxy-5 α -androstane; and

(II)3 α ,17 β -dihydroxy-5 α -androstane;

(ii)androstanedione (5 α -androstan-3,17-dione);

(iii)androstenediol—

(I)1-androstenediol (3 β ,17 β -dihydroxy-5 α -androst-1-ene);

(II)1-androstenediol (3 α ,17 β -dihydroxy-5 α -androst-1-ene);

(III)4-androstenediol (3 β ,17 β -dihydroxy-androst-4-ene); and

(IV)5-androstenediol (3 β ,17 β -dihydroxy-androst-5-ene);

(iv)androstenedione—

(I)1-androstenedione ([5a]-androst-1-en-3,17-dione);

(II)4-androstenedione (androst-4-en-3,17-dione); and

(III)5-androstenedione (androst-5-en-3,17-dione);

(v)bolasterone (7 α ,17 α -dimethyl-17 β -hydroxyandrost-4-en-3-one);

(vi)boldenone (17 β -hydroxyandrost-1,4,-diene-3-one);

(vii)calusterone (7 β ,17 α -dimethyl-17 β -hydroxyandrost-4-en-3-one);

(viii)clostebol (4-chloro-17 β -hydroxyandrost-4-en-3-one);

(ix)dehydrochloromethyltestosterone (4-chloro-17 β -hydroxy-17 α -methyl-androst-1, 4-dien-3-one);

(x)D 1-dihydrotestosterone (a.k.a. “1-testosterone”) (17 β -hydroxy-5 α -androst-1-en-3-one);

(xi)4-dihydrotestosterone (17 β -hydroxy-androstan-3-one);

(xii)drostanolone (17 β -hydroxy-2 α -methyl-5 α -androstan-3-one);

(xiii)ethylestrenol (17 α -ethyl-17 β -hydroxyestr-4-ene);

(xiv)fluoxymesterone (9-fluoro-17 α -methyl-11 β , 17 β -dihydroxyandrost-4-en-3-one);

(xv)formebolone (2-formyl-17 α -methyl-11 α , 17 β -dihydroxyandrost-1,4-dien-3-one);

(xvi)furazabol (17 α -methyl-17 β -hydroxyandrostano[2,3-c]-furazan);

(xvii)13 β -ethyl-17 β -hydroxygon-4-en-3-one;

(xviii)4-hydroxytestosterone (4,17 β -dihydroxy-androst-4-en-3-one);

(xix)4-hydroxy-19-nortestosterone (4,17 β -dihydroxy-estr-4-en-3-one);

(xx)mestanolone (17 α -methyl-17 β -hydroxy-5 α -androstan-3-one);

(xxi)mesterolone (1 α -methyl-17 β -hydroxy-[5 α]-androstan-3-one);

(xxii)methandienone (17 α -methyl-17 β -hydroxyandrost-1,4-dien-3-one);

(xxiii)methandriol (17 α -methyl-3 β ,17 β -dihydroxyandrost-5-ene);

(xxiv)methenolone (1-methyl-17 β -hydroxy-5 α -androst-1-en-3-one);

(xxv)17 α -methyl-3 β , 17 β -dihydroxy-5 α -androstane;

(xxvi)17 α -methyl-3 α , 17 β -dihydroxy-5 α -androstane;

(xxvii)17 α -methyl-3 β , 17 β -dihydroxyandrost-4-ene.

(xxviii)17 α -methyl-4-hydroxynandrolone (17 α -methyl-4-hydroxy-17 β -hydroxyestr-4-en-3-one);

(xxix)methyldienolone (17 α -methyl-17 β -hydroxyestra-4,9(10)-dien-3-one);

(xxx)methyltrienolone (17 α -methyl-17 β -hydroxyestra-4,9-11-trien-3-one);

(xxxi)methyltestosterone (17 α -methyl-17 β -hydroxyandrost-4-en-3-one);

(xxxii)mibolerone (7 α ,17 α -dimethyl-17 β -hydroxyestr-4-en-3-one);

(xxxiii)17 α -methyl-D 1-dihydrotestosterone (17 β -hydroxy-17 α -methyl-5 α -androst-1-en-3-one) (a.k.a.

“17- α -methyl-1-testosterone”);

(xxxiv)nandrolone (17 β -hydroxyestr-4-en-3-one);

(xxxv)norandrostenediol—

(I)19-nor-4-androstenediol (3 β , 17 β -dihydroxyestr-4-ene);

(II)19-nor-4-androstenediol (3 α , 17 β -dihydroxyestr-4-ene);

(III)19-nor-5-androstenediol (3 β , 17 β -dihydroxyestr-5-ene); and

(IV)19-nor-5-androstenediol (3 α , 17 β -dihydroxyestr-5-ene);

(xxxvi)norandrostenedione—

(I)19-nor-4-androstenedione (estr-4-en-3,17-dione);
and

(II)19-nor-5-androstenedione (estr-5-en-3,17-dione;

(xxxvii)norbolethone (13 β ,17 α -diethyl-17 β -hydroxygon-4-en-3-one);

(xxxviii)norclostebol (4-chloro-17 β -hydroxyestr-4-en-3-one);

(xxxix)norethandrolone (17 α -ethyl-17 β -hydroxyestr-4-en-3-one);

(xl)normethandrolone (17 α -methyl-17 β -hydroxyestr-4-en-3-one);

(xli)oxandrolone (17 α -methyl-17 β -hydroxy-2-oxa-[5 α] -androstan-3-one);

(xlii)oxymesterone (17 α -methyl-4,17 β -dihydroxyandrost-4-en-3-one);

(xliii)oxymetholone (17 α -methyl-2-hydroxymethylene-17 β -hydroxy-[5 α]-androstan-3-one);

(xliv)stanozolol (17 α -methyl-17 β -hydroxy-[5 α]-androst-2-eno[3, 2-c]-pyrazole);

(xlv)stenbolone (17 β -hydroxy-2-methyl-[5 α]-androst-1-en-3-one);

(xlv)testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(xlvii)testosterone (17 β -hydroxyandrost-4-en-3-one);

(xlviii)tetrahydrogestrinone (13 β ,17 α -diethyl-17 β -hydroxygon-4,9, 11-trien-3-one);

(xlix)trenbolone (17 β -hydroxyestr-4,9,11-trien-3-one);

