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September 12, 1985

ATTORNEY GENERAL OPINION NO. 85- 119

Colonel Bert Cantwell
Superintendent
Kansas Highway Patrol
111 West Sixth Street
Topeka, Kansas 66603

Re: Public Health--Emergency Medical Services--
Liability for Care Rendered

Probate Code--Care and Treatment of Mentally
Ill Persons--Emergency Detention; Authority of
Police Officers

Synopsis: Law enforcement personnel may take a person who has attempted suicide and who refuses needed emergency medical treatment into temporary custody, at which time emergency medical services personnel may administer such treatment. In the absence of custody, emergency services personnel may, at their discretion, administer such treatment, and are immune from liability for negligent or wrongful acts or omissions under the provisions of the Tort Claims Act, K.S.A. 57-6101 et seq., and K.S.A. 1984 Supp. 65-4307. Cited herein: K.S.A. 59-2902; 59-2908; 65-2891; K.S.A. 1984 Supp. 65-4307; K.S.A. 75-6104.

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Dear Colonel Cantwell:

As Superintendent of the Kansas Highway Patrol and as a member of the Emergency Medical Services Council, you request our opinion on a matter concerning the duties, as well as the potential liability, of emergency medical services personnel in a particular situation. Specifically, you posit the situation where such personnel are called to the scene where a person has attempted suicide but expressly refuses any medical treatment.

Under the common law, a physician is under no duty to treat a person who refuses such treatment. 61 Am.Jur.2d Physicians, §174, p. 305 (1981). This is based upon the need for a patient to consent to the rendering of treatment. However, the legislature has recognized that situations may exist where, due to an emergency, an informed consent to medical treatment may not be possible to properly obtain. While K.S.A. 65-2891 applies only to minors who are injured and whose parents are not available to give consent, its provisions (which do extend to emergency medical service personnel) would allow treatment to be rendered to those persons under the age of 18, regardless of the absence of any formal consent, either by the minor or a parent. Subsection (a) provides immunity in such situations for any damages apart from those "occasioned by gross negligence or by willful or wanton acts."

As to adults who have attempted suicide and subsequently refuse treatment, in our opinion emergency medical services personnel may proceed in one of two different ways. The first, and undoubtedly best, approach involves use of the statutes contained in the Act for Obtaining Treatment of a Mentally Ill Person, K.S.A. 59-2901 et seq. A person who has attempted suicide clearly constitutes someone who requires "treatment" [K.S.A. 59-2902(j)], which may include physical aid, and who is "dangerous to self or others." K.S.A. 59-2902(a). The latter subsection also classifies as mentally ill someone who refuses to seek treatment, which includes a failure to meet the person's basic physical needs to an extent that the person's life is threatened. If such standards can be met, K.S.A. 59-2908(a) allows a law enforcement officer to take the person into custody without a warrant, at which time the individual's medical condition may be treated by the emergency medical services personnel. Accordingly, law enforcement personnel should be notified in such situations so that they may be ready to exercise the authority granted to them (but not to emergency medical services personnel) by the act.

If no law enforcement official is present or can arrive in the time which is available under the circumstances, emergency medical services personnel may have to act upon their own initiative to provide treatment. In that no common-law or statutory duty exists to provide care in the absence of consent, emergency medical services personnel are under no obligation, for example, to attempt to subdue a person who physically resists treatment. If resistance is merely verbal, or if resistance ceases due to the individual's weakness or unconsciousness, then care may be provided. Under the Tort Claims Act, K.S.A. 75-6101 et seq., such actions would be classified as discretionary on the part of the personnel and so would be exempt from liability for negligent or wrongful acts or omissions by virtue of K.S.A. 75-6104(d). A further exemption from liability under such circumstances is provided by K.S.A. 1984 Supp. 65-4307, which exempts "mobile intensive care technicians" from ordinary negligence when they act pursuant to instructions received from a registered nurse or a person license to practice medicine.

In conclusion, Law enforcement personnel may take a person who has attempted suicide and who refuses needed emergency medical treatment into temporary custody, at which time emergency medical services personnel may administer such treatment. In the absence of custody, emergency services personnel may, at their discretion, administer such treatment, and are immune from liability for negligent or wrongful acts or omissions under the provisions of the Tort Claims Act, K.S.A. 57-6101 et seq., and K.S.A. 1984 Supp. 65-4307.

Very truly yours,

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ROBERT T. STEPHAN
Attorney General of Kansas

Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:jm