



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2016-4A

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:

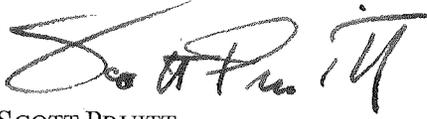
This office has received your request for a written Attorney General Opinion regarding agency action that the State Board of Pharmacy intends to take pursuant to a consent agreement with pharmacy licensee 99-483. The proposed action is to impose a five-year probation term and fines totaling \$10,000 for not having a pharmacist-in-charge responsible for pharmacy operations. The pharmacy's renewal application lists a pharmacist-in-charge who is not licensed in the pharmacy's state of operations, Pennsylvania, and who actually lives in Oklahoma. The pharmacist has even worked part-time at other pharmacies located in Oklahoma while registered as the respondent pharmacy's pharmacist-in-charge.

The Oklahoma Pharmacy Act, 59 O.S.2011 & Supp.2015, §§ 353-355.2, requires that anybody seeking to sell "dangerous drugs, medicines, chemicals or poisons" outside certain narrow exceptions obtain a license from the Board, 59 O.S.Supp.2015, § 353.18(A)(1). These pharmacy licensees must be "under the management and control of a licensed pharmacist or pharmacist-in-charge." *Id.* at § 353.18(A)(2)(c).

The Board's administrative rules require that the pharmacist-in-charge be able to fulfill oversight responsibilities including the "supervision of all employees as they relate to the practice of pharmacy," the "establishment of policies and procedures for safekeeping of pharmaceuticals," and a "proper record keeping system for . . . drugs." OAC 535:15-3-2(b)(1)(A)-(C). The pharmacist-in-charge must also "work sufficient hours in the pharmacy to exercise control and meet the responsibilities of the pharmacy manager." OAC 535:15-3-2(b)(4). Further, out-of-state pharmacy licensees must employ pharmacists who are licensed in the state in which the pharmacy operates. OAC 535:15-3-9(c)(1).

The action seeks to enforce these requirements in circumstances where evidence indicates that a pharmacist-in-charge could not control and be responsible for a pharmacy because the pharmacist lives and works in Oklahoma while the pharmacy operates in Pennsylvania. The Board may reasonably believe that probation and a fine on the pharmacy will adequately incentivize future compliance with the rules governing pharmacists-in-charge.

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 and cursive.

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA