

STATE OF KANSAS

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October 3, 1980

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ATTORNEY GENERAL OPINION NO. 80- 220

Mr. Jerry W. Cole, Chairperson  
Behavioral Sciences Regulatory Board  
2700 West Sixth  
Topeka, Kansas 66606

Re: State Boards, Commissions and Authorities--Behavioral  
Sciences Regulatory Board--Practice of Psychology;  
Care of the Sick and Ill

Synopsis: One who engages in the practice of psychology for a  
fee, monetary or otherwise, who does not possess a  
valid, existing certificate to practice psychology in  
this state is engaged in conduct in violation of K.S.A.  
74-5340.

Thus, persons who are employed by or associated with  
licensed physicians in private practice who perform  
psychological services in connection therewith, but who  
do not possess a valid certificate to practice psychology  
in this state, are engaged in conduct in violation of K.S.A.  
74-5340. Cited herein: K.S.A. 65-2801, K.S.A. 1979 Supp.  
65-2869, 65-2896, 65-2896e, K.S.A. 74-5301, 74-5302,  
as amended by L. 1980, ch. 242, §11, 74-5340, 74-5341,  
74-5344(g), as amended by L. 1980, ch. 242, §28.

\* \* \*

Dear Mr. Cole:

On behalf of the Board of Examiners of Psychologists, the Behavioral  
Sciences Regulatory Board's predecessor, Dr. Thomas FitzGerald, the  
former board's secretary, requested an opinion of this office concerning  
the application of a particular provision of the Certification of  
Psychologists Act, K.S.A. 74-5301 et seq., as amended. Dr. FitzGerald

advised that the Board of Examiners of Psychologists had received reports that certain licensed physicians in private practice in Kansas are employing or associating with persons who are not certified psychologists, but who are performing services of a psychological nature, including psychological testing and psychotherapy, for which services the physician bills the patient or the patient's insurance carrier. One such physician is said to have characterized the employee or associate providing the psychological services as a "psychological assistant." In this context, the Board inquired whether persons neither licensed under the healing arts act nor certified as psychologists may perform services of a psychological nature in the service of or in association with a person who is licensed under the healing arts act in the "care of the sick and ill" within the meaning of that phrase, as it is used in K.S.A. 74-5302 (as amended by L. 1980, ch. 242, §11).

K.S.A. 74-5302 (as amended by L. 1980, ch. 242, §11) defines the "practice of psychology," but also includes the following language:

"except that, in all cases involving the care of the sick and ill as defined by the laws of this state, the primary responsibility devolves upon those licensed under the Kansas healing arts act, as amended." (Emphasis in original.)

As we said in Attorney General Opinion No. 79-247, "the above-quoted proviso and K.S.A. 74-5344(g) [as amended by L. 1980, ch. 242, §28] are intended merely to assure that the practice of the healing arts and the practice of psychology, and the regulation of each discipline, shall remain separate and distinct." Attorney General Opinion No. 79-247, p. 3. Further, we noted that "neither of the above-referenced provisions makes any suggestion that a person licensed under the healing arts act may represent himself or herself to be a psychologist." Id.

Kansas law defines the practice of medicine and surgery to include the "diagnosis, cure or relief of any disease or physical or mental illness." K.S.A. 1979 Supp. 65-2869(b). Thus, to some extent the practice of a licensed physician in the treatment of mental illness may necessarily involve tools, techniques, tests or instruments used by certified psychologists, but is a practice which, in our opinion, comes within the meaning of "care of the sick and ill" as that phrase is used in the proviso in question. But is that proviso applicable to persons, who are not licensed under the healing arts act and are not certified psychologists, to whom a licensed physician refers patients for psychological testing and/or treatment? We think not, for several reasons.

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First, the proviso in question is, by its express terms only applicable to "those [persons] licensed under the healing arts act." K.S.A. 74-5302(a), as amended by L. 1980, ch. 242, §11. Arguably, the proviso might extend in its application to those persons who are registered physicians' assistants, whose practice is regulated by the state board of healing arts under K.S.A. 1979 Supp. 65-2896 et seq. and who work "only under the direction and supervision of a physician." K.S.A. 1979 Supp. 65-2896e. However, we need not decide that question, since the persons in question are not registered physicians' assistants.

