



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION  
2015-117A

John A. Foust, D.Ph., Pharm.D.  
Executive Director  
State Board of Pharmacy  
2920 N. Lincoln Blvd., Ste. A  
Oklahoma City, Oklahoma 73105

November 6, 2015

Dear Executive Director Foust:

This office has received your request for a written Attorney General Opinion regarding agency action that the State Board of Pharmacy intends to take pursuant to a consent agreement with a licensed pharmacy 2-7217 and its owner. The proposed action is to revoke the pharmacy's license, impose a fine of \$15,000, and require the owner of the pharmacy to sell all interests in businesses entities owning pharmacies, to not take interests in pharmacies in the future, and to not become an employee or other person receiving compensation from a pharmacy in the future. The pharmacy and its owner had engaged in a pattern of conduct whereby drug representatives persuaded physicians to prescribe compounded products from the pharmacy, which could then be billed to insurance. The profits from preparing the compounded products were split with the drug representatives, the profits accruing to the pharmacy and owner amounting to some \$1,454,442.16. Further, the pharmacy allowed non-pharmacists to act as pharmacists; failed to keep proper records about drugs; failed to properly label and store drugs; and failed to maintain purity and sanitary standards when compounding drugs, among other things.

The Oklahoma Pharmacy Act, 59 O.S.2011 & Supp.2015, §§ 353–355.3, authorizes the Board to promulgate rules necessary for the regulation of pharmacies and pharmacists and for the protection of public health, 59 O.S.Supp.2015, § 353.7(14), and the Board has promulgated rules regulating pharmacies, *e.g.*, OAC 535:15-3-2. Those rules include ensuring that only pharmacists control access to drugs, OAC 535:15-3-13(a), that proper records are kept about drugs, OAC 535:15-3-2(b)(1)(C), that resulting compounded drugs contain between 90% and 110% of theoretically calculated quantities of active ingredients, OAC 535:15-10-8(f), and that various sanitary procedures be followed when compounding drugs, *e.g.*, OAC 535:15-10-14. Further, the rules state that drugs should only be dispensed when the prescription “has been issued for a legitimate medical purpose by an authorized prescriber acting in the usual course of the prescriber’s professional practice,” OAC 535:15-3-13(c), and the prescription was issued in the context of a “valid preexisting patient-prescriber relationship,” OAC 535:15-3-13(d).

The action seeks to enforce the rules described above and, given the pervasive extent of the violations, ensure the party most responsible for them is barred from carrying on a pharmacy

business in the future without going before the Board. The Board may reasonably believe that the severity of the violations, the extent to which they call into question the legitimacy of the business, and their threat to the public health require the fines and other penalties proposed.

It is, therefore, the official opinion of the Attorney General that the State Board of Pharmacy has adequate support for the conclusion that this action advances the State of Oklahoma's policy to protect the public health, safety, and welfare.

A handwritten signature in black ink, appearing to read "E. Scott Pruitt". The signature is stylized with a large initial "E" and a prominent flourish at the end.

E. SCOTT PRUITT  
ATTORNEY GENERAL OF OKLAHOMA