

260.83 FELONIOUSLY [DIVERTING] [EMBEZZLING] A CONTROLLED SUBSTANCE (BY VIRTUE OF OCCUPATION). FELONY.

NOTE WELL: If the defendant allegedly embezzled by dilution or substitution, use N.C.P.I.—Crim. 260.84. If the defendant was a licensed registrant, or practitioner, or employee of a licensed registrant or practitioner, use N.C.P.I.—Crim. 260.81. If the defendant was a licensed registrant, or practitioner, or employee of a licensed registrant or practitioner, and allegedly embezzled by dilution or substitution, use N.C.P.I.—Crim. 260.82.

The defendant has been charged with feloniously [diverting] [embezzling] [misapplying] (*name substance*), a controlled substance, by virtue of defendant's occupation.

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

First, that by virtue of occupation or profession, defendant administered or provided [medical care] [aid] [emergency treatment] (or any combination thereof).

Second, that the defendant administered or provided this [medical care] [aid] [emergency treatment] (or any combination thereof) to a person who was prescribed a controlled substance.

Third that the 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.

- a. [Embezzled¹ (*name substance*) for [defendant's own use] [unauthorized use] [illegal use]].

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- 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 (*name substance*) was prescribed to another.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant by virtue of occupation or profession administered or provided [medical care] [aid] [emergency treatment] (or any combination thereof), that defendant administered or provided [medical care] [aid] [emergency treatment] [or any combination thereof] to a person who was prescribed a controlled substance, that defendant

- 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]],

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- 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 (*name substance*) was prescribed to another, 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.

