



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION  
2016-40A

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

January 27, 2016

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 pharmacy licensee 2-6500. The proposed action is to place the licensee on probation for five years and impose fines totaling \$45,000. The licensee failed to ensure employees were adequately supervised; failed to follow safety and hygienic standards in compounding dangerous drugs; compounded drugs that are commercially available in the marketplace; and compounded drugs including large amounts of oxycodone without proper documentation.

The Oklahoma Pharmacy Act seeks to “promote, preserve and protect the public health, safety and welfare by and through the effective control and regulation of the practice of pharmacy” within the State. 59 O.S.2011, § 353(B). The practice of pharmacy includes compounding drugs. 59 O.S.Supp.2015, § 353.1(37)(b). The Act authorizes the State Board of Pharmacy to promulgate rules necessary for the regulation of pharmacy and protection of public health, 59 O.S.Supp.2015, § 353.7(14), and the Board has promulgated rules regulating pharmacies and other registrants with the Board, *see, e.g.*, OAC 535:15-3-2. The rules require that pharmacies retain pharmacists-in-charge who adequately supervise employees, OAC 535:15-3-2(c)(5), maintain only a two-to-one ratio of pharmacy technicians to supervising pharmacists, OAC 535:15-13-5(c), and adhere, when compounding drugs, to a variety of safety and hygienic standards including establishing policies and procedures, using ventilated cabinets for preparing certain hazardous drugs, evaluating staff with media-fill tests, maintaining equipment, and more. *See, e.g.*, OAC 535:15-10-3(c)(8), (e)(1), OAC 535:15-10-14(8), OAC 535:15-10-52(c)(8), (e)(1), (f)(4). The rules also prohibit pharmacists from compounding commercially available drugs without specific medical needs. OAC 535:15-10-8(h)(1)–(2); OAC 535:15-10-53(b).

The action seeks to enforce rules that ensure pharmacies maintain safety standards when producing drugs and that they do not dispense commercially available products regulated by the United States Food and Drug Administration. Because illegal compounding can serve as a significant source of profits for a pharmacy, the Board has a reasonable basis for believing that fines and a period of probation are necessary to deter future violations.

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 fluid and cursive, with the first name "E. Scott" and last name "Pruitt" clearly distinguishable.

E. SCOTT PRUITT  
ATTORNEY GENERAL OF OKLAHOMA