



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN  
ATTORNEY GENERAL

September 22, 1980

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ATTORNEY GENERAL OPINION NO. 80-202

William A. Taylor, III  
Cowley County Counselor  
P.O. Box 731  
Winfield, Kansas 67156

Re: Infants--General Provisions--Medical Care for Minors  
Placed in Foster Homes by Department of Social and  
Rehabilitation Services, Consent

Synopsis: When a minor is placed by a district court or the  
Department of Social and Rehabilitation Services  
in a foster home, the foster parents may initiate  
medical care for the child following placement.  
Such care may include psychological or psychiatric  
evaluation and treatment which a physician determines  
is necessary for the welfare of the child. If records  
of such prior evaluation and treatment are labeled as  
confidential, they may be released by the foster parents  
only after authorization for such release is given by  
the placing agent. Cited herein: K.S.A. 1979 Supp.  
38-133, K.A.R. 28-4-304(7), 28-4-306(1)(b), 28-4-307(1)(A).

\* \* \*

Dear Mr. Taylor:

As Counselor for Cowley County, you request the opinion of this  
office on a matter which concerns the release by foster parents of  
medical information relating to a minor child in their custody.  
You indicate that your inquiry is on behalf of the Cowley County  
Mental Health Center, a facility which is partially funded by

the county. The Center wishes to know the extent of foster parents' authority to approve psychological or psychiatric evaluation or treatment for a child in their custody, as well as whether such foster parents may authorize the release of psychological records already in the child's file.

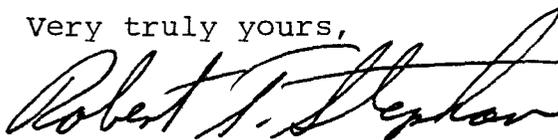
In our opinion, Kansas statutes and administrative regulations provide clear answers to the above. Once a child is placed by a district court or the State Department of Social and Rehabilitation Services (SRS) in the custody of foster parents, the latter are authorized by K.A.R. 28-4-307(1)(A) to initiate medical care for it. Consent of the natural parents for such care (assuming that parental rights have not been severed) is provided for by K.S.A. 1979 Supp. 38-133, which contains a consent form which may be completed at the time custody is given to SRS. Alternatively, consent may be provided by the written order of the district court, if placement was made directly by it. In either case, such consent is effective thereafter for any medical or surgical care which is determined by a physician to be necessary for the child's welfare. As psychological or psychiatric evaluation and treatment would clearly fall within the category of "medical care," such procedures could be undertaken without the further consent of the natural parents, once a consent form was completed. Accordingly, while foster parents may initiate the procedures to obtain these services for a child in their custody, a physician must determine they are needed before evaluation or treatment could actually begin. We see no reason why such a physician could not be one of those on the staff of the Center.

As for the release by the foster parents of material already in the child's medical file, it is our opinion that such action would be governed by the policies of the placing agent, i.e., SRS. K.A.R. 28-4-306(1)(b) provides that foster parents be provided with an "authorization relative to sharing confidential information," with such being included in the written placement agreement itself. Once this is done, under the terms of K.A.R. 28-4-304(7) the foster parents may not disclose such confidential information without the consent of SRS. As the authority to determine what is "confidential" is, by regulation, retained by SRS, its policies would control. Given the nature of the information involved here, it is likely that SRS would need to be notified if the Center requested that the child's file be opened for its use. Of course, additional information of a more clinical nature could remain in the files of physicians who saw the child previously, and the Center would need to contact them individually.

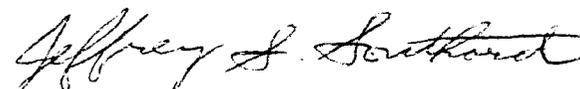
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In conclusion, when a minor is placed by a district court or the Department of Social and Rehabilitation Services in a foster home, the foster parents may initiate medical care for the child following placement. Such care may include psychological or psychiatric evaluation and treatment which a physician determines is necessary for the welfare of the child. If records of such prior evaluation and treatment are labeled as confidential, they may be released by the foster parents only after authorization for such release is given by the placing agent.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Jeffrey S. Southard  
Assistant Attorney General

RTS:BJS:JSS:phf