



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2016-321A

Billy Stout, M.D., Board Secretary
State Board of Medical Licensure and
Supervision
101 NE 51st Street
Oklahoma City, Oklahoma 73105

May 31, 2016

Dear Board Secretary Stout:

This office has received your request for a written Attorney General Opinion regarding agency action that the State Board of Medical Licensure and Supervision intends to take pursuant to a consent agreement with respect to respiratory care licensee 1809. The proposed action is to impose terms of probation during the pendency of disciplinary proceedings. The terms of probation include entry into a peer-based substance abuse monitoring program, obtaining a drug and alcohol assessment, notifying employers of the probation and obtaining Board permission before changing employers, providing certain kinds of mental health and substance abuse information to the Board, and staying current on all payments, including a \$150 per month probation fee.

The licensee entered an *Alford* plea in response to misdemeanor charges for being involved in a personal injury accident while driving under the influence of alcohol as well as driving the wrong way on a one-way road. The licensee also admitted to having several alcoholic beverages on the evening giving rise to the licensee's criminal conviction. The licensee eventually entered a peer-based substance abuse monitoring program but was terminated after a random urine test had positive results.

The Respiratory Care Practice Act, 59 O.S.2011 & Supp.2015, §§ 2026–2045, authorizes the Board to discipline licensees who are “habitually intemperate in the use of alcoholic beverages” or who are “guilty of unprofessional conduct as defined by the rules established by the Board,” 59 O.S.2011, § 2040(3), (9). The Board’s rules clarify that “unprofessional conduct” includes the “intemperate or addicted use of any . . . substance which could result in behavior that interferes with the practice of respiratory care.” OAC 435:45-5-3(a)(1). Here, the licensee admitted to excessive alcohol use and was eventually discharged from peer-based substance abuse monitoring. The Board may reasonably believe that agreed terms of probation identified with the licensee are necessary to protect patient safety and public health during the pendency of the licensee’s disciplinary proceedings.

It is, therefore, the official opinion of the Attorney General that the State Board of Medical Licensure and Supervision has adequate support for the conclusion that this action advances the State of Oklahoma's policy upholding minimum standards of professionalism in the practice of respiratory care.

A handwritten signature in black ink, appearing to read "E. Scott Pruitt". The signature is stylized and cursive, with a prominent initial "E" and "S".

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA