



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 16, 1978

ATTORNEY GENERAL OPINION NO. 78-119

Mr. Tim W. Ryan
Clay County Attorney
509 Court Street
Clay Center, Kansas 67532

RE: Probate Code -- Care and Treatment for Mentally
Ill Persons -- Application for Determination of
Mentally Ill Persons

SYNOPSIS: Pursuant to K.S.A. 59-2913, a signed statement of
a physician must be filed with the application for
determination of mental illness.

* * *

Dear Mr. Ryan:

K.S.A. 59-2913 provides the procedure by which an application may be filed with a district court to determine whether a person is mentally ill as that term is defined by state law. This procedural statute sets forth numerous facts which must appear in the application, and further, it requires that:

[A]ny such application shall be accompanied by a signed statement of a physician stating that said physician has examined the person for whom the application has been filed and the results of the examination on the issue of whether such person is a mentally ill person unless the court allows such application to be accompanied by a verified statement by the

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applicant that such person has refused to submit to an examination by a physician. K.S.A. 59-2913 [Emphasis supplied.]

As the County Attorney of Clay County, you have asked my opinion as to what procedures should be followed if a person for whom an application is filed submits to an examination setting forth the results of the examination. In this regard, you have also asked whether a mental evaluation obtained pursuant to K.S.A. 59-2914(a) may be used in place of the "signed statement of a physician" which is required in the portion of K.S.A. 59-2913 which has been quoted above.

Prior to 1976, K.S.A. 59-2913 read in part as follows:

Any such application may be accompanied or the probate court may require that such application be accompanied by a statement in writing of a "physician" stating that he has examined the "proposed patient" and the results of the examination on the issue of whether the "proposed patient" is a "mentally ill person" or the probate court may allow such application to be accompanied by the applicant that the "proposed patient" has refused to submit to an examination by a "physician".

As noted above, the 1976 amendment to K.S.A. 59-2913 mandates that a signed physician's statement must accompany the application for determination of mental illness. In addition, the 1976 session of the legislature added K.S.A. 59-2914a to Article 29 of Chapter 59. This section provides that:

After the filing of the application provided for in K.S.A. 59-2913 and prior to the hearing provided for in K.S.A. 59-2917, the court shall issue an order for mental evaluation. . . . It shall order the proposed patient to submit himself or herself for a mental evaluation and to undergo such evaluation as may be designated by the court in the order, except that any proposed patient who is not under an order of protective custody issued pursuant to K.S.A. 59-2912

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and who requests a hearing pursuant to subsection (b), need not submit to such evaluation until said hearing has been held and the court finds that there is probable cause to believe that the proposed patient is a mentally ill person. K.S.A. 59-2914a(a).

While K.S.A. 59-2914a clearly requires the court to order a mental evaluation of a proposed patient, there is no evidence that this evaluation may be used in lieu of a physician's statement. The reasons for this interpretation is twofold.

First, as noted above, K.S.A. 59-2913 requires that the application must be accompanied by the signed statement of the physician. Because the mental evaluation required by K.S.A. 59-2914a will not occur until after the application has been filed, it does not appear that the evaluation may be used in place of the physician's statement.

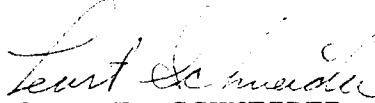
Secondly, the exception clause in K.S.A. 59-2914a(a) clearly states that any proposed patient not subject to a protective custody need not submit to a mental evaluation if he requests a probable cause hearing pursuant to K.S.A. 59-2914a(b). A mental evaluation will then be ordered only if the judge determines that there is probable cause to believe that the proposed patient is a mentally ill person. It therefore appears that a mental evaluation could not be used in lieu of a physician's statement because a request for a hearing pursuant to K.S.A. 59-2914(a) would delay the time at which the evaluation would be conducted. This being the case, it would be impossible for the evaluation to accompany the application at the time it was filed.

Having concluded that a physician's statement must be filed with the application for determination of mental illness, we are now faced with the initial question which you have raised. While a physician may be reluctant to divulge the results of a mental examination, there is certainly no law which prohibits the court from obtaining a copy of the report. I would point out that pursuant to K.S.A. 60-427(c), the physician-patient privilege does not apply to relevant communications "upon an issue of the patient's condition in an action to commit him or her or otherwise place him or her under the control of another or others because of alleged

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incapacity or mental illness. . . ." If the situation should arise in which a physician is reluctant to sign a statement regarding an individual's mental condition, especially when the examination is performed at the request of the applicant, it will be the duty of the applicant's attorney to contact the court to seek an appropriate remedy.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CAB:kns