

1 ARIZONA STATE BOARD OF PHARMACY  
2 1700 W. Washington Street, Room 250  
3 Phoenix, Arizona 85007  
4 (602) 771-2727

5 In the Matter of:

6 ROBERT NEUMAN,

7 Holder of License No. T014468  
8 As a Pharmacy Technician Trainee  
9 In the State of Arizona

FINDINGS OF FACT, CONCLUSIONS  
of LAW and BOARD ORDER  
No. 09-0029-PHR

10 On May 6<sup>th</sup>, 2009 the Arizona State Board of Pharmacy ("Board") considered the State's  
11 Motion to Deem Allegations Admitted at the Board of Pharmacy Offices, 1700 W. Washington Street,  
12 Room 312, in Phoenix, Arizona. Elizabeth Campbell, Assistant Attorney General, appeared on behalf  
13 of the State. Respondent did not appear.

14 On May 6<sup>th</sup>, 2009 the Board granted the State's Motion to Deem Allegations Admitted. Based  
15 upon A.R.S. § 32-1927.01(O) and the Complaint and Notice of Hearing No. 09-0029-PHR filed in this  
16 matter, the Board issues the following Findings of Fact and Conclusions of Law, and Order revoking  
17 Respondent's license.

18 FINDINGS OF FACT

19 1. During all times relevant to this Complaint, Respondent was employed as a pharmacy  
20 technician trainee at Bashas' Pharmacy #100, Bashas' Pharmacy #86, Bashas' Pharmacy #160, and  
21 Food City Pharmacy #164 in Arizona (the "Pharmacies").

22 2. In October 2008, Bashas' loss personnel interviewed Respondent concerning a loss of  
23 controlled substances. Respondent admitted diverting Dilaudid (hydromorphone), Endocet  
24 (oxycodone/APAP), and oxycodone. Respondent admitted to taking at least 30 tablets of the  
25 controlled substances for his friend.

26 3. A subsequent Board controlled substance audit documented shortages of the following  
27 at Bashas' Pharmacy #100: 20 tablets of oxycodone 5/325; 5 tablets of oxycodone ER 20; 10 tablets  
28  
29

1 of oxycodone IR 30; 12 tablets of oxycodone IR 5; and 1 tablet of oxycodone 10/325. The audit did  
2 not disclose who was responsible for the shortages.

3  
4 4. A subsequent Board controlled substance audit documented shortages of the following  
5 at Bashas' Pharmacy #86: 1 tablet of Endocet 7.5/325; 4 tablets of oxycodone IR 5; and 1 tablet of  
6 hydromorphone 4. The audit did not disclose who was responsible for the shortages.

7 5. A subsequent Board controlled substance audit documented shortages of the following  
8 at Food City Pharmacy #164: 87 tablets of oxycodone IR 15; 1 tablet of oxycodone IR 30; and 39  
9 tablets of oxycodone 5/325. The audit did not disclose who was responsible for the shortages.

10 6. A subsequent Board controlled substance audit documented shortages of the following  
11 at Bashas' Pharmacy #160: 3 tablets of oxycodone IR 15; 3 tablets of oxycodone 10/325; 9 tablets of  
12 oxycodone 7.5/325; 8 tablets of oxycodone ER 20; and 11 tablets of oxycodone IR 5. The audit did  
13 not disclose who was responsible for the shortages.

14  
15 7. Hydromorphone is a Schedule II controlled substance. A.R.S. § 36-2513(A)(1)(a)(xi).

16 8. Oxycodone and oxycodone/APAP are Schedule II controlled substances. A.R.S. § 36-  
17 2513(A)(1)(a)(xiv).

18 9. In 2002 Respondent was convicted of misdemeanor assault in Tucson Municipal Court  
19 Case No. M-1041-CR-1108975. However, when Respondent completed his Application for Licensure  
20 as a Arizona Pharmacy Technician on August 1, 2007, he answered "No" to the question "Has the  
21 applicant had any convictions involving a misdemeanor, felony offenses or any drug-related offenses."  
22 That question further stated that the applicant was to answer "Yes" even if the conviction had been  
23 vacated, pardoned, expunged, dismissed, appealed, or the applicant's civil rights had been restored.  
24

### 25 CONCLUSIONS of LAW

26  
27 1. The Board possesses jurisdiction over the subject matter and over Respondent pursuant  
28 to A.R.S. § 32-1901 *et seq.*

1           2. Pursuant to A.R.S. § 32-1927.01(A)(1), the Board may discipline a pharmacy  
2 technician trainee who has engaged in unprofessional conduct.

