

FELONIOUSLY [DIVERTING] [EMBEZZLING] A CONTROLLED SUBSTANCE BY [DILUTION] [SUBSTITUTION] (PRACTITIONER, REGISTRANT, OR EMPLOYEE) FELONY.

GENERAL CRIMINAL VOLUME

JUNE 2019

N.C. Gen. Stat. §§ 90-108(b)(3) and 90-108(a)(14)

260.82 FELONIOUSLY [DIVERTING] [EMBEZZLING] A CONTROLLED SUBSTANCE BY [DILUTION] (OR) [SUBSTITUTION] (PRACTITIONER, REGISTRANT, OR EMPLOYEE)¹. FELONY.

NOTE WELL: If the defendant allegedly embezzled without dilution or substitution, use N.C.P.I.—Crim. 260.81. If the defendant allegedly embezzled by virtue of occupation, use N.C.P.I.—Crim. 260.83. If the defendant allegedly embezzled by virtue of occupation by dilution or substitution, use N.C.P.I.—Crim. 260.84.

The defendant has been charged with feloniously [diverting] [embezzling] [misapplying] (*name substance*), a controlled substance, in the defendant's capacity as a [practitioner] [registrant] [employee of [practitioner] [registrant]], by [dilution] (or) [substitution] [dilution and substitution].

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

First, that the defendant was a [licensed (*describe type of practitioner, e.g., physician, dentist*)] [a registered (*describe type of registrant, e.g., scientific investigator*)] [employee of (*describe type of practitioner or registrant*)].

Second, that the defendant [was authorized to possess] [had access to] controlled substances by virtue of the defendant's employment and the (*name substance*) [had come into defendant's possession] [was under defendant's care].

Third that defendant:

NOTE WELL: Submit the case to the jury under each of the following alternatives ((a), (b), (c), (d), (e), (f)) supported by the evidence.

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- a. [Embezzled (*name substance*) for [defendant's own use] [unauthorized use] [illegal use]].
 - b. [Fraudulently [misapplied] [diverted] (*name substance*) for [defendant's own use] [unauthorized use] [illegal use]].
 - c. [Knowingly and willfully [misapplied] [diverted] (*name substance*) for [defendant's own use] [unauthorized use] [illegal use]].
 - d. [[Took] [made away with] [secreted] (*name substance*) with intent² to embezzle (*name substance*) for [defendant's own use] [unauthorized use] [illegal use]].
 - e. [[Took] [made away with] [secreted] (*name substance*) with intent to fraudulently [misapply] [divert] (*name substance*) for [defendant's own use] [unauthorized use] [illegal use]].
 - f. [[Took] [made away with] [secreted] (*name substance*) with intent to knowingly and willfully [misapply] [divert] (*name substance*) for [defendant's own use] [unauthorized use] [illegal use]].

And Fourth, that defendant did so by means of [dilution]³ (or) [substitution]⁴.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant was a [licensed (*describe type of practitioner, e.g., physician, dentist*)] [a registered (*describe type of registrant, e.g., scientific investigator*)] [employee of (*describe type of practitioner or registrant*)], and that the defendant [was authorized to possess] [had access to] controlled substances by virtue of the defendant's employment and (*name substance*) [had come into defendant's possession] [was under defendant's care], that defendant:

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- a. [Embezzled (*name substance*) for [defendant's own use] [unauthorized use] [illegal use]];
- b. [Fraudulently [misapplied] [diverted] (*name substance*) for [defendant's own use] [unauthorized use] [illegal use]];
- c. [Knowingly and willfully [misapplied] [diverted] (*name substance*) for [defendant's own use] [unauthorized use] [illegal use]];
- d. [[Took] [made away with] [secreted] (*name substance*) with intent to embezzle (*name substance*) for [defendant's own use] [unauthorized use] [illegal use]]];
- e. [[Took] [made away with] [secreted] (*name substance*) with intent to fraudulently [misapply] [divert] (*name substance*) for [defendant's own use] [unauthorized use] [illegal use]]];
- f. [[Took] [made away with] [secreted] (*name substance*) with intent to knowingly and willfully [misapply] [divert] (*name substance*) for [defendant's own use] [unauthorized use] [illegal use]],

and that defendant did so by means of [dilution] (or) [substitution], 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.

1 Embezzlement is the fraudulent taking of personal property with which one has been entrusted. *Black's Law Dictionary* (8th ed. 2004).

2 For a definition of intent see N.C.P.I.—Crim. 120.10.

3 N.C. Gen. Stat. § 90-108(b)(3) defines "dilution" as "the act of diluting or the state of being diluted; the act of reducing the concentration of a mixture or solution."

4 N.C. Gen. Stat. § 90-108(b)(3) defines "substitution" as "to take the place of or replace."