(l)5 α -Androstan-3,6,17-trione;

(li)6-bromo-androstan-3,17-dione;

(lii)6-bromo-androsta-1,4-diene-3,17-dione;

(liii)4-chloro-17 α -methyl-androsta-1,4-diene-3,17 β -diol;

(liv)4-chloro-17 α -methyl-androst-4-ene-3 β ,17 β -diol;

(lv)4-chloro-17 α -methyl-17 β -hydroxy-androst-4-en-3-one;

(lvi)4-chloro-17 α -methyl-17 β -hydroxy-androst-4-ene-3, 11-dione;

(lvii)4-chloro-17 α -methyl-androsta-1,4-diene-3,17 β -diol;

(lviii)2 α ,17 α -dimethyl-17 β -hydroxy-5 α -androstan-3-one;

(lix) 2 α ,17 α -dimethyl-17 β -hydroxy-5 β -androstan-3-one;
(lx) 2 α ,3 α -epithio-17 α -methyl-5 α -androstan-17 β -ol;
(lxi) [3,2-c]-furazan-5 α -androstan-17 β -ol;
(lxii) 3 β -hydroxy-estra-4,9,11-trien-17-one;
(lxiii) 17 α -methyl-androst-2-ene-3,17 β -diol;
(lxiv) 17 α -methyl-androsta-1,4-diene-3,17 β -diol;
(lxv) Estra-4,9,11-triene-3,17-dione;
(lxvi) 18 α -Homo-3-hydroxy-estra-2,5(10)-dien-17-one;
(lxvii) 6 α -Methyl-androst-4-ene-3,17-dione;
(lxviii) 17 α -Methyl-androstan-3-hydroxyimine-17 β -ol;
(lixix) 17 α -Methyl-5 α -androstan-17 β -ol;
(lxx) 17 β -Hydroxy-androstano[2,3-d]isoxazole;
(lxxi) 17 β -Hydroxy-androstano[3,2-c]isoxazole;
(lxxii) 4-Hydroxy-androst-4-ene-3,17-dione[3,2-c]pyrazole-5 α -androstan-17 β -ol;
(lxxiii) [3,2-c]pyrazole-androst-4-en-17 β -ol;
(lxxiv) [3,2-c]pyrazole-5 α -androstan-17 β -ol; and
(lxxv) any salt, ester, or ether of a drug or substance described in this paragraph.

The substances excluded under this subparagraph may at any time be scheduled by the Attorney General in accordance with the authority and requirements of subsections (a) through (c) of section 201 [[21 USCS § 811](#)].

(B)

(i) Except as provided in clause (ii), such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration.

(ii) If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of subparagraph (A).

(C)

(i) Subject to clause (ii), a drug or hormonal substance (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone) that is not listed in subparagraph (A) and is derived from, or has a chemical structure substantially similar to, 1 or more anabolic steroids listed in subparagraph (A) shall be considered to be an anabolic steroid for purposes of this Act if—

(I) the drug or substance has been created or manufactured with the intent of producing a drug or other substance that either—

(aa) promotes muscle growth; or

(bb) otherwise causes a pharmacological effect similar to that of testosterone; or

(II) the drug or substance has been, or is intended to be, marketed or otherwise promoted in any

manner suggesting that consuming it will promote muscle growth or any other pharmacological

effect similar to that of testosterone.

(ii)A substance shall not be considered to be a drug or hormonal substance for purposes of this subparagraph if it—

(I)is—

(aa)an herb or other botanical;

(bb)a concentrate, metabolite, or extract of, or a constituent isolated directly from, an herb or other botanical; or

(cc)a combination of 2 or more substances described in item (aa) or (bb);

(II)is a dietary ingredient for purposes of the Federal Food, Drug, and Cosmetic Act (*21 U.S.C. 301 et seq.*); and

(III)is not anabolic or androgenic.

(iii)In accordance with section 515(a) [21 USCS § 515(a)], any person claiming the benefit of an exemption or exception under clause (ii) shall bear the burden of going forward with the evidence with respect to such exemption or exception.

(42)The term “international transaction” means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.

(43)The terms “broker” and “trader” mean a person that assists in arranging an international transaction in a listed chemical by—

(A)negotiating contracts;

(B)serving as an agent or intermediary; or

(C)bringing together a buyer and seller, a buyer and transporter, or a seller and transporter.

(44)The term “felony drug offense” means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances.

(45)

(A)The term “scheduled listed chemical product” means, subject to subparagraph (B), a product that—

(i)contains ephedrine, pseudoephedrine, or phenylpropanolamine; and

(ii)may be marketed or distributed lawfully in the United States under the Federal, Food, Drug, and Cosmetic Act as a nonprescription drug. Each reference in clause (i) to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.

(B)Such term does not include a product described in subparagraph (A) if the product contains a chemical specified in such subparagraph that the Attorney General has under section 201(a) [21 USCS § 811(a)] added to any of the schedules under section 202(c) [21 USCS § 812(c)]. In the absence of such scheduling by the Attorney General, a chemical specified in such subparagraph may not be considered to be a controlled substance.

(46)The term “regulated seller” means a retail distributor (including a pharmacy or a mobile retail vendor), except that such term does not include an employee or agent of such distributor.

(47)The term “mobile retail vendor” means a person or entity that makes sales at retail from a stand that is intended to be temporary, or is capable of being moved from one location to another, whether the stand is located within or on the premises of a fixed facility (such as a kiosk at a shopping center or an airport) or whether the stand is located on unimproved real estate (such as a lot or field leased for retail purposes).

(48)The term “at retail”, with respect to the sale or purchase of a scheduled listed chemical product, means a sale or purchase for personal use, respectively.

(49)

(A)The term “retail distributor” means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to ephedrine, pseudoephedrine, or phenylpropanolamine products are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales.

(B)For purposes of this paragraph, entities are defined by reference to the Standard Industrial Classification (SIC) code, as follows:

(i)A grocery store is an entity within SIC code 5411.

(ii)A general merchandise store is an entity within SIC codes 5300 through 5399 and 5499.

(iii)A drug store is an entity within SIC code 5912.

(50)The term “Internet” means collectively the myriad of computer and telecommunications

facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocol to such protocol, to communicate information of all kinds by wire or radio.

