

260.84 FELONIOUSLY [DIVERTING] [EMBEZZLING] A CONTROLLED SUBSTANCE BY [DILUTION] (OR) [SUBSTITUTION] (BY VIRTUE OF OCCUPATION). FELONY.

*NOTE WELL: If the defendant allegedly embezzled without dilution or substitution, use N.C.P.I.—Crim. 260.83. 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, by [dilution] (or) [substitution].

For you to find the defendant guilty of this offense, the state must prove five 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 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 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<sup>1</sup> (*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<sup>2</sup> 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]].

Fourth, that defendant did so by means of [dilution]<sup>3</sup> (or) [substitution]<sup>4</sup>.

And Fifth, 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]],

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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 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]],

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

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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."

