



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 58

Peter Rinn
Chief Counsel
Department of Social and
Rehabilitation Services
6th Floor, State Office Building
Topeka, Kansas 66612

Re: State Departments; Public Officers and Employees--
Social and Rehabilitation Services--Licensing of
Psychiatric Hospitals

Public Health--Hospitals and Other Facilities;
Licensing Inspection and Regulation

Synopsis: A facility, such as Behavioral Medicine Center of
Parsons, Kansas, which provides services to
patients primarily diagnosed as having psychiatric
or drug and alcohol abuse related problems should
be licensed as a psychiatric hospital pursuant to
K.S.A. 1985 Supp. 75-3307b. Cited herein:
K.S.A. 65-411, 65-425, 65-427, 65-428, 65-4003, 65-
4003d, 65-4013, 65-4603, 65-4801, 75-3304a, K.S.A.
1985 Supp. 75-3307b, 42 U.S.C.A. §1395x(f).

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Dear Mr. Rinn:

You have requested our opinion concerning licensing of
psychiatric hospitals. Specifically, you have inquired
whether Behavioral Medicine Center (BMC), located in
Parsons, Kansas, should be licensed by the Secretary of Social
and Rehabilitation Services.

The information submitted to this office by yourself and Mr. Jeff Ellis, attorney for BMC, indicates that BMC does not operate as a general acute hospital. Rather, the facility provides psychiatric and substance abuse treatment. In addition, "ancillary" medical services are provided as needed by psychiatric and substance abuse patients.

It is our opinion that BMC is a psychiatric hospital. While the term "psychiatric hospital" is not specifically defined in the Kansas statutes, the federal statutes do contain a definition at 42 U.S.C. §1395x(f). For purposes of that act:

"The term 'psychiatric hospital' means an institution which--

"(1) is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;. . . ." (Emphasis added.)

Although there is some disagreement between the interested parties as to what services are provided by BMC, it is not disputed that the primary services provided are psychiatric diagnosis and treatment and substance abuse treatment. In this regard, it is interesting to note that at least two of the state psychiatric hospitals, Larned State Hospital and Osawatomie State Hospital, have provisions for substance abuse treatment including medical detoxification of alcoholics. Thus, the existence of these services does not, in itself, transform a psychiatric hospital into a general or special hospital as defined by K.S.A. 65-425(a) and (b). Similarly, "ancillary" medical services, such as treatment for hypertension, broken bones, cuts and abrasions, and other physical problems, does not necessarily take a facility out of the realm of psychiatric hospitals, especially when these services are provided only to patients whose primary diagnosis is psychiatric or substance abuse related.

It has been suggested that BMC, even if designated a psychiatric hospital, should be licensed by the Department of Health and Environment as a "special hospital." K.S.A. 65-427 provides as follows:

"After July 1, 1973, no person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct

or maintain a medical care facility in this state without a license under this law." (Emphasis added.)

"Medical care facility" is defined at K.S.A. 65-425(h) as "a hospital, ambulatory surgical center or recuperation center," and "hospital" is defined at subsection (i) as a "'general hospital' or 'special hospital.'" K.S.A. 65-425(b) defines "special hospital" as follows:

"'Special hospital' means an establishment with an organized medical staff of physicians; with permanent facilities that include inpatient beds; and with medical services, including physican [sic] services, and continuous registered professional nursing services for not less than twenty-four (24) hours of every day, to provide diagnosis and treatment for four or more nonrelated patients who have specified medical conditions."

Finally, for purposes of these statutes "licensing agency" means the department of health and environment . K.S.A. 65-425(e).

We believe that licensing a psychiatric hospital as a special hospital would be an inappropriate application of the statutes.

In distinguishing a psychiatric hospital from a general or special hospital, the phrase "psychiatric hospital" is to be given its peculiar meaning. K.S.A. 77-201, Second provides in part,

"[T]echnical words and phrases, and other words and phrases that have acquired a peculiar and appropriate meaning in law shall be construed to their peculiar and appropriate meanings. . . ."

The legislature has indicated in at least three separate statutes that the terms are not synonymous and that a psychiatric hospital does not fit within the definition of a general or special hospital found in K.S.A. 65-425. For instance, K.S.A. 65-4801, which contains the definitions of terms used in the act regulating applications for certificates of need for various health facilities, provides in part, as follows:

"'Health facility' means a medical care facility as defined in K.S.A. 65-425 and amendments thereto; psychiatric hospital; adult care home which term shall be limited to skilled nursing home, intermediate nursing care home and intermediate personal care home as such terms are defined in K.S.A. 39-923 and amendments thereto; and kidney disease treatment center, including centers not located in a medical care facility." (Emphasis added.)