(51)The term “deliver, distribute, or dispense by means of the Internet” refers, respectively, to any delivery, distribution, or dispensing of a controlled substance that is caused or facilitated by means of the Internet.

(52)The term “online pharmacy”—

(A)means a person, entity, or Internet site, whether in the United States or abroad, that knowingly or intentionally delivers, distributes, or dispenses, or offers or attempts to deliver, distribute, or dispense, a controlled substance by means of the Internet; and

(B)does not include—

(i)manufacturers or distributors registered under subsection (a), (b), (d), or (e) of section 303 [*21 USCS* § 823] who do not dispense controlled substances to an unregistered individual or entity;

(ii)nonpharmacy practitioners who are registered under section 303(f) [*21 USCS* § 823(f)] and whose activities are authorized by that registration;

(iii)any hospital or other medical facility that is operated by an agency of the United States (including the Armed Forces), provided such hospital or other facility is registered under section 303(f) [*21 USCS* § 823(f)];

(iv)a health care facility owned or operated by an Indian tribe or tribal organization, only to the extent such facility is carrying out a contract or compact under the Indian Self-Determination and Education Assistance Act [25 *USCS* §§ 450 et seq.];

(v)any agent or employee of any hospital or facility referred to in clause (iii) or (iv), provided such agent or employee is lawfully acting in the usual course of business or employment, and within the scope of the official duties of such agent or employee, with such hospital or facility, and, with respect to agents or employees of health care facilities specified in clause (iv), only to the extent such individuals are furnishing services pursuant to the contracts or compacts described in such clause;

(vi)mere advertisements that do not attempt to facilitate an actual transaction involving a controlled substance;

(vii)a person, entity, or Internet site that is not in the United States and does not facilitate the delivery, distribution, or dispensing of a controlled substance by means of the Internet to any person in the United States;

(viii)a pharmacy registered under section 303(f) [21 *USCS* § 823(f)] whose dispensing of controlled substances via the Internet consists solely of—

(I)refilling prescriptions for controlled substances in schedule III, IV, or V, as defined in paragraph (55); or

(II)filling new prescriptions for controlled substances in schedule III, IV, or V, as defined in paragraph (56);
or

(ix)any other persons for whom the Attorney General and the Secretary have jointly, by regulation, found it

to be consistent with effective controls against diversion and otherwise consistent with the public health and safety to exempt from the definition of an “online pharmacy”.

(53)The term “homepage” means the opening or main page or screen of the website of an online pharmacy that is viewable on the Internet.

(54)The term “practice of telemedicine” means, for purposes of this title, the practice of medicine in accordance with applicable Federal and State laws by a practitioner (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1834(m) of the Social Security Act [*42 USCS § 1395m(m)*], which practice—

(A)is being conducted—

(i)while the patient is being treated by, and physically located in, a hospital or clinic registered under section 303(f) [*21 USCS § 823(f)*]; and

(ii)by a practitioner—

(I)acting in the usual course of professional practice;

(II)acting in accordance with applicable State law; and

(III)registered under section 303(f) [*21 USCS § 823(f)*] in the State in which the patient is located, unless the practitioner—

(aa)is exempted from such registration in all States under section 302(d) [*21 USCS § 822(d)*]; or

(bb)is—

(AA)an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract; and

(BB)registered under section 303(f) [*21 USCS § 823(f)*] in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f) [*21 USCS § 823(f)*];

(B)is being conducted while the patient is being treated by, and in the physical presence of, a practitioner—

(i)acting in the usual course of professional practice;

(ii)acting in accordance with applicable State law; and

(iii)registered under section 303(f) [*21 USCS § 823(f)*] in the State in which the patient is located, unless the practitioner—

(I)is exempted from such registration in all States under section 302(d) [*21 USCS § 822(d)*]; or

(II)is—

(aa)an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract; and

(bb)registered under section 303(f) [*21 USCS § 823(f)*] in any State or is using the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f) [*21 USCS § 823(f)*];

(C)is being conducted by a practitioner—

(i)who is an employee or contractor of the Indian Health Service, or is working for an Indian tribe or tribal organization under its contract or compact with the Indian Health Service under the Indian Self-Determination and Education Assistance Act;

(ii)acting within the scope of the employment, contract, or compact described in clause (i); and

(iii)who is designated as an Internet Eligible Controlled Substances Provider by the Secretary under section 311(g)(2) [*21 USCS § 831(g)(2)*];

(D)

(i)is being conducted during a public health emergency declared by the Secretary under section 319 of the Public Health Service Act [*42 USCS § 247d*]; and

(ii)involves patients located in such areas, and such controlled substances, as the Secretary, with the concurrence of the Attorney General, designates, provided that such designation shall not be subject to the procedures prescribed by subchapter II of chapter 5 of title 5, United States Code [*5 USCS §§ 551 et seq.*];

(E)is being conducted by a practitioner who has obtained from the Attorney General a special registration under section 311(h) [*21 USCS § 831(h)*];

(F)is being conducted—

(i)in a medical emergency situation—

(I)that prevents the patient from being in the physical presence of a practitioner registered under section 303(f) [*21 USCS § 823(f)*] who is an employee or contractor of the Veterans Health Administration acting in the usual course of business and

employment and within the scope of the official duties or contract of that employee or contractor;

(II)that prevents the patient from being physically present at a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f) [21 USCS § 823(f)];

(III)during which the primary care practitioner of the patient or a practitioner otherwise practicing telemedicine within the meaning of this paragraph is unable to provide care or consultation; and **(IV)**that requires immediate intervention by a health care practitioner using controlled substances to prevent what the practitioner reasonably believes in good faith will be imminent and serious clinical consequences, such as further injury or death; and

(ii)by a practitioner that—

(I)is an employee or contractor of the Veterans Health Administration acting within the scope of that employment or contract;

(II)is registered under section 303(f) [21 USCS § 823(f)] in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f) [21 USCS § 823(f)]; and

(III)issues a controlled substance prescription in this emergency context that is limited to a maximum of a 5-day supply which may not be extended or refilled; or

(G)is being conducted under any other circumstances that the Attorney General and the Secretary have jointly, by regulation, determined to be consistent with effective controls against diversion and

otherwise consistent with the public health and safety.