Second, except for the provisions pertaining to registered physicians' assistants, we find nothing in the healing arts act (K.S.A. 65-2801 et seq. which would authorize licensed physicians to delegate responsibility to employees, who are neither certified psychologists nor persons licensed under the healing arts act for performance of services psychological in nature for treatment of patients, nor any provisions which would authorize physicians to refer their patients to associates who are neither certified psychologists nor persons licensed under the healing arts act.

Finally, and most importantly, the Certification of Psychologists Act, as amended, clearly restricts the practice of psychology to those persons who are certified psychologists. K.S.A. 74-5340 plainly states that

"it shall be unlawful, without a valid, existing certificate as a psychologist issued by the board for any person to represent himself to be a psychologist as defined in section 2 [74-5302]."

K.S.A. 74-5302(b), as amended by L. 1980, ch. 242, §11(b), provides as follows:

"The term 'represents himself to be a psychologist' means that a person engages in the practice of psychology for a fee, monetary or otherwise or holds himself out to the public by any title or description of services incorporating the word 'psychologic,' 'psychological,' 'psychologists,' or 'psychology,' and under such title or description offers to render or renders services to individuals, corporations, or the public for a fee, monetary or otherwise."  
(Emphasis in original.)

The 1980 amendment to section 74-5302(b), the underscored language quoted above, constitutes a significant change in the Certification of

Psychologists Act. Before this change was made, the Certification Act was merely a "title act," making unlawful only those representations to the public "by any title or description of services incorporating the word 'psychologic,' 'psychological' . . . (etc.)" under which a person offers to render or renders services for a fee. Now, by virtue of this amendment, an unlawful representation under 74-5340 also includes engaging in the "practice" of psychology, as defined by the act, without a certificate. Accordingly, persons who are employed by or associated with licensed physicians in private practice who perform psychological testing services and/or psychotherapy in connection therewith, but who do not possess a valid certificate to practice psychology in this state (with the exceptions of other persons licensed under the healing arts act and registered physicians' assistants, as discussed above), are violating the law. Clearly, such persons are engaged in the practice of psychology, as defined by K.S.A. 74-5302(a), as amended by L. 1980, ch. 242, §11(a), for a fee. If they do not hold a valid, existing certificate to practice psychology, their conduct is in violation of K.S.A. 74-5340, which violation is punishable by fine or imprisonment, or both, pursuant to K.S.A. 74-5341.

It should be noted that K.S.A. 74-5344, as amended by L. 1980, ch. 242, §28, permits the practice of psychology in a variety of settings by persons who are not certified psychologists, so long as no unlawful representations are made. See, e.g., subsection (a) of section 28, L. 1980, ch. 242 permitting

"qualified members of other professional groups such as . . . ministers, Christian Science practitioners, social workers, and sociologists . . . [to do] work of a psychological nature consistent with their training and consistent with any code of ethics of their respective professions so long as they do not hold themselves out to the public by any title or description of services incorporating the word 'psychologic,' 'psychological,' 'psychologist,' or 'psychology.'"

Subsection (c) of section 28 of the act permits the practice of psychology and the use of title by a person "in the employ of a federal, state, county or municipal agency, or other political subdivision, or a duly chartered educational institution, or a not for profit corporation insofar as such practice is a part of the

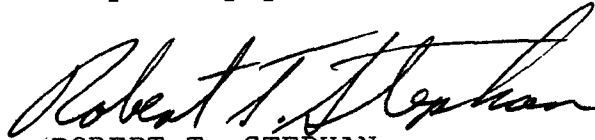
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duties of such person's salaried position, and . . . such practice is performed solely on behalf of such person's employer." See also, L. 1980, ch. 242, §28(d), (e). None of these exceptions is applicable in the factual context you have described.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Steven Carr  
Assistant Attorney General

RTS:BJS:SC:pf