3           3. The conduct and circumstances described above constitute a violation of A.R.S. § 13-  
4 1802(A)(1) (A person commits theft if, without lawful authority, the person knowingly controls  
5 another person's property with the intent to deprive that other person of such property). Theft is a  
6 crime of moral turpitude. *State v. Superior Court of Pima County*, 121 Ariz. 174, 175-76, 589 P.2d  
7 48, 49-50 (App. 1978) (shoplifting involves moral turpitude and bears a close relationship to the  
8 common law crime of larceny).

9           4. The conduct and circumstances described above constitute a violation of A.R.S. § 13-  
10 3406(A)(1) (A person may not knowingly possess or use a prescription-only drug unless the person  
11 obtains the prescription-only drug pursuant to a valid prescription of a licensed prescriber).  
12 Furthermore, a person may not knowingly obtain or procure the administration of a prescription-only  
13 drug by fraud, deceit, misrepresentation or subterfuge. A.R.S. § 13-3406(A)(6). In either case, such  
14 illegal acquisition, possession or procurement of a prescription-only drug is a class 1 misdemeanor.  
15 A.R.S. § 13-3406(B)(1).

16           5. The conduct and circumstances described above constitute a violation of A.R.S. § 13-  
17 3406(A)(7) (A person may not sell, transfer or offer to sell or transfer a prescription-only drug). Such  
18 illegal transfer of a prescription-only drug is a class 6 felony. A.R.S. § 13-3406(B)(2).

19           6. The conduct and circumstances described above constitute a violation of A.R.S. § 36-  
20 2531(E) (A person may not knowingly or intentionally acquire or obtain possession of a controlled  
21 substance by means of forgery, fraud, deception or subterfuge). A person who violates A.R.S. § 36-  
22 2531(E) is guilty of a class 4 felony. A.R.S. § 36-2531(E).

23           7. The conduct and circumstances described above constitute a violation of A.R.S. § 36-  
24 2525(D) (A controlled substance included in schedule II shall not be dispensed without the written  
25

1 prescription order in ink or indelible pencil or typewritten and manually signed by the medical  
2 practitioner).

3  
4 8. The conduct and circumstances described above constitute a violation of A.R.S. § 36-  
5 2531(A)(1) (It is unlawful for any person who is subject to A.R.S. § 36-2521 *et seq.* to intentionally or  
6 knowingly distribute or dispense a controlled substance in violation of section 36-2525). A person  
7 who violates A.R.S. § 36-2531(A)(1) is guilty of a class 4 felony. A.R.S. § 36-2531(B).

8  
9 9. The conduct and circumstances described above constitute a violation of A.R.S. § 32-  
10 1968(A) (“A prescription-only drug shall be dispensed only under one of the following conditions: (1)  
11 By a medical practitioner in conformance with A.R.S. § 32-1921; (2) On a written prescription order  
12 bearing the prescribing medical practitioner’s manual signature; (3) On an electronically transmitted  
13 prescription order containing the prescribing medical practitioner’s electronic or digital signature that  
14 is reduced promptly to writing and filed by the pharmacist; (4) On a written prescription order  
15 generated from electronic media containing the prescribing medical practitioner’s electronic or manual  
16 signature. A prescription order that contains only an electronic signature must be applied to paper that  
17 uses security features that will ensure the prescription order is not subject to any form of copying or  
18 alteration; (5) On an oral prescription order that is reduced promptly to writing and filed by the  
19 pharmacist; (6) By refilling any written, electronically transmitted or oral prescription order if a refill  
20 is authorized by the prescriber either in the original prescription order, by an electronically transmitted  
21 refill order that is documented promptly and filed by the pharmacist or by an oral refill order that is  
22 documented promptly and filed by the pharmacist.”)

23  
24 10. The conduct and circumstances described above constitute unprofessional conduct  
25 pursuant to A.R.S. § 32-1901.01(C)(6) (Committing a felony, whether or not involving moral  
26 turpitude, or a misdemeanor involving moral turpitude or any drug- related offense. In either case,  
27 conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the  
28 commission).



1 DATED this <sup>gth</sup> day of May, 2009.

2 ARIZONA STATE BOARD OF PHARMACY

3 SEAL

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5  
6 

7 Hal Wand, R.Ph.  
8 Executive Director

9  
10  
11 COPIES mailed this 11 day of May, 2009, by

12 Certified Mail Receipt No. 7007 2680 0001 2491 8812 TVP

13 to:

14 Robert Neuman  
15 7950 E. Stella #H-5  
16 Tucson, Arizona 85730  
17 Respondent

18 COPIES of the foregoing mailed this 11 day of May 2009, to:

19 Elizabeth Campbell, Assistant Attorney General  
20 and

21 Christopher Munns, Assistant Attorney General, Solicitors Office

22 Both located at  
23 1275 W. Washington  
24 Phoenix, AZ 85007