(55)The term “refilling prescriptions for controlled substances in schedule III, IV, or V”—

(A)means the dispensing of a controlled substance in schedule III, IV, or V in accordance with refill instructions issued by a practitioner as part of a valid prescription that meets the requirements of subsections (b) and (c) of section 309 [21 USCS § 829], as appropriate; and

(B)does not include the issuance of a new prescription to an individual for a controlled substance that individual was previously prescribed.

(56)The term “filling new prescriptions for controlled substances in schedule III, IV, or V” means filling a prescription for an individual for a controlled substance in schedule III, IV, or V, if—

(A)the pharmacy dispensing that prescription has previously dispensed to the patient a controlled substance other than by means of the Internet and pursuant to the valid prescription of a practitioner that meets the applicable requirements of subsections (b) and (c) of section 309 [21 USCS § 829] (in this paragraph referred to as the “original prescription”);

(B)the pharmacy contacts the practitioner who issued the original prescription at the request of that individual to determine whether the practitioner will authorize the issuance of a new prescription for that individual for the controlled substance described in subparagraph (A); and

(C)the practitioner, acting in the usual course of professional practice, determines there is a legitimate

medical purpose for the issuance of the new prescription.

(57)The term “suspicious order” may include, but is not limited to—

(A)an order of a controlled substance of unusual size;

(B)an order of a controlled substance deviating substantially from a normal pattern; and

(C)orders of controlled substances of unusual frequency.

[(58)] (57)The term “serious drug felony” means an offense described in *section 924(e)(2) of title 18, United States Code*, for which—

(A)the offender served a term of imprisonment of more than 12 months; and

(B)the offender’s release from any term of imprisonment was within 15 years of the commencement of the instant offense.

[(59)] (58)The term “serious violent felony” means—

(A)an offense described in *section 3559(c)(2) of title 18, United States Code*, for which the offender served a term of imprisonment of more than 12 months; and

(B)any offense that would be a felony violation of *section 113 of title 18, United States Code*, if the offense were committed in the special maritime and territorial jurisdiction of the United States, for which the offender served a term of imprisonment of more than 12 months.

HISTORY:

Act Oct. 27, 1970, *P. L. 91-513*, Title II, Part A, § 102, 84 *Stat. 1242*; May 14, 1974, *P. L. 93-281*, § 2, 88 *Stat. 124*; Nov. 10, 1978, *P. L. 95-633*, Title I, § 102(b), 92 *Stat. 3772*; Nov. 30, 1979, *P. L. 96-132*, § 16(a), 93 *Stat. 1049*; Oct. 12, 1984, *P. L. 98-473*, Title II, Ch V, Part B, § 507, 98 *Stat. 2071*; Oct. 19, 1984, *P. L. 98-509*, Title III, § 301(a), 98 *Stat. 2364*; Oct. 27, 1986, *P. L. 99-570*, Title I, Subtitle A, § 1003(b), Subtitle E, § 1203, Subtitle Q, § 1870, 100 *Stat. 3207-6*, 3207-13, 3207-56; Nov. 10, 1986, *P. L. 99-646*, § 83, 100 *Stat. 3619*; Nov. 18, 1988, *P. L. 100-690*, Title VI, Subtitle A, § 6054, 102 *Stat. 4316*; Nov. 29, 1990, *P. L. 101-647*, Title XIX, § 1902(b), Title XXIII, § 2301, Title XXXV, § 3599I, 104 *Stat. 4852*, 4858, 4932; Dec. 17, 1993, *P. L. 103-200*, §§ 2(a), 7–9(a), 107 *Stat. 2333*, 2340; Sept. 13, 1994, *P. L. 103-322*, Title IX, Subtitle A, § 90105(d), Title XXXIII, § 330024(a), (b), (d)(1), 108 *Stat. 1988*, 2150; Oct. 3, 1996, *P. L. 104-237*, Title II, §§ 204(a), 209, Title IV, § 401(a), (b), 110 *Stat. 3102*, 3104, 3107; Oct. 11, 1996, *P. L. 104-294*, Title VI, §§ 604(b)(4), 607(j), 110 *Stat. 3506*, 3512; Nov. 21, 1997, *P. L. 105-115*, Title I, Subtitle B, § 126(c)(3), 111 *Stat. 2328*; Feb. 18, 2000, *P. L. 106-172*, §§ 3(c), 5(a), 114 *Stat. 9*, 10; Oct. 17, 2000, *P. L. 106-310*, Div B, Title XXXVI, Subtitle A, Part II, § 3622(a), 114 *Stat. 1231*; Nov. 2, 2002, *P. L. 107-273*, Div B, Title IV, § 4002(c)(1), 116 *Stat. 1808*; Oct. 22, 2004, *P. L. 108-358*, § 2(a), 118 *Stat. 1661*; Jan. 5, 2006, *P. L. 109-162*, Title XI, Subtitle C, § 1180, 119 *Stat. 3126*; March 9, 2006, *P. L. 109-177*, Title VII, Subtitle A, §§ 711(a)(1), (2)(A), 712(a)(1), 120 *Stat. 256*, 263; Oct. 15, 2008, *P. L. 110-425*, § 3(a), 122 *Stat. 4821*; Dec. 18, 2014, *P. L. 113-260*, § 2(a), 128 *Stat. 2929*; July 22, 2016, *P. L. 114-198*, Title III, § 303(a)(2), 130 *Stat. 722*; Oct. 24,

2018, *P.L. 115-271*, Title III, Subtitle B, Ch. 1, § 3202(c), Ch. 9, § 3292(a), *132 Stat. 3945*, 3956; Dec. 20, 2018, *P.L. 115-334*, Title XII, Subtitle F, § 12619(a), *132 Stat. 5018*; Dec. 21, 2018, *P.L. 115-391*, Title IV, § 401(a)(1), *132 Stat. 5220*.

21 USCS § 829

Current through Public Law 116-140,
approved April 28, 2020.

