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ATTORNEY GENERAL

**ATTORNEY GENERAL OPINION  
2022-31A**

Marty Hendrick, Executive Director  
Oklahoma State Board of Pharmacy  
2920 N. Lincoln Blvd., Suite A  
Oklahoma City, OK 73105

September 28, 2022

Re: Kyle Rackley, Case No. 1639

Dear Executive Director Hendrick:

This office has received your request for a written Attorney General Opinion regarding action that the State Board of Pharmacy intends to take in Case No. 1639.

The Oklahoma Pharmacy Act authorizes the Board to regulate the practice of pharmacy. 59 O.S.2021, § 353.7. Specifically, “[t]he State Board of Pharmacy may . . . revoke permanently or suspend any certificate, license or permit issued pursuant to the Oklahoma Pharmacy Act or reprimand or place on probation any holder of a certificate, license, or permit who . . . violates any provision of the Uniform Controlled Dangerous Substances Act” or “[c]onducts himself or herself in a manner likely to lower public esteem for the profession of pharmacy.” *Id.* § 353.26(A)(1)(b), (e). The Uniform Controlled Dangerous Substances Act states that “[i]t shall be unlawful for any person knowingly or intentionally to possess a controlled dangerous substance[.]” 63 O.S.2021, § 2-402(A)(1). Further, it is unlawful to (1) fail to have a licensed pharmacist “present and on duty at all business hours”; (2) “subvert the authority of the pharmacist-in-charge . . . by impeding the management of the prescription department”; and (3) permit the practice of pharmacy by anyone other than a licensed pharmacist. *See* 59 O.S.2021, § 353.18(A)(2), *id.* § 353.24(B)(5–6).

Respondent is a licensed pharmacy tech and owner of a licensed pharmacy. According to a Board complaint, from November 2021 through April 2022, Respondent violated Board rules by (1) performing pharmacy tasks without direct, on-site supervision of a licensed pharmacist; (2) performing prohibited duties;<sup>1</sup> (3) failing to maintain effective controls against diversion of prescription drugs; (4) performing tasks while a license pharmacist is not present and on duty at all times; (5) subverting the authority of the pharmacist-in-charge by impeding his or her management of the prescription department to maintain compliance with state and federal law; and (6) practicing pharmacy without a license. *See* 59 O.S.2021, § 353.18(A)(2)(d); 59 O.S.2021,

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<sup>1</sup> Support personnel shall not “interpret the original prescription[.]” or “take verbal authorizations . . . for any refill . . . .” *See* OAC 535:15-13-7(1), (3).

§ 353.24(B) (5), (6); OAC 535:15-13-5(a), OAC 535:15-13-7(1), (3); OAC 535:10-3-1.2. The Board proposes to revoke the respondent's permit. The Board may reasonably believe the proposed action is 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's policy to protect public health, safety, and welfare.



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