

### 14-3106. Possession of a dangerous drug.

For you to find the defendant guilty of possession of a dangerous drug [as charged in Count \_\_\_\_\_]<sup>1</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant possessed<sup>2</sup> a drug called \_\_\_\_\_<sup>3</sup>;  
2. \_\_\_\_\_<sup>3</sup> [has been determined to be a dangerous drug by the New Mexico Board of Pharmacy;]<sup>4</sup>

[OR]

[only may be used under the supervision of a practitioner licensed by law to administer or prescribe the drug under federal law;]

[OR]

[Is dispensed bearing the legend ["Caution: federal law prohibits dispensing without a prescription"]<sup>4</sup> [or] ["Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"] [or] ["RX only"];]

3. The defendant knew it was \_\_\_\_\_<sup>3</sup> [or believed it to be \_\_\_\_\_<sup>3</sup>];

[4. The defendant knew that \_\_\_\_\_<sup>3</sup> [has been determined to be a dangerous drug by the New Mexico Board of Pharmacy;]<sup>4</sup> [OR] [only may be used under the supervision of a practitioner licensed by law to administer or prescribe the drug under federal law;] [OR] [Is dispensed bearing the legend ["Caution: federal law prohibits dispensing without a prescription"]<sup>4</sup> [or] ["Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"] [or] ["RX only"];];]<sup>5</sup>

[5. The defendant [did not have a valid prescription for \_\_\_\_\_<sup>3</sup>;]<sup>4</sup> [or] [was not licensed] [or] [was not legally authorized to possess a dangerous drug because \_\_\_\_\_<sup>6</sup>;]]

6. This happened in New Mexico, on or about \_\_\_\_\_<sup>7</sup>.

#### USE NOTES

1. Insert the count number if more than one count is charged.
2. UJI 14-130 NMRA, the definition of possession in controlled substance cases, should be given if possession is in issue.
3. Use chemical name for drug.
4. Use applicable alternative or alternatives.
5. Element 4 distinguishes the penalties as defined in NMSA 1978, Section 26-1-26(A) and (B). Thus, this instruction may be used to instruct on the lesser-included offense defined in Section 26-1-26(B) by removing element 4. See Committee commentary.
6. If evidence is presented that possession of the drug was legal under NMSA 1978, Section 26-1-18, describe the factual basis for the claim. See Committee commentary.
7. Insert date on which offense occurred.

[Adopted by Supreme Court Order No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016.]