



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 24

Mary Ann Gabel, Executive Secretary
Behavioral Sciences Regulatory Board
900 Jackson, Room 853
Topeka, Kansas 66612

Re: Probate Code -- Care and Treatment for Mentally Ill
Persons -- Definition of Psychologist

State Boards, Commissions and Authorities --
Licensure of Psychologists -- Unlicensed and
Licensed Psychologists

Synopsis: The statutes concerning licensure of psychologists do not require all persons engaged in the practice of psychology to be licensed. K.S.A. 1986 Supp. 74-5344. The Treatment Act for Mentally Ill Persons, however, specifically defines the term "psychologist" to mean licensed psychologist. K.S.A. 1986 Supp. 59-2902(1). Therefore, persons engaged in the practice of psychology who are not licensed can not be considered as "psychologists" under the provisions of K.S.A. 59-2901 et seq. Cited herein: K.S.A. 1986 Supp. 59-2901; 59-2902; 59-2908; 59-2909; 59-2910; 59-2927a; 59-2928; 59-2929; 74-5302; 74-5310; 74-5344; 74-5348; K.S.A. 74-7502; K.S.A. 1986 Supp. 74-7507; K.A.R. 1986 Supp. 102-1-5; K.A.R. 102-1-11.

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Dear Ms. Gabel:

As the Executive Secretary for the Behavioral Sciences Regulatory Board (Board), you request our opinion concerning

1986 House Bill No. 2050 (L. 1986, ch. 211) as it relates to licensed and non-licensed individuals in psychology. Your interest stems from the fact that the Board issues licenses in psychology and regulates licensed psychologists. K.S.A. 74-7502; K.S.A. 1986 Supp. 74-7507.

1986 House Bill No. 2050 made substantial revisions to the Treatment Act for Mentally Ill Persons (Act), K.S.A. 59-2901 et seq. Amendments to the Act include adding the word "psychologist" to the provisions of various statutes. For example, a treatment facility may admit and detain any person for emergency observation and treatment upon the written application of any individual accompanied by a written statement of a physician or psychologist. K.S.A. 1986 Supp. 59-2909(c), (d). If an individual is admitted and detained at a treatment facility pursuant to an application by a law enforcement officer, the individual must be examined by a physician or psychologist. K.S.A. 1986 Supp. 59-2908(a); 59-2909(b). The Act was also amended to provide that persons in treatment facilities have the right to consult with their personal psychologist, K.S.A. 1986 Supp. 59-2910(a), and have the right to communicate by letter with any psychologist, K.S.A. 1986 Supp. 59-2929(a)(8). Restraints are not allowed unless a physician or psychologist determines it to be necessary. K.S.A. 1986 Supp. 59-2928(a). In addition, a provision was added concerning a psychologist's treatment responsibilities to his or her patient. K.S.A. 1986 Supp. 59-2927a. See Note, "The 1986 Kansas Involuntary Commitment Statute: Is Easier Necessarily Better?" 25 Washburn L. J. 131, 146 (1986).

Under the Act the term "psychologist" is defined as follows:

"'Psychologist' means a certified psychologist as defined by K.S.A. 74-5302 and amendments thereto." K.S.A. 1986 Supp. 59-2902(1). (Emphasis added.)

Psychologists are licensed in this state pursuant to the provisions of the Licensure of Psychologists Act, K.S.A. 74-5301 et seq. (By amendment in 1986 the legislature changed the designation from "certified" psychologist to "licensed" psychologist. Use of the term "certified" in K.S.A. 1986 Supp. 59-2902(1) was evidently a legislative oversight. For purposes of this opinion "licensed" and "certified" have the same meaning. See K.S.A. 1986 Supp. 74-5348.) K.S.A. 1986 Supp. 74-5302(e) defines the term as follows:

"'Licensed psychologist' means a person licensed by the [behavioral sciences regulatory] board under the provisions of this act."

Thus, for purposes of the statutes concerning the treatment of mentally ill persons, "psychologist" means licensed psychologist.

