



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

March 9, 1977

ATTORNEY GENERAL OPINION NO. 77- 80

Mr. John J. Conard
Executive Officer
Kansas State Board of Regents
Suite 1416 - Merchants National
Bank Tower
Topeka, Kansas 66612

Re: Mentally Ill Persons--Rights--Restrictions

Synopsis: The use of "time out" rooms for children and adolescent patients at the University of Kansas Medical Center constitutes the use of "seclusion" within the meaning of K.S.A 1976 Supp. 59-2928. Certain items, such as firearms, other weapons, medication, incendiary materials and the like constitute such demonstrably hazardous materials that they may be withheld from the personal possessions of a patient in a treatment facility without a specific finding of "good cause" in each separate instance, upon the adoption of an appropriate regulation describing such items.

* * *

Dear Mr. Conard:

K.S.A. 1976 Supp. 59-2928 states thus:

"Restraints or seclusion shall not be applied to a patient unless it is determined by the head of the treatment facility or a member of the medical staff to be required to prevent substantial bodily injury to such

Mr. John J. Conard
Page Two
March 9, 1977

patient or others. The extent of the restraint or seclusion applied to the patient shall be the least restrictive measure necessary to prevent injury to the patient or others. The extent of the restraint or seclusion applied to the patient shall be the least restrictive measure necessary to prevent injury to the patient or others, and the use of restraint or seclusion shall not exceed three (3) hours without medical re-evaluation, except that such medical re-evaluation shall not be required, unless necessary, between the hours of 12 o'clock midnight and 8:00 o'clock a.m. The head of the treatment facility or a member of the medical staff shall sign a statement explaining the medical necessity for the use of any restraint and seclusion and shall make such statement a part of the medical record of such patient."

You advise that a concern has arisen concerning a procedure used with children and adolescents at the University of Kansas Medical Center, who, for various reasons, are required to remain for various intervals in their room or a "time-out" room. Although the doors of the rooms are not locked, there is occasionally an attendant or "sitter" who remains outside the door. The question is raised whether this procedure could be regarded as "seclusion" and would therefore require to be explained in the patient's medical record. The term "seclusion" is not defined by the act. Absent a precise statutory definition, it appears appropriate that the term be given its ordinary and customary signification. Long v. Meade, 162 Kan. 129, 174 P.2d 114 (1946). Under the cited statute, neither restraints nor seclusion may be applied to a patient unless necessary to prevent substantial bodily injury to the patient or to others. The apparent purpose of the provision is to restrict the use of these measures in the treatment and care of mentally ill persons. Although the term "seclusion" is not defined, it reasonably signifies the forced confinement of a patient in a facility so as to separate the patient from other patients, staff and other persons. The procedure described above results, in my judgment, in seclusion of the patient involved, and should be reported and accounted for in the medical record of the patient.

Secondly, you inquire concerning K.S.A. 1976 Supp. 59-2929, which provides in pertinent part thus:

Mr. John J. Conard
Page Three
March 9, 1977

"Every patient being treated in any treatment facility, in addition to all other rights preserved by the provisions of this act, shall have the following rights:

(1) To wear his or her own clothes, keep and use his or her own personal possessions including toilet articles and keep and be allowed to spend his or her own money"

Under subsection (b), the "head of the treatment facility may, for good cause only, restrict a patient's rights under this section," except that certain rights, not involved here, may not be restricted under any circumstances. You advise that the Center routinely requires that patients give the nursing staff temporary custody of any personal possessions which the Medical Center staff believes might be used to harm the patient or others. This procedure is deemed necessary with every admission, due to the uncertainty of early evaluation whether the patient is suicidal or a threat to others. It is desired to adopt a procedure whereby, in the written statement of rights which is furnished each patient upon admission, notice would be given that certain items are routinely kept in the temporary possession of the nursing staff.

A patient's right to keep and use his or her own personal possessions while a patient is subject to a number of obvious limitations, among them space and storage facilities, considerations of safety, hygienic concerns and the like. Although a patient might wish to keep a firearm among his or her personal possessions, it would obviously be unacceptable. Likewise, the individual's own medication would not ordinarily be left at the patient's own disposal. These are but two obvious examples. The section permits the treatment facility to "adopt regulations governing the conduct of all patients being treated in such treatment facility, which regulations shall be consistent with the provisions of this section." The basic question presented is whether any articles of a patient's claimed personal possessions may be removed from the patient and placed in temporary custody of the facility staff without a showing of good cause therefor, and a statement of the reasons therefor entered upon the patient's medical record. In my judgment, there are a number of items which pose such obvious hazards to the patient, other patients and staff that provision may be made by regulation for the routine withholding of such items from the patient, and notification thereof given to the patient at the time of admission. For example, incendiary materials such as lighters and matches, knives and other weapons, prescribed medication, and other like items which might be found among a patient's

Mr. John J. Conard
Page Four
March 9, 1977

personal effects at the time of admission pose such demonstrable hazards that, in my judgment, there exists prima facie "good cause" for withholding these items from the patient. If an appropriate regulation is drafted describing such items, there need be no separate finding of good cause for the removal of each such item from the patient upon admission, likewise there need be no separate recording of the removal or withholding of such enumerated items upon the patient's medical report.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj