



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION  
2017-685A

Chelsea O. Church, D.Ph., Pharm.D., BCPS, Executive Director  
Oklahoma 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 10322 and pharmacy 31-5799. The Board's proposed action as to the licensee is to suspend the licensee's license for 30 days, from October 1 through October 30, 2017; beginning October 31, 2017, place the licensee on probation for 4 years, until October 31, 2021; prohibit the licensee from working as a pharmacist-in-charge from October 1, 2017 until October 1, 2018; require the licensee to attend a 1 day (8 hour) law seminar in addition to the required 15 hours of CE during the calendar years of 2017, 2018, 2019, 2020 and 2021 for a total of 23 hours of CE during these calendar years; and require all 15 hours of required CE to be live during the calendar years of 2017, 2018, 2019, 2020 and 2021.

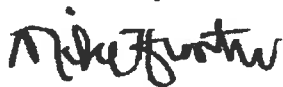
As to the pharmacy, the Board's proposed action is to place the pharmacy's license on probation for 4 years, from October 1, 2017 until October 1, 2021; require the pharmacy's pharmacist-in-charge to work inside the pharmacy no fewer than 24 hours per week during the time that the pharmacy is on probation; and fine the pharmacy \$100.00 per count on Counts 1-149 for a total fine of \$14,900.00. The Board also proposes to require the licensee and the pharmacy to do a perpetual inventory on all Controlled Dangerous Substances (CDS) and to conduct actual on-hand counts of Oxycodone-containing products, Hydrocodone-containing products, Adderall, Alprazolam, and Carisoprodol every 2 weeks for 1 year. Moreover, the Board has determined that only a pharmacist shall have access to and can order CII's. Further, the Board determined that the licensee and the pharmacy shall start the process to change the CSOS certification immediately and that this change is required to be completed within 6 months, by February 28, 2018. Finally, the Board has determined that all computers used by the pharmacy shall have individual passwords.

The licensee is the owner and pharmacist-in-charge of the pharmacy. During the third week of January, 2017, the licensee contacted the acting Executive Director of the Board to report a significant loss of oxycodone. On January 24, 2017, a Board Compliance Officer talked with the licensee. The licensee told the compliance officer that the loss was around 10,000 oxycodone 30 mg tablets and that the pills were taken by a technician, Tech. #12624. The licensee stated that the technician had fallen in love with a local resident who was probably asking the technician to steal the pills. In a subsequent investigation the licensee stated that whoever had been stealing the pills had been editing the "on hands" in the computer system, that the pharmacy staff had access to the licensee's passwords for the

pharmacy computer system and that the licensee's sign in had been used to make the adjustments in the computer system. During the investigation, the technician denied the theft and said that another technician, Tech. #21367, was the one that does all the ordering, including C2's on CSOS, and that that technician had the licensee's CSOS information. During an inspection and audit at the pharmacy it was observed that a fill-in pharmacist was using the licensee's sign in credentials, and that most of the computers were signed in with these credentials. The staff indicated that this practice was normally used when the licensee was not working. On March 22, 2017, the licensee provided a DEA 106 showing that a total of 14,845 Oxycodone pills were lost (148 bottles of 100 count bottles). According to the licensee the theft began in October and ended in January. During this time frame approximately 37 bottles were stolen each month.

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 id.* §353.1(37)(g). The Act gives the Board “the power and duty to [] [r]egulate the practice of pharmacy.” *Id.* § 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[.]” 59 O.S.Supp.2016, § 353.7(14); *see also id.* § 353.7(13). The Act also 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;” and/or “tak[ing] other disciplinary action[s][.]” 59 O.S.Supp.2016, § 353.7(12); *see also id.* § 353.7(18). The Act and the Board rules specifically make it “unlawful for any licensee . . . to . . . [f]ail to establish and maintain effective controls against the diversion of drugs for any other purpose than legitimate medical, scientific or industrial uses as provided by state, federal and local law[.]” *Id.* § 353.24(A)(9), OAC 535:25-9-8(2); *see also* OAC 475:20-1-2(a), 21 C.F.R. § 1301.71(a). The Board rules also require licensees to “conduct business in conformity with all federal, state and municipal laws at all times.” OAC 535:25-7-3(a). 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.



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