

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

October 31, 2014

Opinion No. 14-100

Pharmacies as Health Care Entities

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**QUESTION**

Is a pharmacy a “health care entity” for purposes of Tenn. Code Ann. § 63-6-602(a)?

**OPINION**

Yes. A pharmacy falls within the definition of a “health care entity” as that term is defined in Tenn. Code Ann. § 63-6-601.

**ANALYSIS**

Tenn. Code Ann. § 63-6-602(a) provides that “[a] physician having an investment interest in a health care entity shall not refer patients to the entity unless” the physician performs health care services at the entity or the investment interest complies with Tenn. Code Ann. § 63-6-603. Tenn. Code Ann. § 63-6-601 defines “health care entity” for purposes of this statute:

- (1) “Entity” or “health care entity” means and includes a health care facility and an agency, company or health care professional, other than the referring physician, providing health care services;
- (2) “Health care facility” means and includes any real property or equipment of a health care institution as that term is defined in § 68-11-1602;
- (3) “Health care service” means and includes a diagnostic, treatment, therapy or rehabilitation service.

A “pharmacy” is defined in Tenn. Code Ann. § 63-10-204(34) as “a location licensed by this state where drugs are compounded or dispensed under the supervision of a pharmacist, as defined in the rules of the board [of pharmacy] and where prescription orders are received or processed.” A “pharmacist” is defined as “an individual *health care provider* licensed by the state of Tennessee . . . to practice the profession of pharmacy.” Tenn. Code Ann. § 63-10-204(32) (emphasis added). The “practice of pharmacy” means “a patient-oriented *health service profession* in which pharmacists interact and consult with patients and other health care professionals to enhance patients’ wellness, prevent illness and optimize outcomes.” Tenn. Code Ann. §63-10-204(37)(A) (emphasis added). The “practice of pharmacy” involves:

- (i) Interpretation, evaluation and implementation of medical orders and prescription orders;
- (ii) Responsibility for compounding and dispensing prescription orders, including radioactive substances;
- (iii) Participation in drug, dietary supplement and device selection, storage, distribution and administration;
- (iv) Drug evaluation, utilization or regimen review;
- (v) Maintenance of patient profiles and other pharmacy records;
- (vi) Provision of patient education and counseling;
- (vii) Provision of patient care services and activities pursuant to a collaborative pharmacy practice agreement;
- (viii) Drug or drug-related research; and
- (ix) Those professional acts, professional decisions or professional services necessary to maintain all areas of a patient's pharmacist-provided care.

*Id.*

A pharmacist is therefore a “health care entity” under Tenn. Code Ann. § 63-6-601(1), because a pharmacist is a “health care professional . . . providing health care services.” *Id.* The services enumerated above constitute “diagnostic, treatment, therapy or rehabilitation service[s].” Tenn. Code Ann. § 63-6-601(3). *See also id.* § 63-10-204(41) (defining “provider” or “necessary health care provider” to include “a pharmacist who provides health care services within the scope of pharmacy practice”).<sup>1</sup>

A pharmacy is also a “health care entity” under § 63-6-601(1), because of the close nexus that must exist between the pharmacist and the pharmacy. The rules of the Board of Pharmacy fully support this conclusion. A pharmacy is the separately licensed location, or “pharmacy practice site,” where certain functions associated with the practice of pharmacy take place only under the supervision of a pharmacist. *See* Tenn. Comp. R. & Regs. 1140-01-.01(26) (defining “pharmacy practice site” in pertinent part as “any place within this state where prescription drugs or prescription devices are dispensed and where pharmaceutical care is provided”).

A pharmacist may compound and dispense prescription drugs, devices, and related materials only in a pharmacy-practice site that is duly licensed by the Board,

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<sup>1</sup> The rules of the Board of Pharmacy describe the outcomes of “pharmaceutical care” as including the “cure of a disease, elimination or reduction of a patient’s symptomatology, arresting or slowing of a disease process and the preventing of a disease or symptomatology.” Tenn. Comp. R. & Regs. 1140-01-.01(24).

*id.* 1140-03-.02,<sup>2</sup> and a licensed pharmacy-practice site, in turn, requires the presence of a licensed pharmacist.

A pharmacy practice site where prescription drugs and devices and related materials are received, stored, compounded and dispensed shall not be opened for business or any other reason unless a licensed pharmacist is present. Furthermore, no medical or prescription order shall be dispensed except during the presence and under the direct supervision of a pharmacist.

*Id.* 1140-01-.13(7). Indeed, the Board’s rules permit a pharmacist only one temporary absence from the pharmacy-practice site for a period not exceeding one hour per day. During such absence, a sign containing the words “pharmacist not on duty” must be conspicuously displayed at the pharmacy practice site. No medical or prescription order may be compounded or dispensed during the absence of a pharmacist, and during the pharmacist’s absence, “the prescription department shall be closed off by physical barrier from floor to ceiling.” *Id.* 1140-03-.07. Civil penalties may be assessed for each day “any person, partnership, firm, or corporation or agency causes or permits a pharmacy practice site to be conducted in violation of any statutes, rules or orders” enforceable by the Board. *Id.* 1140-08-.01(3).

HERBERT H. SLATERY III  
Attorney General and Reporter

JOSEPH F. WHALEN  
Acting Solicitor General

SARA E. SEDGWICK  
Senior Counsel

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<sup>2</sup> “The practice of the *knowledge* skills of pharmacy is not pharmacy practice site dependent,” but any person practicing “any aspect of the art and science of pharmacy” must be licensed by the Board. *Id.* (emphasis added).

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Requested by:

The Honorable Harry Brooks  
State Representative  
117 War Memorial Building  
Nashville, Tennessee 37243