



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2016-6A

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

January 7, 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 pharmacist licensee 13429, a pharmacy licensee's pharmacist-in-charge. The proposed action is to place the licensee on probation for five years; impose fines totaling \$5,000 on the licensee; require that the licensee attend a one-day law seminar in addition to other continuing education requirements during 2016 and 2017; and require that all continuing education during licensee's probation term be in-person and live. The licensee must also provide documentation of completed training in compounding and provide proof of biannual training in compounding standards during licensee's probation term if working in a facility that compounds sterile products. The licensee had failed to adequately supervise employees, failed to follow safety and hygienic standards in compounding dangerous drugs, and compounded drugs that are commercially available in the marketplace.

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), and that pharmacists involved in compounding adhere 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, 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 Board's 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. The Board may reasonably believe that fines and probation with training requirements will adequately prevent 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 written in a cursive, flowing style with some loops and flourishes.

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA