STATE OF KANSAS

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CURT T. SCHNEIDER
Attorney General

September 26, 1975

ATTORNEY GENERAL OPINION NO. 75-383

The Honorable John M. Elwell
Probate Judge
Douglas County Courthouse
Lawrence, Kansas 66044

Dear Judge Elwell:

Re: Mentally Ill Persons--Admittance to State Hospitals

Synopsis: There is no basis for refusal of admittance of persons ordered to state psychiatric hospitals for evaluation, custody or treatment when said refusal is based solely on the lack of a psychiatrist's statement supporting the court order, there being no requirement in the Act for Obtaining "Care and Treatment" for a "Mentally Ill Person" that the probate court obtain such statements.

* * *

Dear Judge Elwell:

You inquire concerning the legal basis and authority for a policy apparently adopted by Topeka State Hospital governing admission of patients ordered there pursuant to involuntary commitments under the Act for Obtaining "Care and Treatment" for a "Mentally Ill Person," K.S.A. 1974 Supp. 59-2901 *et seq.*

You advise that on September 11, 1975, an application for determination of mental illness was filed with the Douglas County Court, accompanied by a letter from a physician recommending in-patient treatment. In the letter, the physician stated that the proposed patient had been treated by this physician on numerous occasions during the past several years, and during this time, the proposed patient had suicidal tendencies and indeed had attempted suicide, and that in the opinion of the physician, the proposed patient should be admitted for in-patient psychiatric care because the patient threatened harm to the patient's own person.

You advise that when an admittance date was sought to be arranged with authorities at Topeka State Hospital, the intake workers advised that patients would no longer be accepted on involuntary commitments with only a physician's recommendation. Henceforth, it was stated, the involuntary commitment of any patient must be accompanied and supported by a psychiatric evaluation, and that a physician's statement would be insufficient.

K.S.A. 1974 Supp. 59-2911 *et seq.* sets forth the procedure to be followed in making and determining applications for determination of mentally ill persons. Under K.S.A. 1974 Supp. 59-2913(7), the application must contain a

> "request that the court make a determination that the 'proposed patient' is a 'mentally ill person' and make one or more orders provided for in sections 12 [59-2912] (B), 14 [59-2914] and 15 [59-2915]."

Under K.S.A. 1974 Supp. 59-2914, the probate court must issue certain mandatory preliminary orders, including, under (F) thereof, an "order for mental evaluation:"

> "It shall order the 'proposed patient' to submit himself for a mental evaluation and to undergo such evaluation at a 'general hospital' or a 'psychiatric hospital,' mental health clinic, private psychiatrist or 'physician' designated by the court in the order. *A state 'psychiatric hospital' shall receive and evaluate any 'proposed patient' ordered evaluated therein.*" [Emphasis supplied.]

Alternatively under this section, if the "proposed patient" consents in writing that the hearing not be set for ninety days so that the court may make an order of referral,

> "the court may, in its discretion, refer the 'proposed patient' for a period of time not to exceed ninety (90) days for short term 'care or treatment' to any of the following facilities:

(a) A state 'psychiatric hospital';
(b) Any facility of the United States government available for the 'care or treatment' of a 'mentally ill person';
(c) A private 'psychiatric hospital';
(d) 'Other facilities for "care or treatment" *Provided further, That an order for 'care or treatment' in any of the facilities (b) through (d) is conditioned upon the consent of such facility.*" [Emphasis supplied.]

Admittance to a state psychiatric hospital is not conditioned upon the consent of the institution under either of these provisions. The order for mental evaluation shall be issued "unless the court shall determine that the statement of the physician, if any, filed with the application is a sufficient evaluation."

An order of protective custody may be issued by the court under K.S.A. 1974 Supp. 59-5912(b), upon the application of any reputable person, when an application for determination of mental illness is filed. The application for protective custody must include, in addition to the application for determination of mental illness, a statement of the affiant's belief that the 'proposed patient' is a 'mentally ill person,' and that because of the "proposed patient"'s illness, he or she is likely to injure himself or herself, or others if not immediately detained. This provision authorizing protective custody orders does not require that the probate court require a statement of a psychiatrist prior to issuance of the order.

The officials of state psychiatric hospitals have no authority, of course, to amend the statute or to impose greater or other requirements than those specifically provided by statute. An administratively-imposed requirement that the order be supported by the statement of a psychiatrist rather than the statement of a physician is tantamount to amendment of the act by administrative fiat. As you point out, K.S.A. 1974 Supp. 59-2913 itself contains no requirement that an application for determination of mental illness be accompanied by a psychiatrist's statement, or indeed, by a physician's statement. It does expressly authorize the court to require a physician's statement. The discretion of the court to require or not to require a physician's statement may not be gainsaid by administrative action of hospital authorities, nor, indeed, may the hospital require the court to require what the court is not required by statute to require, that is, a statement of a psychiatirst on the question of mental

illness. The determination of the court that a physician's statement is sufficient is a judicial determination which is binding upon the administrative authorities of the state psychiatric hospitals. Similarly, an order for protective custody which meets the conditions prescribed therefor by statute, is a valid and binding order for protective custody which may not be disregarded or circumvented by administratively-imposed requirements other than those authorized by the "Act for Obtaining 'Care and Treatment' for a 'Mentally Ill Person.'"

Accordingly, it is my opinion that there is no authority for refusal to admit a patient for treatment of mental illness at a state psychiatric hospital when such refusal is based solely on the fact that the court order therefor is not supported by a statement of a psychiatrist regarding the question of mental illness or of the likelihood that the proposed patient may be a danger to himself or to others, there being no statutory requirement that the court obtain such a statement in the first instance.

Yours very truly,

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CTS:JRM:kj

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