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April 10, 1981

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ATTORNEY GENERAL OPINION NO. 81- 90

Charles V. Hamm, General Counsel
Legal Division
State Department of Social and
Rehabilitation Services
State Office Building
Topeka, Kansas 66612

Re: Public Health -- Alcoholism and Drug Abuse Treat-
ment -- Definition of Treatment Facility

Synopsis: The treatment of alcohol or drug abuse is defined
by Kansas statutes and administrative rules and
regulations to include the application of psycho-
logical care. The offering of such services
creates a "treatment facility" which must be
licensed if it is to operate, and the fact that
a person offering such services has been previous-
ly licensed as a practicing psychologist does not
excuse him from this requirement. Cited herein:
K.S.A. 65-4003, 65-4012, 65-4015, 65-4016,
65-4022, 65-4023, 65-4601, 65-4602, 65-4608,
65-4612, 74-5302, K.S.A. 1980 Supp. 75-3307b,
K.A.R. 1980 Supp. 30-31-2.

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Dear Mr. Hamm:

As General Counsel for the State Department of Social and
Rehabilitation Services, you request our opinion on a ques-
tion regarding the licensing of alcohol and drug abuse treat-
ment facilities. Such facilities are regulated by statute
(K.S.A. 65-4001 et seq. and 65-4601 et seq., respectively),
including provisions which make the operation of an unlicensed
facility a criminal offense. K.S.A. 65-4022, 65-4023, 65-4601.
Accordingly, before instituting any proceedings in the cases
now before you, you wish to obtain our opinion as to the scope
of the state's control over such facilities.

Charles V. Hamm
Page Two
April 10, 1981

Although there are separate statutes which deal with the licensure of facilities for the treatment of alcoholism and those which concern drug abuse, the two areas are treated quite similarly, both conceptually and procedurally. In both areas the Legislature has sought to regulate the operation of "treatment facilities" for those persons afflicted with either of these conditions, and has done so by requiring all "treatment facilities" to be licensed before they may operate. K.S.A. 65-4012, 65-4601. Once a license is granted, rules and regulations promulgated by the Secretary must be observed, under threat of license suspension or revocation. K.S.A. 65-4015, 65-4016, 65-4608, and 65-4612. As noted, criminal penalties, as well as injunctive relief, are available for use against unlicensed facilities which continue to operate without a license.

Your specific inquiry deals with the scope of the term "treatment facility" which is defined at both K.S.A. 65-4003(4) and 65-4602(b). While the two definitions differ in their initial wording, both exclude from the scope of their respective acts "a licensed medical care facility, a licensed adult care home or a facility licensed under the provisions of K.S.A. 1980 Supp. 75-3307b." The latter type of facility, it should be noted, deals with the treatment of mentally-ill or mentally-retarded persons.

Given the three limited exceptions contained in the above definition, there would appear to be no avenue open to a private individual who wished to operate a treatment facility but to submit to licensure. However, as you indicate in your letter, an argument has been made by at least two licensed psychologists that, as they do not operate treatment facilities, they should not be regulated in the course of offering alcohol or drug abuse treatment in their private practices. They have furthermore taken the position that, insofar as they are already licensed psychologists, further licensure is unnecessary. In our opinion, such arguments are not supported by the statutes.

As defined by K.S.A. 74-5302(a), the term "practice of psychology" is broadly defined so as to include

"the application of established principles of learning, motivation, perception, thinking, and emotional relationships to problems of behavior adjustment, group relations, and behavior modification, by persons trained in psychology. The application of such principles includes, but is not restricted to, counsel-

Charles V. Hamm
Page Three
April 10, 1981

ing and the use of psychological remedial measures with persons, in groups or individually, having adjustment or emotional problems in the areas of work, family, school, and personal relationships"

As can be seen, however, no specific mention is made of the offering of treatment for alcohol or drug abuse problems. To the contrary is K.S.A. 65-4003(11), wherein "treatment" for alcoholism and intoxication is defined as covering

"the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons"
(Emphasis added.)

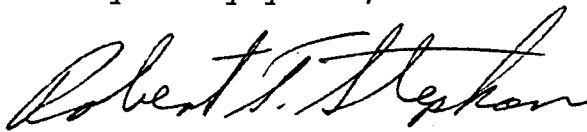
While no similar definition exists in the drug abuse statutes, psychological treatment is included in the administrative rules and regulations covering both types of programs (K.A.R. 1980 Supp. 30-31-2), which the secretary of the department of social and rehabilitation services is empowered to adopt to further the purposes of the act. (K.S.A. 65-4010, 4607).

In our opinion, the inclusion of psychological services in the concept of alcohol or drug abuse treatment indicates a legislative and administrative intent to regulate the application of this discipline when it is applied in this way. There are well-recognized maxims of statutory construction that specific statutes take precedence over general ones [Chelsea Plaza Homes, Inc. v. Moore, 226 Kan. 430 (1979)], and that an earlier enacted act yields to a later one [American Fidelity Inc. Co. v. Employers Mutual Casualty Co., 3 Kan.App.2d 245 (1979)]. The application of such principles here only serves to reinforce the plain language of the statute, for while psychologists have been required to be licensed in order to practice in Kansas since 1968, licensure requirements for the operation of specialized treatment facilities were established only later (1972 for alcoholism, 1976 for drug abuse). Nor, in our opinion, is there any conflict inherent in such an interpretation, for while licensure of psychologists insures competency, it does not warrant the adequacy of treatment facilities or the programs offered therein. Therefore, if psychological services are rendered, even on an out-patient basis, for the treatment of alcohol or drug abuse, a treatment facility has been created pursuant to K.S.A. 65-4003(4) and/or 65-4602(b), with all of the attendant consequences described herein.

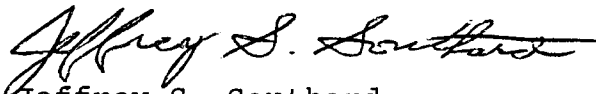
Charles V. Hamm
Page Four
April 10, 1981

In conclusion, the treatment of alcohol or drug abuse is defined by Kansas statutes and administrative rules and regulations to include the application of psychological care. K.S.A. 65-4003(11), K.A.R. 1980 Supp. 30-31-2. The offering of such services creates a "treatment facility" which must be licensed if it is to operate, and the fact that a person offering such services has been previously licensed as a practicing psychologist does not excuse him from this requirement.

Very truly yours,



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RTS:BJS:JSS:hle