***United States Code Service > TITLE 21. FOOD
AND DRUGS (Chs. 1 — 28) > CHAPTER 13.
DRUG ABUSE PREVENTION AND CONTROL
(§§ 801 — 971) > CONTROL AND
ENFORCEMENT (§§ 801 — 904) >
REGISTRATION OF MANUFACTURERS,
DISTRIBUTORS, AND DISPENSERS OF
CONTROLLED SUBSTANCES (§§ 821 — 832)***

§ 829. Prescriptions

(a) Schedule II substances. Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 USCS §§ 301 et seq.], may be dispensed without the written prescription of a practitioner, except that in emergency situations, as prescribed by the Secretary by regulation after consultation with the Attorney General, such drug may be dispensed upon oral prescription in accordance with section 503(b) of that Act [21 USCS § 353(b)]. Prescriptions shall be retained in conformity with the requirements of section 307 of this title [21 USCS § 827]. No prescription for a controlled substance in schedule II may be refilled.

(b) Schedule III and IV substances. Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which is a prescription drug as determined under the Federal

Food, Drug, and Cosmetic Act [21 USCS §§ 301 et seq.], may be dispensed without a written or oral prescription in conformity with section 503(b) of that Act [21 USCS § 353(b)]. Such prescriptions may not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(c) Schedule V substances. No controlled substance in schedule V which is a drug may be distributed or dispensed other than for a medical purpose.

(d) Non-prescription drugs with abuse potential. Whenever it appears to the Attorney General that a drug not considered to be a prescription drug under the Federal Food, Drug, and Cosmetic Act [21 USCS §§ 301 et seq.] should be so considered because of its abuse potential, he shall so advise the Secretary and furnish to him all available data relevant thereto.

(e) Controlled substances dispensed by means of the Internet.

(1)No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 USCS §§ 301 et seq.] may be delivered, distributed, or dispensed by means of the Internet without a valid prescription.

(2)As used in this subsection:

(A)The term “valid prescription” means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by—

(i)a practitioner who has conducted at least 1 in-person medical evaluation of the patient; or

(ii)a covering practitioner.

(B)

(i)The term “in-person medical evaluation” means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.

(ii)Nothing in clause (i) shall be construed to imply that 1 in-person medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(C)The term “covering practitioner” means, with respect to a patient, a practitioner who conducts a medical evaluation (other than an in-person medical evaluation) at the request of a practitioner who—

(i)has conducted at least 1 in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine, within the previous 24 months; and

(ii)is temporarily unavailable to conduct the evaluation of the patient.

(3)Nothing in this subsection shall apply to—

(A)the delivery, distribution, or dispensing of a controlled substance by a practitioner engaged in the practice of telemedicine; or

(B)the dispensing or selling of a controlled substance pursuant to practices as determined by the Attorney General by regulation, which shall be consistent with effective controls against diversion.

(f) Partial fills of schedule II controlled substances.

(1)Partial fills. A prescription for a controlled substance in schedule II may be partially filled if—

(A)it is not prohibited by State law;

(B)the prescription is written and filled in accordance with this title, regulations prescribed by the Attorney General, and State law;

(C)the partial fill is requested by the patient or the practitioner that wrote the prescription; and

(D)the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed.

(2)Remaining portions.

(A)In general. Except as provided in subparagraph (B), remaining portions of a partially filled prescription for a controlled substance in schedule II—

(i)may be filled; and

(ii)shall be filled not later than 30 days after the date on which the prescription is written.

(B)Emergency situations. In emergency situations, as described in subsection (a), the remaining portions of a partially filled prescription for a controlled substance in schedule II—

(i)may be filled; and

(ii)shall be filled not later than 72 hours after the prescription is issued.

(3)Currently lawful partial fills. Notwithstanding paragraph (1) or (2), in any circumstance in which, as of the day before the date of enactment of this

subsection [enacted July 22, 2016], a prescription for a controlled substance in schedule II may be lawfully partially filled, the Attorney General may allow such a prescription to be partially filled.

HISTORY:

Act Oct. 27, 1970, *P. L. 91-513*, Title II, Part C, § 309, 84 *Stat. 1260*; Oct. 15, 2008, *P. L. 110-425*, § 2, 122 *Stat. 4820*; July 22, 2016, *P. L. 114-198*, Title VII, § 702(a), 130 *Stat. 740*.

21 USCS § 841, Part 1 of 6

Current through Public Law 116-140,
approved April 28, 2020.

***United States Code Service > TITLE 21. FOOD
AND DRUGS (Chs. 1 — 28) > CHAPTER 13.
DRUG ABUSE PREVENTION AND CONTROL
(§§ 801 — 971) > CONTROL AND
ENFORCEMENT (§§ 801 — 904) > OFFENSES
AND PENALTIES (§§ 841 — 865)***

§ 841. Prohibited acts A

(a) Unlawful acts. Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—

(1)to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2)to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties. Except as otherwise provided in section 409, 418, 419, or 420 [*21 USCS § 849, 859, 860, or 861*], any person who violates subsection (a) of this section shall be sentenced as follows:

(1)

(A)In the case of a violation of subsection (a) of this section involving—

(i)1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii)5 kilograms or more of a mixture or substance containing a detectable amount of—

(I)coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II)cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III)ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV)any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii)280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv)100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v)10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi)400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii)1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii)50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts,

isomers, or salts of its isomers; such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$10,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$20,000,000 if the defendant is an individual or \$75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 409, 418, 419, or 420 [21 USCS § 849, 859, 860, or 861] after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years and fined in accordance with the preceding sentence. Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of

imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B)In the case of a violation of subsection (a) of this section involving—

(i)100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii)500 grams or more of a mixture or substance containing a detectable amount of—

(I)coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II)cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III)ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV)any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii)28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv)10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v)1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers; such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$5,000,000 if the defendant is an individual or \$25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$8,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. Notwithstanding section

3583 of title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C)In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillary J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 1999 [*21 USCS § 812* note]), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to

life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D)In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be

sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(E)

(i) Except as provided in subparagraphs (C) and (D), in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$500,000 if the defendant is an individual or \$2,500,000 if the defendant is other than an individual, or both.

(ii) If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 30 years, a fine not to

exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both.

(iii)Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2)In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term

of at least 2 years in addition to such term of imprisonment.

(3)In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$100,000 if the defendant is an individual or \$250,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 4 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$200,000 if the defendant is an individual or \$500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

(4)Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 404 [*21 USCS § 844*] and *section 3607 of title 18, United States Code*.

(5)Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

(A)the amount authorized in accordance with this section;

(B)the amount authorized in accordance with the provisions of title 18, United States Code;

(C)\$500,000 if the defendant is an individual; or

(D)\$1,000,000 if the defendant is other than an individual; or both.

