

N.C.P.I.—CRIM 260.18

FORGED PRESCRIPTION—ACQUIRING OR OBTAINING POSSESSION OF A CONTROLLED SUBSTANCE BY [MISREPRESENTATION] [FRAUD] [FORGERY] [DECEPTION] [SUBTERFUGE]. FELONY.

GENERAL CRIMINAL VOLUME

JUNE 2014

N.C. Gen. Stat. § 90-108(a)(10)

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260.18 FORGED PRESCRIPTION—ACQUIRING OR OBTAINING POSSESSION OF A CONTROLLED SUBSTANCE BY [MISREPRESENTATION] [FRAUD] [FORGERY] [DECEPTION] [SUBTERFUGE]. FELONY.

The defendant has been charged with feloniously [acquiring] [obtaining possession of] a controlled substance by [misrepresentation] [fraud] [forgery] [deception][subterfuge].

For you to find defendant guilty of this offense, the State must prove three things beyond a reasonable doubt:

First, that the defendant [acquired] [obtained possession<sup>1</sup> of] a controlled substance.<sup>2</sup>

Second, that the defendant did so by the use of [misrepresentation] [fraud] [forgery] [deception] [subterfuge].<sup>3</sup>

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1 For a definition of possession see N.C.P.I.-Crim. 104.41.

2 Prior to searching a person, a person's premises, or a person's vehicle, an officer may ask the person whether the person is in possession of a hypodermic needle or other sharp object that may cut or puncture the officer or whether such a hypodermic needle or other sharp object is on the premises or in the vehicle to be searched. If there is a hypodermic needle or other sharp object on the person, on the person's premises, or in the person's vehicle and the person alerts the officer of that fact prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object. The exemption under this subsection does not apply to any other drug paraphernalia that may be present and found during the search. For purposes of this subsection, the term "officer" includes "criminal justice officers" as defined in N.C. Gen. Stat. § 17C-2(3) and "justice officer" as defined in N.C. Gen. Stat. § 17E-2(3).

3 Misrepresentation is any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts. Colloquially it is understood to mean a statement made to deceive or mislead. Under N.C. Gen. Stat. § 14-100 the misrepresentation constituting false pretenses can be of a past or subsisting fact or a future fulfillment or event.

Fraud is an intentional misrepresentation of the truth for the purpose of inducing another in reliance upon it to part with something of value.

Deception is the act of deceiving; intentional misleading by falsehood spoken or acted.

Subterfuge is that to which one resorts for concealment.

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And Third, that the defendant intentionally<sup>4</sup> used such [misrepresentation] [fraud] [forgery] [deception] [subterfuge].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant [acquired] [obtained possession of] a controlled substance by the intentional use of [misrepresentation] [fraud] [forgery] [deception] [subterfuge], it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.<sup>5</sup>

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Forgery is the making of a false writing with the intent to defraud and that is apparently capable of effecting a fraud.

4 See N.C.P.I.-Crim. 120.10.

5 The legal definitions of the statutory terms "misrepresentation, fraud, forgery, deception or subterfuge" have in common a requirement that the person acting in a dishonest manner do so intentionally. Stated another way, those actions involve not only some behavior that tends to deceive others, but also a specific intention to deceive. Because any commission of the offense set out in N.C. Gen. Stat. § 90-108(a)(10) is by definition intentional, and because N.C. Gen. Stat. § 90-108(b) provides that intentional violations of N.C. Gen. Stat. § 90-108 are felonies, a misdemeanor offense under N.C. Gen. Stat. § 90-108(a)(10) does not exist." *S v. Church*, 73 N.C. App. 645, 646, 327 S.E.2d 33, 34 (1985).