Kansas law does not require all persons who practice psychology to be licensed by the Board as a psychologist. K.S.A. 1986 Supp. 74-5344. See K.S.A. 1986 Supp. 74-5302(a) (definition of "practice of psychology"). For example, persons employed as psychologists for exempt organizations need not be licensed:

"Nothing contained in this act shall be construed . . . to limit the practice of psychology or use of official title on the part of a person in the employ of a federal, state, county or municipal agency, or other political subdivision, or a duly chartered educational institution, or a not-for-profit corporation insofar as such practice is a part of the duties of such person's salaried position, and insofar as such practice is performed solely on behalf of such person's employer, or insofar as such person is engaged in public speaking with or without remuneration" K.S.A. 1986 Supp. 74-5344(c). See Attorney General Opinion No. 80-270.

The statutes and regulations concerning psychologists also provide that "unlicensed assistants" may practice psychology without a license. There are two classes of unlicensed assistants: (1) students, or those persons working toward licensure (applicants for licensure must have had at least two years of supervised experience), K.S.A. 1986 Supp. 74-5310; 74-5344(d); K.A.R. 1986 Supp. 102-1-5(b); and (2) persons who are not held out as psychologists but who furnish psychological services under the supervision of a licensed psychologist, K.S.A. 1986 Supp. 74-5344(e); K.A.R. 102-1-11. The question you submit to us is whether, for purposes of the Treatment Act for Mentally Ill Persons, persons who practice psychology but are not required to be licensed may be considered as "psychologist" under the Act?

The role of uncertified assistants was the subject of Attorney General Opinion No. 82-25. In that opinion we were asked whether licensed psychologists could receive payments from third party payors for services rendered by unlicensed assistants. We concluded that the exemption from licensure, K.S.A. 74-5344(e), "plainly permits a certified psychologist to employ uncertified assistants for remuneration, as long as such assistants are supervised by the certified psychologist. Therefore, the psychologist may properly receive payments [from third party payors] for the services rendered by these supervised employees." Id. at 2.

It is argued that, since we have opined that third party providers may be billed for the services of unlicensed assistants, every legal privilege and responsibility of licensed psychologists should be extended to unlicensed assistants and psychologists employed by exempt organizations. However, K.S.A. 1986 Supp. 59-2902(1) clearly provides that the term "psychologist" means licensed psychologist. Therefore, while K.S.A. 1986 Supp. 74-5344 provides that certain persons are not required to be licensed to practice psychology, the Treatment Act for Mentally Ill Persons limits the practice of psychology in situations governed by these statutes to psychologists licensed by the Board.

The Act's requirement that psychologists be licensed may, in certain situations, be incongruous with the exemption for governmental and not-for-profit agencies. A "treatment facility" is defined under the Act as "any mental health center or clinic, psychiatric unit of a medical care facility, psychologist, physician or other institution or individual authorized or licensed by law to provide either inpatient or outpatient" mental health services. K.S.A. 1986 Supp. 59-2902(q). See K.S.A. 1986 Supp. 59-2902(p). Many treatment facilities are run by the state, local governments, or not-for-profit corporations. Employees of these institutions are not required to be licensed. K.S.A. 1986 Supp. 74-5344(c). Thus, persons who are not required to be licensed because they are employed by an exempt agency must nevertheless be licensed to practice psychology under the statutes concerning care and treatment of mentally ill persons when many mental health treatment facilities are exempt agencies.

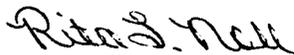
In summary, the statutes concerning licensure of psychologists do not require all persons engaged in the practice of psychology to be licensed. K.S.A. 1986 Supp. 74-5344. The

Treatment Act for Mentally Ill Persons, however, specifically requires a psychologist to be a licensed psychologist. K.S.A. 1986 Supp. 59-2902(1). Therefore, persons engaged in the practice of psychology who are not licensed can not be considered as "psychologists" under the provisions of K.S.A. 59-2901 et seq.

Very truly yours,



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