



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2016-46A

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

January 28, 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 10778 and pharmacy licensee 2-4610, which was owned by the pharmacist during relevant times but was later sold. The proposed action is to suspend the pharmacist license for 100 days and impose ten years' probation. The action also includes a \$105,000 fine and requirements that the pharmacist licensee attend one-day law seminars each year from 2016 to 2018 and attend live continuing education courses over the same years.

The licensees shipped prescriptions into other jurisdictions without being licensed in those jurisdictions; filled prescriptions by out-of-state physician assistants without authority to have prescriptions filled in Oklahoma; filled prescriptions sent by email without signatures; paid kickbacks for prescribing drugs to be compounded by the pharmacy; and failed to properly document justifications for numerous compounded drugs. The licensees neither admitted nor denied the allegations, but they agreed to be bound by the discipline imposed by the Board.

The Oklahoma Pharmacy Act, 59 O.S.2011 & Supp.2015, §§ 353–355.2, 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), including through the Board’s promulgation of administrative rules, 59 O.S.Supp.2015, 353.7(13). The Board’s regulations bar secret arrangements for dividing fees—such as kickbacks—as well as distributing drugs without complying with state or local laws for prescription drug distribution. *See* OAC 535:10-3-1.1(8); OAC 535:10-3-1.2(2). Oklahoma law also prohibits filling prescriptions for certain controlled substances without signed prescriptions, OAC 475:30-1-4(a), (f), and filling prescriptions despite a prescriber’s lack of legal authority to issue them, OAC 535:15-3-11(a). The rules also require that records of compounding be compiled and reviewed. OAC 535:15-10-3(c)(6).

The action seeks to enforce these requirements in circumstances where respondent licensees neither admit nor deny allegations of misconduct but agree to discipline for the allegations. The

Administrative Procedures Act endorses the appropriate use of consent orders, 75 O.S.2011, § 309(E), and the Board is reasonable to think that significant fines, suspension, probation terms, and education requirements are necessary to deter and prevent future violations. In particular, given the number of violations and the opportunity for practices such as kickbacks and illicit compounding to generate revenue, fines may be particularly necessary to establish deterrence and ensure violators do not enjoy the fruits of unlawful conduct.

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