(6)Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use—

(A)creates a serious hazard to humans, wildlife, or domestic animals,

(B)degrades or harms the environment or natural resources, or

(C)pollutes an aquifer, spring, stream, river, or body of water, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(7)Penalties for distribution.

(A)In general. Whoever, with intent to commit a crime of violence, as defined in *section 16 of title 18, United States Code* (including rape), against an individual, violates subsection (a) by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18, United States Code.

(B)Definition. For purposes of this paragraph, the term “without that individual's knowledge” means

that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

(c) Offenses involving listed chemicals. Any person who knowingly or intentionally—

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this title;

(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this title; or

(3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 310 [21 USCS § 830], or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required; shall be fined in accordance with title 18, United States Code, or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

(d) Boobytraps on Federal property; penalties; “boobytrap” defined.

(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured,

distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under title 18, United States Code, or both.

(2)If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under title 18, United States Code, or both.

(3)For the purposes of this subsection, the term “boobytrap” means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

(e) Ten-year injunction as additional penalty. In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

(f) Wrongful distribution or possession of listed chemicals.

(1)Whoever knowingly distributes a listed chemical in violation of this title (other than in violation of a recordkeeping or reporting requirement of section 310 [21 USCS § 830]) shall, except to the extent that paragraph (12), (13), or (14) of section 402(a) [21 USCS § 842(a)] applies, be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 310 [21 USCS § 830] have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under title 18, United States Code, or imprisoned not more than one year, or both.

(g) Internet sales of date rape drugs.

(1) Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that—

(A) the drug would be used in the commission of criminal sexual conduct; or

(B) the person is not an authorized purchaser; shall be fined under this title or imprisoned not more than 20 years, or both.

(2) As used in this subsection:

(A) The term “date rape drug” means—

(i) gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol;

(ii) ketamine;

(iii) flunitrazepam; or

(iv) any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed by *section 553 of title 5, United States Code* [5 USCS § 553], to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

(B)The term “authorized purchaser” means any of the following persons, provided such person has acquired the controlled substance in accordance with this Act:

(i)A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A “qualifying medical relationship” means a medical relationship that exists when the practitioner has conducted at least 1 medical evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health [health] professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(ii)Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this Act.

(iii)A person or entity providing documentation that establishes the name, address, and business of the person or entity and which provides a legitimate purpose for using any “date rape drug” for which a prescription is not required.

(3)The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4-butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this Act.

(h) Offenses involving dispensing of controlled substances by means of the Internet.

(1)In general. It shall be unlawful for any person to knowingly or intentionally—

(A)deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this title; or

(B)aid or abet (as such terms are used in *section 2 of title 18, United States Code*) any activity described in subparagraph (A) that is not authorized by this title.

(2)Examples. Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally—

(A)delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by section 303(f) [21 USCS § 823(f)] (unless exempt from such registration);

(B)writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of section 309(e) [21 USCS § 829(e)];

(C)serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together

a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections [section] 303(f) or 309(e) [*21 USCS § 823(f)* or *829(e)*];

(D)offering to fill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire; and

(E)making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under subsection (d) or (e), respectively, of section 311 [*21 USCS § 831*].

(3)Inapplicability.

(A)This subsection does not apply to—

(i)the delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under this title;

(ii)the placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or

(iii)except as provided in subparagraph (B), any activity that is limited to—

(I)the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of the Communications Act of 1934 [*47 USCS § 231*]); or

(II)the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or

alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 [47 USCS § 230(c)] shall not constitute such selection or alteration of the content of the communication.

(B)The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

(4)Knowing or intentional violation. Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).

HISTORY:

Act Oct. 27, 1970, *P. L. 91-513*, Title II, Part D, § 401, 84 Stat. 1260; Nov. 10, 1978, *P. L. 95-633*, Title II, § 201, 92 Stat. 3774; Sept. 26, 1980, *P. L. 96-359*, § 8(c), 94 Stat. 1194; Oct. 12, 1984, *P. L. 98-473*, Title II, Ch II, § 224(a)(2), Ch V, Subch, Part A, Subpart, §§ 502, 503(b)(1)(2), 98 Stat. 2030, 2068, 2070; Oct. 27, 1986, *P. L. 99-570*, Title I, Subtitle A, §§ 1002, 1003(a), 1004(a) Subtitle C, § 1103, Title XV, § 15005, 100 Stat. 3207-2, 3207-5, 3207-6, 3207-11, 3207-192; Nov. 18, 1988, *P. L. 100-690*, Title VI, Subtitle A, § 6055, Subtitle H, §§ 6254(h), 6265(h), Subtitle N, §§ 6452(a), 6470(g), (h), 6479, 102 Stat. 4318, 4366, 4367, 4371, 4378, 4379, 4381; Nov. 29, 1990, *P. L. 101-647*, Title X, § 1002(e), Title XII, § 1202, Title XXXV, § 3599K, 104 Stat. 4828, 4830, 4932; Sept. 13, 1994, *P. L. 103-322*, Title IX, Subtitle A, § 90105(a), (c), Title XVIII, Subtitle B, 180201(b)(2)(A), 108 Stat. 1987, 1988, 2047; Oct. 3, 1996, *P. L. 104-237*, Title II, § 206(a), Title III, § 302(a), 110 Stat. 3103, 3105; Oct. 13, 1996,

P. L. 104-305, § 2(a), (b)(1), 110 Stat. 3807; Oct. 21, 1998, P. L. 105-277, Div E, § 2(a), 112 Stat. 2681-759; Feb. 18, 2000, P. L. 106-172, §§ 3(b)(1), 5(b), 9, 114 Stat. 9, 10, 13; Nov. 2, 2002, P. L. 107-273, Div B, Title III, § 3005(a), Title IV, § 4002(d)(2)(A), 116 Stat. 1805, 1809; March 9, 2006, P. L. 109-177, Title VII, Subtitle A, § 711(f)(1)(B), Subtitle C, § 732, 120 Stat. 262, 270; July 27, 2006, P. L. 109-248, Title II, § 201, 120 Stat. 611; Oct. 15, 2008, P. L. 110-425, § 3(e), (f), 122 Stat. 4828; Aug. 3, 2010, P. L. 111-220, §§ 2(a), 4(a), 124 Stat. 2372; Dec. 21, 2018, P.L. 115- 391, Title IV, § 401(a)(2), 132 Stat. 5220.

as to one count should not control your verdict as to the other counts.

