



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2015-183A

Billy Stout, M.D., Board Secretary
State Board of Medical Licensure and
Supervision
101 NE 51st Street
Oklahoma City, Oklahoma 73105

December 9, 2015

Dear Board Secretary Stout:

This office has received your request for a written Attorney General Opinion regarding agency action that the State Board of Medical Licensure and Supervision intends to take with regard to a motion filed by former medical doctor licensee 23746. The motion requests that the Board issue a declaratory ruling invalidating a prior Board order accepting licensee's voluntary submittal to jurisdiction. The Board rejected that motion.

A voluntary submittal to jurisdiction is, essentially, the label given to agreed disciplinary orders entered by the Board; the negotiation and entry of such agreed orders, while perhaps prone to some criticism, is a common practice across professional licensing boards in Oklahoma. Such consent orders, often not expressly authorized by statutes, save significant State—and professional—resources in exchange for milder discipline than might otherwise occur.

Licensee's voluntary submittal occurred in 2014 after serious allegations of flagrant and ongoing sexual misconduct were made both criminally and before the Board. Those allegations ranged from 2008 to 2011; affected at least seventeen people, including patients and employees; and included innuendo, sexually explicit comments, solicitations, and physical advances. Licensee has never admitted guilt as to any of the allegations.

The complaint initiating licensee's discipline also included other allegations, including allegations that licensee had interfered with the Board's investigation and had falsified records.

Licensee's voluntary submittal to jurisdiction according to the Board's records included no admission of guilt but did include a statement that the licensee understood a hearing could result in discipline. The voluntary submittal also required the revocation of the license and that the discipline be submitted to a national database that would be viewed by medical licensing authorities in other states.

In his motion to the Board, the licensee advanced two legal theories to support vacatur of his voluntary submittal to jurisdiction. First, he argued that the Board did not have authority to

approve the voluntary submittal to jurisdiction because the only possible statutory authority for accepting it did not have its requirements met.

In other words, rather than seeing his prior voluntary submittal as an agreed order, licensee views it as an attempt at a Surrender in Lieu of Prosecution. That process, peculiar to the Board and explicitly described in its statutes, requires an admission of guilt and the voluntary surrender of the license. *See* 59 O.S.2011, § 509.1(E). The advantage of such a surrender for a licensee is that it absolutely bars Board staff from engaging in any disciplinary proceedings, sparing a licensee from the expense and press of mounting a defense and also barring any discipline harsher than a revocation—including potentially significant fines. It is also a course that can be taken despite Board staff’s reluctance to allow it. In other words, there is no negotiating a Surrender in Lieu of Prosecution; there is only a question of whether the licensee’s attempt at one meets the statutory requirements. Here, there is no question that licensee’s voluntary submittal does not meet the statutory requirements for a Surrender in Lieu of Prosecution because the submittal does not contain an admission of guilt.

The question decided by the Board in passing upon licensee’s motion, then, is whether it has the legal authority to accept a voluntary submittal to jurisdiction—or, in other words, whether the Board can approve agreed orders negotiated by disciplinary respondents and Board staff. The Board’s administrative rules specifically recognize voluntary submittals, OAC 435:5-1-5.1, and the Administrative Procedures Act, 75 O.S.2011 & Supp.2015, §§ 250–323, also authorizes the entry of consent orders and agreed settlements unless specifically barred, 75 O.S.Supp.2015, § 309(E). Based on these authorities, it is apparent that—so long as the obligations imposed by an agreed order fall within a statutory range of actions authorized for a board and the procedural requirements for instituting disciplinary proceedings are met—a board has the authority to impose discipline according to a consent order with a respondent who agrees to the terms of the discipline, voluntarily waiving a full hearing. Here, the Board has statutory authority to, among other things, revoke a medical license. *See* 59 O.S.2011, § 509.1(A). Acceptance of consent orders in the form of voluntary submittals to jurisdiction is intended to advance the Board’s statutory mandate to “suspend, revoke or order any other appropriate sanctions against the license of any physician . . . for unprofessional conduct.” 59 O.S.Supp.2015, § 503; *see also* 59 O.S.2011, § 509.1(A). The Board may reasonably believe that accepting and enforcing such consent orders is legally appropriate and advances its statutory mission.

The licensee’s second argument was that the Board had lost the original copy of its order, does not have a legally adequate copy, and that there is a dispute as to the contents of the order. Looking to licensee’s own filings before the Board and evidence in the record before the Board, the Board could have concluded that these allegations are either false or irrelevant. There appears to be an order on file at the Board; it bears the signature of licensee; and it contains findings and terms that substantially mirror evidence as to the negotiation of the agreement. The order on file does not even substantially differ from licensee’s current position on the true agreement’s contents except that licensee alleges the true agreement “would not be considered discipline in any way by the Medical Licensure Board” or that his relinquishment of his license could not “be in any way as a result of the prosecution of [his] case.” Mot. Declaratory Ruling and Mot. Vacate Order at 8. No evidence presented to the Board bore out these irrelevant and borderline frivolous claims. The Board’s rejection of this legal theory underlying the motion has some evidentiary

support, and the Board may reasonably believe that rejecting these contentions would advance its statutory mission to discipline physicians who engage in unprofessional conduct.

The Board denied licensee's motion, and it could have done so reasonably as to both legal theories underlying the motion. It is, therefore, the official opinion of the Attorney General that the State Board of Medical Licensure and Supervision has adequate support for the conclusion that this action advances the State of Oklahoma's policy to protect public health and ensure patient 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