K.S.A. 65-411, in defining terms used in the Kansas medical facilities survey and construction act, provides, in part:

"'Medical facility' includes public health centers; psychiatric hospitals; health maintenance organizations as defined in K.S.A. 40-3202; medical care facilities as defined in K.S.A. 65-425; adult care homes, which term shall be limited to skilled nursing homes, intermediate nursing care homes and intermediate personal care homes as said terms are defined in K.S.A. 39-923; kidney disease treatment centers, including centers not located in a medical care facility; and other facilities as may be designated by the secretary of health, education and welfare for the provision of health care." (Emphasis added.)

In addition, the terms have not been used synonymously in the statutes regarding property tax exemptions. K.S.A. 79-201b provides that a hospital or a psychiatric hospital is exempt from property or ad valorem taxes levied under the laws of Kansas if operated by a not for profit corporation, and if all intangible property "[belongs] exclusively to such a corporation and [is] used exclusively for hospital or psychiatric hospital purposes."

It is clear from these statutes that the legislature did not intend for psychiatric hospitals to be included within the definition of "medical care facility" or "hospital" found at K.S.A. 65-425, as there would be no need to cite both if one was a subset of the other. Thus, psychiatric hospitals were

not intended to be licensed by the department of health and environment pursuant to K.S.A. 65-428.

K.S.A. 1985 Supp. 75-3307b, on the other hand, mentions psychiatric hospitals specifically and gives the department of social and rehabilitation services (SRS) authority to adopt rules and regulations regarding the licensing of such facilities. That statute states:

"(a) The enforcement of the laws relating to the hospitalization of mentally ill persons of this state in a psychiatric hospital and the diagnosis, care, training or treatment of persons in community mental health centers or facilities for the mentally retarded and facilities serving other handicapped persons receiving assistance through the department of social and rehabilitation services is entrusted to the secretary of social and rehabilitation services. The secretary may adopt rules and regulations on the following matters, so far as the same are not inconsistent with any laws of this state:

"(1) The licensing, certification or accrediting of private hospitals as suitable for the detention, care or treatment of mentally ill persons, and the withdrawal of licenses granted for causes shown;

. . . .

"(3) the visitation and inspection of psychiatric hospitals and of all persons detained therein;

. . . .

"(6) reports and information to be furnished to the secretary by the superintendents or other executive officers of all psychiatric hospitals, community mental health centers or facilities for the mentally retarded and facilities serving other handicapped

persons receiving assistance through the department of social and rehabilitation services."

Since psychiatric hospitals were not intended to be included within the definition of "medical care facility" in K.S.A. 65-425(h), and therefore licensed by the department of health and environment pursuant to K.S.A. 65-428, the licensing of such facilities by SRS would not be "inconsistent with any laws of this state."

The interests of SRS in retaining authority over psychiatric hospitals is emphasized in K.S.A. 75-3304a, which provides:

"The secretary of social and rehabilitation services is hereby designated as the state agency charged with the administration of the mental health program of the state of Kansas, and such secretary shall have primary responsibility for the state's mental health program, including preventive mental hygiene activities." (Emphasis added.)

SRS also has an interest in the operation of facilities which provide treatment for drug or alcohol abusers. K.S.A. 65-4603 gives the secretary of social and rehabilitation services licensing authority over any "treatment facility for drug abusers" which is not already licensed as a medical care facility, an adult care home or a facility licensed under the provisions of K.S.A. 1985 Supp. 75-3307b. K.S.A. 65-4003, 65-4003d and 65-4013 provide similarly for treatment facilities for alcoholics. (It is our understanding that these facilities would be "already licensed as a medical care facility" if they were units of a general hospital.) In that SRS has been granted authority to license psychiatric hospitals, treatment facilities for drug abusers and treatment facilities for alcoholics separately, it would seem logical that SRS should license a facility which combines these services and caters to patients primarily diagnosed as having psychiatric, drug or alcohol abuse related problems.

In conclusion, it is our opinion that insofar as psychiatric and substance abuse treatment are the primary services

provided by Behavioral Medicine Center, it should be licensed as a psychiatric hospital pursuant to K.S.A. 1985 Supp. 75-3307b.

Very truly yours,



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Julene L. Miller
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