Furthermore, the fact that another person entered a plea of guilty to one or more of the crimes charged is not evidence of guilt of the defendant as to any crime charged. Moreover, you are not to be concerned with the guilt of any other person not on trial in this case.

The indictment charges that the offenses were committed, quote, on or about, end quote, a certain date. Although the government must prove beyond a reasonable doubt that the offenses were committed on a date reasonably near the date alleged in the indictment, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

A person acts knowingly if he acts intentionally and voluntarily, and not because of ignorance, mistake, accident or carelessness.

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proven directly, because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done or omitted by that person, and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent.

Inferences are simply deductions or conclusions which reason and common sense lead you to draw from the evidence received in the case. You may infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.

You are instructed as a matter of law that Oxycodone, Oxymorphone, Methadone and Alprazolam are controlled substances. It is solely for you, however, to determine whether the government proved beyond a reasonable doubt that the defendant, Donovan Dave Dixon, committed the alleged narcotic offenses involving those substances, as charged in the indictment.

The term to distribute, as used in these instructions, means to deliver or to transfer or to attempt to deliver or to transfer possession or control of something from one person to another. The term to distribute includes writing a prescription for the controlled substance at issue.

Count 1 of the indictment charges that beginning in or about 2012, and continuing up to and including April 6, 2015, in the Eastern District of North Carolina and elsewhere, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, did knowingly and intentionally combine, conspire, confederate, agree, and have a tacit understanding

with other persons, while acting and intending to act outside the usual course of professional practice or not for a legitimate medical purpose, to knowingly, intentionally and unlawfully prescribe, dispense and distribute quantities of Oxycodone, Oxymorphone and Methadone, Schedule II controlled substances, and a quantity of Alprazolam, a Schedule IV controlled substance, in violation of Title 21, U.S. Code, Section 841(a)(1), all in violation of Title 21, United States Code, Section 846.

Section 846 of Title 21, United States Code, makes it a crime for anyone to conspire or commit a violation of certain controlled substance laws of the United States. To sustain its burden of proof for the crime of conspiracy to distribute and to possess with the intent to distribute quantities of Oxycodone, Oxymorphone, Methadone and Alprazolam, as charged in Count 1 in the indictment, the government must prove the following three elements beyond a reasonable doubt:

First: That the conspiracy, agreement or understanding to commit the crime, as described in Count 1 of the indictment, was formed, reached or entered into by two or more persons;

Second: That at some time during the existence or life of the conspiracy, agreement or understanding the defendant, Donovan Dave Dixon, knew the purpose of the conspiracy, agreement or understanding; and

Third: That with knowledge of the purpose of the conspiracy, agreement or understanding the defendant, Donovan Dave Dixon, then knowingly joined the conspiracy, agreement or understanding.

A criminal conspiracy is an agreement or a mutual understanding knowingly made or knowingly entered into by at least two people to violate the law by some joint or common plan or course of action. A conspiracy is, in a very true sense, a partnership in crime.

A conspiracy or agreement to violate the law, like any other kind of agreement or understanding, need not be formal, written or even expressed directly in every detail.

The government must beyond a reasonable doubt that the defendant, Donovan Dave Dixon, knowingly entered into an agreement or understanding with at least one other person that day, and perhaps others, would violate the controlled substance statute by means of some common plan or course of action, as alleged in Count 1. It is proof of this conscious understanding and deliberate agreement by the alleged members that should be central to your consideration of the charge of conspiracy.

To prove that a conspiracy or an illegal agreement existed, the government is not required to produce a written contract between the parties, or even produce evidence of an expressed oral agreement spelling out all of the details of the understanding.

To prove that a conspiracy existed, moreover, the government is not required to show that all of the people named in the indictment as members of the conspiracy were, in fact, parties to the agreement or that all of the members of the alleged conspiracy were named or charged, or that all of the people whom the evidence shows were actually members of the conspiracy agreed to all of the means or methods set out in the indictment.

Unless the government proved beyond a reasonable doubt that a conspiracy actually existed, then you must acquit the defendant, Donovan Dave Dixon, on Count 1.

Before the jury may find that the defendant, Donovan Dave Dixon, became a member of the conspiracy charged in Count 1 of the indictment, the evidence in the case must show beyond a reasonable doubt that the defendant knew the purpose or goal of the agreement or understanding, and then knowingly entered into the agreement, intending, in some way, to accomplish the goal or purpose of the agreement.

A person may become a member of a conspiracy without full knowledge of all of its details. If a person knowingly joins a conspiracy during the life of the conspiracy with an understanding of the unlawful nature thereof on even one occasion, it is sufficient to convict the defendant of conspiracy, even if he played a lesser role in the conspiracy than other members of the conspiracy.

Thus, if the evidence establishes beyond a reasonable doubt that the defendant knowingly joined the agreement specified in Count 1 of the indictment, the fact that the defendant did not join the agreement at its beginning or did not know all of the details of the agreement, or did not participate in each act of the agreement, or did not know all of the other conspirators, or did not play a major role in accomplishing the unlawful goal, is not important to your decision regarding his membership in the conspiracy.

Merely associating with others and discussing common goals, mere similarity of conduct between or among such persons, merely being present at the place where a crime takes place or is discussed, merely being a relative of someone engaged in criminal conduct, or even knowing about criminal conduct, does not, of itself, make someone a member of the conspiracy. Also, a person who has no knowledge of the conspiracy, but he happens to act in a way that advances some purpose of the conspiracy, does not thereby become a conspirator.

The government is not required to prove that the parties, too, or members of the alleged agreement or conspiracy were successful in achieving either the object of the alleged agreement or conspiracy.

Evidence has been received in this case that certain persons who are alleged to be coconspirators of the defendant have done or said things during the existence or life of the alleged conspiracy in order to further or advance its goal. Such acts and statements of these other individuals may be considered by you in determining whether the government has proven the charges in Count 1 of the indictment against the defendant.

Since these acts may have been performed and these statements may have been made outside the presence of the defendant and either done or said without the defendant's knowledge, these acts or statements should be examined with particular care by you before considering them against the defendant

if he did not do the particular act or make the particular statement.

