



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2016-738A

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 with respect to pharmacist licensee 10778. The proposed action is to require the balance of the fine imposed by a previous Agreed Order with the Board to be paid by April 29, 2017. The previous Agreed Order addressed the three hundred three counts alleged against Respondent and imposed a \$105,000.00 fine, among other things, to be paid according to a monthly payment schedule. The Board reports Respondent is delinquent on payments as it has only received Respondent's April and May 2016 payments. The Board accounts Respondent owes \$40,380 in due and unpaid fines of the \$88,848 total outstanding.

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 by and through the effective control and regulation of the practice of pharmacy.” 59 O.S.2011, § 353(B). The Act authorizes the State Board of Pharmacy to promulgate rules necessary for the regulation of pharmaceutical care and protection of public health, 59 O.S.Supp.2016, § 353.7(14), and the Board has promulgated rules regulating pharmacies and registrants with the Board. For violations of these rules, the Board has authorization to reprimand, place on probation, suspend or revoke licenses, or take other disciplinary action, and/or levy fines not to exceed \$3,000 per count. *Id.* § 353.7(12). Failure to comply with the Board's orders may result in additional sanctions by the Board. OAC 535:1-7-4(b). The Board now seeks to enforce the April 29, 2017 deadline for complete payment of the fine. The Administrative Procedures Act endorses the appropriate use of consent orders. 75 O.S.2011, § 309(E). In this particular case, given the number of violations for practices such as kickbacks and illicit compounding to generate revenue, the Board's enforcement of the fine is reasonably 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 stylized with a large, sweeping initial "E" and a long horizontal stroke extending to the right.

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA