



STATE OF KANSAS

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January 14, 1981

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ATTORNEY GENERAL OPINION NO. 81-9_____

The Honorable Loren H. Hohman, II
State Representative--Fifty-Fifth District
1626 Plass
Topeka, Kansas 66604

Re: "State Boards, Commissions and Authorities--Behavioral
Sciences Regulatory Board--Unlawful Representations
By Use of Title or Description of Services

Synopsis: Any person lacking a valid certificate to practice psychology in this state who advertises his or her services in the "yellow pages" directory under the directory heading "Psychologists," is subject to prosecution and the imposition of criminal penalties for violation of K.S.A. 74-5340. Such an advertisement constitutes an unlawful representation of a "title or description of services" by which one purports to offer psychological services to the public for a fee. Cited herein: K.S.A. 74-5301, 74-5302, 74-5340.

* * *

Dear Representative Hohman:

You request our opinion whether a mental health practitioner who is not a certified psychologist may advertise his or her services in the telephone directory "yellow pages" under the heading "Psychologists" without violating the provisions of K.S.A. 74-5301 et seq., the Certification of Psychologists Act. You advise that there are various mental health professionals who provide services which are psychological in nature, such as marriage and family counselors, psychiatric social workers, psychiatric nurses, and psychiatrists who may wish to cross-reference

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their services in "yellow pages" advertisements under "Psychologists." Specifically, you inquire whether the practitioner's listing of information, including his or her highest earned degree, profession other than psychology, and areas of expertise, justify the listing under the "Psychologists" heading without violating the Certification of Psychologists Act.

We have considered questions concerning "yellow pages" advertising in a previous Attorney General's opinion, Opinion No. 79-247, written in response to questions raised by the former Board of Examiners of Psychologists. The following excerpt is pertinent to your question:

"The Board next inquires whether an agency providing psychological services may be listed in a 'yellow pages' telephone directory under the heading designated for psychologists without listing the psychologists attached to that agency. You advise that, from time to time, persons who are not certified psychologists will place advertisements in the directory under the 'Psychologists' heading by listing only the agency name, e.g., Universal Counseling Center.

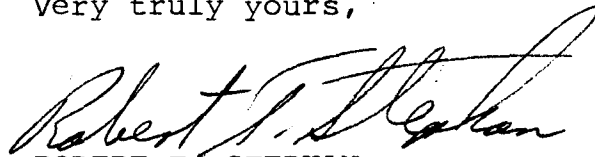
"As the Board is well aware, any person lacking a valid certificate who represents himself or herself to be a psychologist, i.e., holding himself or herself out to the public by 'any title or description of services incorporating the word "psychologic," "psychological," "psychologist," or "psychology," and under such title or description offers to render or renders services to individuals, corporations, or the public for a fee, monetary or otherwise' is violating the law. K.S.A. 74-5340 and 74-5302(b). In our judgment, the situation you describe (persons who are not certified psychologists advertising under the 'yellow pages' listing for psychologists) would constitute such a violation of Kansas law in that the directory listing 'Psychologists' is a 'title or description of services' by which the unlawful representation is made." Attorney General Opinion No. 79-247, p. 5. (Emphasis added.)

We affirm that opinion. Any person lacking a valid certificate to practice psychology, though he or she may be a well-qualified mental health professional or practitioner in any of the fields you have described, who advertises his or her services in the "yellow pages" directory

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listing for psychologists is, in our judgment, liable for punishment under K.S.A. 74-5340 for the making of unlawful representations forbidden by the Certification Act. Such an advertisement is, in our opinion, the act of holding one's self out to the public by "title or description of services incorporating the word . . . 'psychologist,'" by which advertisement one purports to offer services to the public for a fee. K.S.A. 74-5340 makes such acts unlawful. Even though the advertisement itself may disclaim the practice of psychology by the mental health practitioners, the directory heading would constitute an unlawful representation, and a disclaimer such as the one you have described may only be a mitigating circumstance, in our judgment, in criminal prosecutions of persons who make such representations, which may be taken into consideration regarding the crime or any sentence imposed therefor.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Steven Carr
Assistant Attorney General

RTS:BJs:SC:pf
Enclosure:

Attorney General Opinion No. 79-247