Acts done or statements made by an alleged coconspirator before a defendant joined a conspiracy may also be considered by you in determining whether the government has sustained its burden of proof in Count 1 of the indictment.

Acts done or statements made before an alleged conspiracy began or after an alleged conspiracy ended, however, may only be considered by you regarding the person who performed that act or made that statement.

Count 2 of the indictment charges on or about March 4, 2013, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed, and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 3 of the indictment charges on or about March 6, 2013, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for legitimate medical purpose, knowingly and intentionally prescribed, dispensed, and distributed a

quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 2, United States Code, Section 841(a)(1).

Count 4 of the indictment charges on or about March 13, 2013, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed, and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 5 of the indictment charges on or about March 26, 2013, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 6 charges April 3, 2013, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical

purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 7 of the indictment charges on or about April 9, 2013, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 8 of the indictment charges on or about April 26, 2013, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 9 of the indictment charges on or about September 3, 2013, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act

outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 10 of the indictment charges on or about July 30, 2014, in the in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 11 of the indictment charges on or about August 8, 2014, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 12 of the indictment charges on or about August 15, 2014, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a

physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 13 of the indictment charges on or about August 25, 2014, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 14 of the indictment charges on or about September 3, 2014, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 15 of the indictment charges on or about September 8, 2014, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 16 of the indictment charges on or about September 18, 2014, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 17 of the indictment charges on or about September 29, 2014, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled

substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 18 of the indictment charges on or about October 2, 2014, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 19 of the indictment charges on or about October 13, 2014, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 20 of the indictment charges on or about October 22, 2014, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and

intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count 21 of the indictment charges on or about November 3, 2014, in the Eastern District of North Carolina, the defendant, Donovan Dave Dixon, then a physician licensed to practice medicine in the State of North Carolina, while acting and intending to act outside the usual course of professional practice and not for a legitimate medical purpose, knowingly and intentionally prescribed, dispensed and distributed a quantity of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Section 841(a)(1) of Title 21 of the United States Code, in part, makes it a crime for anyone to knowingly or intentionally distribute or dispense, or possess with intent to manufacture, distribute or dispense a controlled substance, including Oxycodone.

To sustain its burden of proof for the crime of unlawful dispensation and distribution of Oxycodone, as charged in Counts 2 through 21 of the indictment, the government must prove the following three elements beyond a reasonable doubt:

First: That the defendant, Donovan Dave Dixon, did dispense or distribute a quantity of Oxycodone on or about the date charged;

Second: That the defendant, Donovan Dave Dixon, did so knowingly or intentionally; and Third: That the defendant, Donovan Dave Dixon, dispensed this Oxycodone other than for a legitimate medical purpose or outside the scope of professional medical practice.

There are no specific guidelines concerning what is required to support a conclusion that a defendant physician acted outside the usual course of professional medical practice or for other than a legitimate medical purpose. In making a medical judgment concerning the proper treatment for an individual patient, physicians have discretion to choose among a wide range of options. Therefore, in determining whether the defendant acted for other than a legitimate medical purpose, you should examine all of the defendant's actions and the circumstances surrounding these actions.

Factual circumstances which may indicate that a physician acted outside the usual course of professional medical practice or for other than a legitimate medical purpose include: one, prescribing an inordinately large quantity of controlled substances; two, issuing large numbers of prescriptions; three, failing to give patients a physical examination before issuing prescriptions; four, warning patients to fill prescriptions at different drugstores; issuing prescriptions to a patient known to be delivering the drugs to others; six, prescribing controlled drugs at intervals inconsistent with legitimate medical treatment; seven, using street slang rather than medical terminology for the drugs

prescribed; eight, the absence of a logical relationship between the drugs prescribed and the patient's alleged condition; nine, writing more than one prescription at a time in order to allow patient to fill them at different times and places; ten, whether any medical history was taken; and, eleven, continuing to prescribe narcotics after the physician is aware that patient is addicted.

If a doctor dispenses a drug in good faith, in medically treating a patient, then the doctor has dispensed that drug for a legitimate medical purpose in the usual course of professional medical practice. That is, he has dispensed the drug lawfully. Good faith in this context means good intentions, and the honest exercise of professional judgment as to the patient's needs. It means the defendant acted in accordance with what he reasonably believed to be a legitimate medical purpose and in accordance with what he reasonably believed to be a legitimate medical purpose and in accordance with the usual course of generally accepted medical practice. If you find that the defendant acted in good faith in dispensing the drugs charged in the indictment, then you must find the defendant not guilty of that charged crime.

For you to find that the government has proven this essential element, you must determine that the government has proven beyond a reasonable doubt that the defendant was acting outside the bounds of professional medical practice -- that his authority to prescribe controlled substances was being used not for treatment of a patient, but for the purpose of assisting

another in the maintenance of a drug habit or dispensing controlled substances for other than a legitimate medical purpose, including for the defendant's own personal profit. Put another way, the government must prove as to each count beyond a reasonable doubt that the defendant dispensed the specific controlled substance other than for a legitimate medical purpose or not within the bounds of professional medical practice.

A physician's own methods do not themselves establish what constitutes the usual course of professional medical practice. In determining whether the defendant's conduct was within the bounds of professional medical practice, you should, subject to the instructions I give you concerning the credibility of experts and other witnesses, consider the testimony you have heard relating to what has been characterized during the trial as the norms of professional medical practice.

You should also consider the extent to which, if at all, any violation of professional norms you find to have been committed by the defendant interfered with his treatment of his patients and contributed to an overprescription or excessive dispensation of controlled substances. You should consider the defendant's actions as a whole and the circumstances surrounding them. A physician's conduct may constitute a violation of applicable professional regulations as well as applicable criminal statutes. However, a violation of a professional regulation does not, in and of itself, establish a violation of the criminal law.

As I just stated, in determining whether the defendant is guilty of the crimes with which he is charged, you should consider the totality of his actions and the circumstances surrounding them, and the extent and severity of any violations of professional norms you find he committed.

Upon retiring to your jury room to begin your deliberations, you must elect one of your members to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

Your verdict must represent the collective judgment of the jury. To return a verdict, it is necessary that each juror agree to it. Your verdict, in other words, must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with one another with a view towards reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors.