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ATTORNEY GENERAL OPINION NO. 89- 80

Mary Ann Gabel  
Executive Director  
Behavioral Sciences Regulatory Board  
900 Jackson, Room 885  
Topeka, Kansas 66612

Re: Public Health -- Professional Counselors --  
Diagnosis and Treatment of Mental Illness or Disease

Synopsis: While registration acts generally do not restrict the practice of a regulated profession, the legislature may by statute place limitations on the scope of practice. The legislative history of K.S.A. 1988 Supp. 65-5812(e) reflects the plain meaning and intent of the words used in this provision. Thus, registered professional counselors may not diagnose or treat mental illness or disease. Cited herein: K.S.A. 1988 Supp. 65-5001; 65-5801; 65-5802; 65-5803; 65-5812; 74-7507.

\* \* \*

Dear Ms. Gabel:

As Executive Director of the Behavioral Sciences Regulatory Board (Board), you ask our opinion concerning the professional counselors registration act. Specifically, you question whether counselors who are registered with the State of Kansas may diagnose or treat mental illness or disease. It is the duty of the Board to implement the act and to register and regulate the profession of professional counseling. K.S.A. 1988 Supp. 74-7507.

The legislature enacted the professional counselors registration act in 1987. K.S.A. 1988 Supp. 65-5801 et seq. The law provides that "no person shall represent that such person is a registered professional counselor, registered counselor or professional counselor without having first obtained a registration" from the Board. K.S.A. 1988 Supp. 65-5803(a). Violation of the act is a class B misdemeanor. K.S.A. 1988 Supp. 65-5803(b). "Professional counseling" is defined in the Act as follows:

"'Professional counseling' means to assist an individual or group to develop understanding of personal strengths and weaknesses, to restructure concepts and feelings, to define goals and to plan actions as these are related to personal, social, educational and career development and adjustment." K.S.A. 1988 Supp. 65-5802(c).

K.S.A. 1988 Supp. 65-5802(b) provides that "practice of professional counseling" means

"assisting an individual or group for a fee, monetary or otherwise, through counseling, assessment, consultation and referral." K.S.A. 1988 Supp. 65-5802(b).

The terms contained in the above provision are defined as follows:

"(d) 'Assessment' means selecting, administering, scoring and interpreting instruments designed to describe an individual's aptitudes, abilities, achievements, interests and personal characteristics.

(e) 'Consultation' means the application of principles, methods and techniques of the practice of counseling to assist in solving current or potential problems of individuals or groups in relation to a third party.

(f) 'Referral' means the evaluation of information to identify problems and to determine the advisability of referral to

other practitioners." K.S.A. 1988 Supp.  
65-5802.

Among the exceptions to the requirement of registration is the following:

"Nothing in the professional counselors registration act shall be construed:

. . . .

(e) to authorize a person registered under this act to diagnose or treat mental illness or disease." K.S.A. 1988 Supp. 65-5812.

It is argued that while the act does not authorize a registered professional counselor to diagnose and treat mental illness and disease, the law does not prohibit a registered professional counselor from diagnosing and treating mental illness and disease. Further, it is argued that the act is a registration act which does not limit the practice of registered professional counselors.

Health care personnel seeking formal recognition of professional or technical competence by the state must undergo a credentialing process. K.S.A. 1988 Supp. 65-5001 et seq. The three levels of credentialing are certification, registration, and licensure, defined as follows:

"(b) 'Certification' means the process by which a nongovernmental agency or association or the federal government grants recognition to an individual who has met certain predetermined qualifications specified by the nongovernmental agency or association or the federal government.

(c) 'Registration' means the process by which the state identifies and lists on an official roster those persons who meet predetermined qualifications and who will be the only persons permitted to use a designated title.

(d) 'Licensure' means a method of regulation by which the state grants

permission to persons who meet predetermined qualifications to engage in an occupation or profession, and that to engage in such occupation or profession without a license is unlawful." K.S.A. 1988 Supp. 65-5001.

In other words, registration is "title protection" while licensure is "practice protection".

Generally, a registration act does not limit the practice of the regulated profession. However, all the statutes of an act regulating a profession must be read together. The words "registration" or "license" do not in themselves prescribe the extent of the regulation of the profession if the legislature has dictated otherwise by statute.

The answer to the question presented to us depends upon the meaning and intent of K.S.A. 1988 Supp. 65-5812(e). The Kansas Supreme Court has stated that

"[w]here the language of a statute is plain and unambiguous, this court's responsibility is to give effect to the intent of the legislature as expressed, and not to rearrange the legislature's work to express what the court thinks the law should or should not be." Barber v. Williams, 244 Kan. 318, 324 (1988).

The professional counselors registration act provides that the act is not to be construed to authorize registrants to diagnose or treat mental illness or disease. The plain meaning of the words used in K.S.A. 1988 Supp. 65-5812(e) is that registered counselors do not have the authority and are not permitted to engage in certain practice.

The plain meaning of the words in the provision reflects the intent of the legislature in enacting that portion of the statute. The professional counselors registration act (L. 1987, ch. 315) was introduced to the legislature as 1987 Senate Bill No. 78. The bill was referred to the Senate Committee on Public Health and Welfare where two days of hearings were held. As introduced, the bill provided for the licensure of professional counselors. Opponents of the bill included mental health professionals and organizations representing mental health professionals. The primary opposition to the bill concerned the scope of practice, that

the definition of counseling was too broad and would allow counselors to diagnose and treat persons suffering from mental disease and illness. Minutes, Senate Public Health and Welfare Committee (Minutes), February 6, 1987, pp.1-2. The Senate committee amended the bill to provide for the registration of counselors instead of licensure. In addition, the committee amended the provision which is now K.S.A. 65-5812 by adding subsection (e), that the act is not to be construed "to authorize a person registered under this act to diagnose or treat mental illness or disease." Minutes, March 4, 1987.

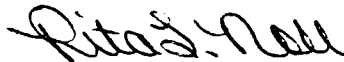
After passage by the Senate and introduction to the House of Representatives, SB 78 as amended was referred to the House Committee on Public Health and Welfare. At committee hearings held on the bill the groups and individuals who testified in opposition at the Senate hearings now spoke in favor of the bill. Minutes, House Committee on Public Health and Welfare, March 26, 1987, pp. 3-4. The bill passed the House and was signed into law by the governor as amended by the Senate Committee.

In summary, while registration acts generally do not restrict the practice of a regulated profession, the legislature may by statute place limitations on the scope of practice. The legislative history of K.S.A. 1988 Supp. 65-5812(e) reflects the plain meaning and intent of the words used in this provision. Thus, it is our opinion that registered professional counselors may not diagnose or treat mental illness or disease.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Rita L. Noll  
Assistant Attorney General

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