



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION  
2016-740A

Cindy Fain, D.Ph.  
Executive Director  
State Board of Pharmacy  
2920 N. Lincoln Blvd., Ste. A  
Oklahoma City, Oklahoma 73105

December 19, 2016

Dear Executive Director Fain:

This office received your request for a written Attorney General Opinion regarding agency action that the State Board of Pharmacy intends to take under a consent agreement with medical gas distributor licensee 9-D-777. The proposed action is to impose fines totaling \$2,000 and restrict the licensee from providing medical grade gas services. The licensee failed to meet requirements for the storage and handling of medical gases and failed to establish and maintain the requisite recordkeeping for distribution on medical gases. The licensee distributes oxygen to a medical gas supplier, two nursing facilities, and to patients upon prescription by physician.

The Oklahoma Pharmacy Act, 59 O.S.2011 & Supp.2016, §§ 353–355.2, seeks to “promote, preserve and protect the public health, safety and welfare” within the State. 59 O.S.2011, § 353(B). To achieve that objective, the Act authorizes the Board to regulate medical gas distributors, 59 O.S.Supp.2016, §§ 353.7(5), 353.18(B)(1), and promulgate rules for regulating pharmaceutical care and protection of public health. 59 O.S.Supp.2016, § 353.7(14). Medical gas distributors must maintain compliance with federal, state and local laws, OAC 535:20-9-3, 535:20-9-4(g)(1)(A); maintain compliance with the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, OAC 535:20-9-4(e); maintain and establish policies and procedures for the storage, handling, and inventory management of medical gases, OAC 535:20-9-4(i)(6); maintain and file the proper and accurate records and reports required by the applicable laws, OAC 535:20-9-4(i)(5), 535:20-9-6(a)(1)(B); adhere to the standard of care when filling prescriptions and drug orders to avoid incorrect fills, OAC 535:25-9-9; and employ qualified personnel, OAC 535:20-9-4(f). This action seeks to enforce these requirements and protect the public health by ensuring medical gas distributors engage in business in a safe manner. The Board’s imposition of fines and restriction of medical grade gas services are reasonable actions to deter and 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 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 with large, sweeping letters and a prominent flourish at the end.

E. SCOTT PRUITT  
ATTORNEY GENERAL OF OKLAHOMA