



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2017-689A

Chelsea O. Church, D.Ph., Pharm.D., BCPS, Executive Director
State Board of Pharmacy
2920 N. Lincoln Blvd., Suite A
Oklahoma City, Oklahoma 73105

September 21, 2017

Dear Executive Director Church:

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 an Agreed Order with respect to pharmacist licensee #15148. The proposed action is to suspend the licensee's license for 1 year until August 30, 2018; and require the licensee to continue the licensee's contract with Oklahoma Pharmacists Helping Pharmacists (OPHP). After August 30, 2018 the licensee may petition the Board to stay the suspension and place the licensee on probation. The Board has also determined that, at such time, probation may be granted at the Board's discretion upon a showing of the licensee's compliance with the OPHP contract and upon a showing that the licensee's resumed practice would not put the public at risk. Additionally, the Board has found that the licensee shall obtain a fit-for-duty evaluation from an OPHP-approved provider and be found to be fit-for-duty before returning to work. The Board is also requiring that the licensee attend a 1 day (8 hour) law seminar in addition to the required 15 hours of CE during the calendar years of 2017 and 2018 for a total of 23 hours of CE during these calendar years, and all 15 hours of required CE shall be live courses during the calendar year of 2017.

The licensee has been licensed as a pharmacist in the State of Oklahoma since March 13, 2012. The licensee is not currently working in a pharmacy. The licensee had previously worked at a pharmacy in Shawnee, Oklahoma. The licensee was terminated from that pharmacy on December 15, 2015, for violation of company policy including theft. After an investigation the licensee admitted in writing to theft of hydrocodone 10-325, amphetamine salt combo 30 mg, amphetamine salt combo 20 mg and dextroamphetamine 15 mg from the Shawnee pharmacy. On January 25, 2016, the licensee entered into a self-referred contract with OPHP. Subsequently, the licensee was employed by a pharmacy located in Eufaula, Oklahoma. On June 2, 2017, the licensee's employment was terminated with the Eufaula pharmacy for violation of policy as a result of testing positive for hydrocodone on a drug test. On June 9, 2017, the Board received a report from OPHP that the licensee was non-compliant with his OPHP contract. The report stated that the licensee had tested positive for hydrocodone using a Hairstat 12 test collected on May 10, 2017. The licensee had no approval from OPHP to take or have a prescription on file for hydrocodone. When confronted regarding the positive result, the licensee first denied but then quickly admitted using hydrocodone for hip/back pain, and that his significant other had obtained it from a friend. The

OPHP report stated that the licensee had not been forthcoming with OPHP regarding the licensee's non-compliance and that the licensee changed the licensee's story more than once. Subsequent to the Hairstat 12 collection, the licensee, in another hair test taken on June 2, 2017, also tested positive for hydrocodone and oxycodone. The licensee told OPHP that he had obtained the oxycodone from the licensee's girlfriend/fiancée who was prescribed this drug when she delivered their first child. OPHP has been unable to verify this information even though OPHP requested proof of a valid prescription from the licensee. In a text message dated July 5, 2017 and a letter dated July 6, 2017, OPHP recommended that the licensee cease the practice of pharmacy. On July 14, 2017, a compliance officer visited a pharmacy in Poteau, Oklahoma where the licensee had previously been employed to confirm the licensee was no longer working there. The owner of the Poteau pharmacy informed the compliance officer that the licensee had worked at the pharmacy on Tuesday through Thursday of that week. In a telephone conversation with the compliance officer, the licensee admitted working those days after being told that OPHP recommended that the licensee not work in a pharmacy. The licensee said that the licensee felt obligated to finish the licensee's previously scheduled work schedule with the Poteau pharmacy. The Poteau pharmacy owner, however, told the compliance officer that the licensee was trying to schedule to work additional Fridays and weekends.

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” within the State. 59 O.S.2011, § 353(B); *see also* 59 O.S.Supp.2016, § 353.1(37)(g). The Act gives the Board “the power and duty to [] [r]egulate the practice of pharmacy.” 59 O.S.Supp.2016, § 353.7(1). In doing so, the Act authorizes the Board to “[m]ake and publish rules such as may be necessary for carrying out and enforcing the provisions of the [Act], Oklahoma drug laws and rules, federal drug laws and regulations, and make such other rules as in its discretion may be necessary to protect the health, safety, and welfare of the public[.]” *Id.* § 353.7(14). The Act also authorizes the Board to “[a]dopt and establish rules of professional conduct[.]” *Id.* § 353.7(13). Furthermore, the Act gives the Board the power to discipline licensees that violate the Act or the Board's rules. *See id.* § 353.7(12). Such disciplinary actions may include, but are not limited to, “[r]eprimand[ing], plac[ing] on probation, suspend[ing] [and] revok[ing]” licenses; “levy[ing] fines;” “requir[ing] additional continuing education, including attendance at a live continuing education program;” “requir[ing] participation in a rehabilitation program for the impaired;” and/or “tak[ing] other disciplinary action[s][.]” *Id.* § 353.7(12); *see also id.* § 353.7(18). Oklahoma law provides that it is “unlawful for any person knowingly or intentionally to possess a controlled dangerous substance unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his or her professional practice[.]” 63 O.S.Supp.2016, § 2-402(A)(1). The Board's rules specifically provide that “[t]heft while working as a registrant is a violation of registrant conduct.” OAC 535:25-9-7. The Board rules also specifically provide that “[a]buse of alcohol or drugs, use of an illegal controlled dangerous substance (CDS), or testing positive for such substance or its metabolite is a violation of registrant conduct.” OAC 535:25-7-3(c). Furthermore, the Board's rules require that “[r]egistrants . . . conduct business in conformity with all federal, state and municipal laws at all times” and “[c]onduct themselves at all times in a manner that will entitle them to the respect and confidence of the community in which they practice.” OAC 535:25-7-3(a),(b). Finally, the Board rules state that “[a] registrant shall not violate directly, (or indirectly through the actions of another), assist or abet in the violation of, or conspire to violate, any

provision of the [Act], the Federal Food, Drug, and Cosmetic Act . . . , the Prescription Drug Marketing Act . . . , the Robinson-Patman Act . . . , or federal, state and local laws and rules.” OAC 535:25-9-3. The action proposed by the Board seeks to enforce these requirements. The Board may reasonably believe that the disciplinary 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 of Oklahoma’s policy to promote, preserve and protect the public health, safety and welfare by and through the effective control and regulation of the practice of pharmacy and of the registration of drug outlets engaged in the manufacture, production, sale and distribution of dangerous drugs and medication.



MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA



RYAN CHAFFIN
DEPUTY CHIEF – ASSISTANT ATTORNEY GENERAL