



STATE OF KANSAS

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August 30, 1983

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ATTORNEY GENERAL OPINION NO. 83- 126

Dr. Helen Gilles, Secretary
Kansas Board of Healing Arts
503 Kansas, Suite 500
Topeka, Kansas

Re: Public Health -- Kansas Healing Arts Act -- Filing a
False Claim

Synopsis: The Kansas Board of Healing Arts may limit, suspend, or
revoke the license of a physician for submitting false
claims to insurance companies on the grounds of "immoral"
or "dishonorable" conduct pursuant to K.S.A. 65-2836 (b)
as amended by 1983 S.B. 41. Cited herein: K.S.A.
65-2836 as amended by 1983 Senate Bill No. 41.

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Dear Dr. Gilles:

On behalf of the Kansas Board of Healing Arts [hereinafter referred
to as Board], you have requested an opinion as to whether a psychiatrist
may legally sign insurance forms as the "doctor of record" for services
actually rendered by another mental health professional who is not employed
by the psychiatrist. As we understand it, the psychiatrist does not
see the patient and does not consult with or supervise the person who
is treating the patient. In short, the psychiatrist's role is apparently
limited to signing the insurance claim forms. You ask whether such
practice would constitute "immoral" or "dishonorable" conduct as set

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forth in K.S.A. 65-2836(b) as amended by 1983 Senate Bill No. 41, thereby constituting grounds for limiting, suspending or revoking a license to practice healing arts.

We note at the outset that the threshold question of whether the signing of such insurance claim forms constitutes the filing of a false claim is a question of fact which must be determined by the finder of fact, in this case the Board, after considering all information available in a particular case. Such is not a question of law for analysis by this office.

However, if the Board determines that the actions of a psychiatrist do constitute the submitting of a false claim, the legal issue to be addressed is whether submitting a false claim to an insurance company constitutes "immoral" or "dishonorable" conduct under K.S.A. 65-2836(b) as amended. The Kansas Supreme Court considered whether the submission of false claims for medical services will support revocation of a license to practice healing arts in Kansas State Board of Healing Arts v. Seasholtz, 210 Kan. 694 (1972). In that case, two doctors of osteopathy had their licenses revoked on the grounds of immoral, unprofessional or dishonorable conduct for submitting false and fraudulent claims against public funds for medical services furnished to welfare patients. In upholding the revocations, the Court defined dishonorable conduct as "conduct which is dishonest, unprincipled and shameful." Id at 698. The Court further observed:

"Overall, we have no hesitancy in holding that the intentional making of excessive and unwarranted charges for medical services by a licensed practitioner of the healing arts is indeed reason for the revocation of his license, whether the charges are presented to a public agency or to a patient. Numerous cases may be found to the effect that where a doctor has been guilty of making false medical claims, reports or billings, his conduct justifies revocation of his license to practice his profession. (See 95 A.L.R.2d Anno: Doctor -- False Claim, Report or Bill, pp. 873, et seq.)" Id. at 698.

Revocation or suspension of a license for submitting false claims to private insurance companies has also been upheld in other jurisdictions. See e.g. Wassermann v. Board of Regents of University of State of New York, 192 N.E.2d 264 (1962) (holding that fraud upon private

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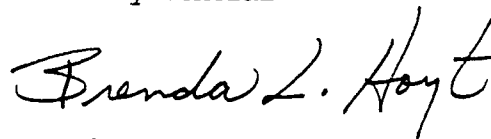
insurance companies affected a vital public interest and governmental regulation of insurance companies by impacting upon insurance rates).

Therefore, it is our opinion that the Board of Healing Arts may suspend or revoke the license of a Kansas physician for submitting false insurance claims on the grounds of immoral, unprofessional or dishonorable conduct.

Very truly yours,



ROBERT T. STEPHAN
Attorney General



Brenda L. Hoyt
Assistant Attorney General

RTS:JEF:BLH:may