

1 5. When store administrators confronted Respondent about the employees' allegations,
2 Respondent admitted that he had taken various prescription drugs during the day and placed them in a plastic
3 bag in his pocket. He surrendered the plastic bag full of prescription drugs to store administrators.

4 6. Respondent prepared and signed a hand-written statement listing the prescription drugs that he
5 took and explaining why he took them. The 184 stolen tablets included the following drugs: 15 units of Ambien
6 5mg, a schedule IV controlled substance drug; Glipizide 2.5mg, Inderal 80mg, Lotrel 5/20mg, Metformin
7 500mg, Niaspan 500mg, Pravacol 20mg, Quinipril 40mg, Ranitidine 300mg, Synthroid 112mcg, Toprol 100mg,
8 all of which are prescription-only drugs. Respondent explained that he could not pay for the drugs and took
9 them for his wife's use.
10

11 7. Store administrators reported the incident to the Phoenix Police Department. Police officers
12 investigated the incident, took control of the 184 stolen tablets and recommended that Respondent be charged
13 with unlawful acquisition and possession of prescription-only drugs in violation of A.R.S. § 13-2406(A)(1) and
14 shoplifting in violation of A.R.S. 13-1805(A)(1), pending store administrators' determination of the value of the
15 stolen drugs.
16

17 8. On September 12, 2005 store administrators informed Board staff that Respondent had been
18 caught stealing controlled substance and prescription-only drugs from the pharmacy. Store administrators
19 included Respondent's handwritten statement listing the drugs that he stole. Store administrators later reported
20 to the Police Department that the value of the stolen drugs was less than \$250.

21 9. On October 17, 2005 a Phoenix City Prosecutor indicted Respondent for theft, a class 1
22 misdemeanor offense. A.R.S. § 13-1802(A)(1), (E).

23 10. On January 25, 2006 Respondent appeared before the Board for a conference about allegations
24 of stealing controlled substance and prescription-only drugs from the Pharmacy.
25

26 11. At the conference, Respondent admitted to the Board that he had obtained controlled substance
27 and prescription-only drugs from the Pharmacy and that he did not have a valid prescription for those drugs. He
28 also admitted that he did not pay for those drugs.
29

1 pursuant to A.R.S. § 32-1968(A)”). A person who violates A.R.S. § 32-1091 *et seq.* with the intent to defraud
2 or mislead is guilty of a class 5 felony. A.R.S. § 32-1996(A)(2).

3
4 4. The conduct and circumstances described above constitute unprofessional conduct pursuant to
5 A.R.S. § 32-1901.01(B)(8) (“Committing a felony, whether or not involving moral turpitude, or a misdemeanor
6 involving moral turpitude or any drug related offense. In either case, conviction by a court of competent
7 jurisdiction or a plea of no contest is conclusive evidence of the commission.”)

8 5. A person may not knowingly acquire or possess a prescription-only drug unless the person
9 obtains the prescription-only drug pursuant to a valid prescription of a licensed prescriber. A.R.S. § 13-
10 3406(A)(1). Such illegal acquisition or possession of a prescription-only drug is a class 1 misdemeanor. A.R.S.
11 § 13-3406(B)(1). “The sale or dispensing or prescribing of narcotic drugs, except for medicinal use and under
12 strict surveillance, [involves] moral turpitude.” *Du Vall v. Board of Medical Examiners of Arizona*, 49 Ariz.
13 329, 337, 66 P.2d 1026, 1030 (1939).

14
15 6. A person commits theft if, without lawful authority, the person knowingly controls another
16 person’s property with the intent to deprive that other person of such property. A.R.S. § 13-1802(A)(1). Theft
17 of property or services with a value of less than \$250 is a class 1 misdemeanor. A.R.S. § 13-3406(E). Theft is a
18 crime of moral turpitude. *Du Vall*, 49 Ariz. at 339, 66 P.2d at 1031; *State v. Superior Court of Pima County*,
19 121 Ariz. 174, 175-76, 589 P.2d 48, 49-50 (App. 1978) (shoplifting involves moral turpitude and bears a close
20 relationship to the common law crime of larceny).

21
22 7. The conduct and circumstances described above constitute unprofessional conduct pursuant to
23 A.R.S. § 32-1901.01(B)(18) (“Providing false or misleading information or omitting material information in
24 any communication to the board or the board’s employee’s or agents.”).

25
26 **ORDER**

27 In view of the above Findings of Fact and Conclusions of Law, the Board issues the following Order:

28 Pharmacist license No. 14591 issued to Marvin Fein is revoked. A.R.S. § 32-1927(A)(1).

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