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ATTORNEY GENERAL OPINION NO. 92- 7

The Honorable Barbara P. Allen
State Representative, 21st District
4650 College Blvd., Suite 300
Overland Park, KS 66211

Re: State Boards, Commissions and Authorities --
Regulation of Psychologists; Licensure of
Psychologists -- Issuance of License; Qualifications

Synopsis: When granting a license to practice psychology, the behavioral sciences regulatory board does not have the authority to designate an "area of emphasis" as a restriction or limitation of that license. Accordingly, K.A.R. 102-1-10(b)(4) is void and unenforceable as it exceeds the board's statutory authority. Cited herein: K.S.A. 1990 Supp. 74-5302; 74-5310.

* * *

Dear Representative Allen:

As state representative for the twenty-first district, you ask the following question:

"When granting a license to practice psychology, does the behavioral sciences regulatory board have the authority to designate an 'area of emphasis' as a restriction or limitation of that license?"

The behavioral sciences regulatory board is the governmental agency charged with the responsibility of licensing psychologists in the state of Kansas. K.S.A. 1990 Supp.

74-5310 sets forth the criteria which an applicant must meet in order to be licensed as a psychologist.

"Any person paying the [application] fee must also submit evidence verified by oath and satisfactory to the board that such person:

"(1) is at least 21 years of age;

"(2) is of good moral character;

"(3) has received the doctor's degree based on a program of studies in content primarily psychological from an educational institution having a graduate program with standards consistent with those of the state universities of Kansas, or the substantial equivalent of such program in both subject matter and extent of training; and

"(4) has had at least two years of supervised experience; a significant portion of which shall have been spent in rendering psychological services satisfying the board's approved standards for the psychological service concerned."
K.S.A 1990 Supp. 74-5310.

If these criteria are met, the applicant is granted a license, i.e. authorization to engage in the practice of psychology, defined as:

"The application of established principles of learning, motivation, perception, thinking and emotional relationships to problems of behavior adjustment, group relations and behavior modifications, by persons trained in psychology. The application of such principles includes, but is not restricted to, counseling and the use of psychological remedial measures with persons, in groups or individually, having adjustment or emotional problems in the areas of work, family, school and personal relationships; measuring and testing personality, intelligence,

aptitudes, public opinion, attitudes and skills; the teaching of such subject matter; and the conducting of research on problems that relate to human behavior, except that in all cases involving the case of the sick and ill as defined by the laws of the state of Kansas, the primary responsibility devolves upon those licensed under the healing arts act." K.S.A. 1990 Supp. 74-5302(a).

Once granted, a license to practice psychology is limited only by the parameters of that statutory definition.

An "area of emphasis" as used in regulations adopted pursuant to the licensure of psychologists act is an emphasized area of education within a degree program of psychological studies and therefore has meaning only up to the time of licensure as a psychologist.

Four Kansas administrative regulations contain the term "area of emphasis." K.A.R. 102-1-5 addresses in greater specificity the two year supervision and professional experience requirements of K.S.A. 1990 Supp. 74-5310 which must be met in order to obtain a license. Within this regulation the term "area of emphasis" pertains to the requisite pre-licensure professional experience. K.A.R. 102-1-7 specifically provides that an area of emphasis shall not be listed on licenses issued by the board. K.A.R. 102-1-12(a)(13) lists as a factor for consideration in evaluating an applicant's degree program "whether the course work includes the skill courses appropriate for the applicant's major or area of emphasis." Those three regulations are consistent with the premise that once qualified by education, training and experience, an applicant is to be granted a license to practice psychology as that term is statutorily defined.

The board, being a creature of statute, has powers no broader than the statute which creates its existence and defines its authority.

"Administrative agencies are creatures of statute and their power is dependent upon authorizing statutes, therefore any exercise of authority claimed by the agency must come from within the statutes. There is no general or common law power that can be exercised by an

administrative agency. Pork Motel, Corp. v. Kansas Department of Health and Environment, 234 Kan. 374, 378 (1983).

Since the board has not been granted statutory power to restrict a license to practice psychology, the board is not authorized to designate an area of emphasis as a restriction or limitation of such a license. In light of this conclusion, one additional regulation must be addressed. K.A.R. 102-1-10 defines acts of unprofessional conduct, which are grounds authorizing the board to suspend, limit, revoke, refuse to issue or renew a license to practice psychology. Subsection (b)(4) of that regulation defines unprofessional conduct as:

"Performing professional services that are inconsistent with the licensee's emphasis area or areas recognized by the board based on a review of training, education or experience."

Since the board does not have the statutory authority to designate an emphasis area or a board recognized area of a license to practice psychology, in our opinion K.A.R. 102-1-10(b)(4) is invalid and unenforceable.

"Rules or regulations of an administrative agency, to be valid, must be within the statutory authority conferred upon the agency. Those rules or regulations that go beyond the authority authorized, which violate the statute, or are inconsistent with the statutory power of the agency have been found void. Administrative rules and regulations to be valid must be appropriate, reasonable and not inconsistent with the law." Pork Motel, Corp. v. Kansas Department of Health and Environment, *supra*, Syl. 1.

A psychology license authorizes the licensee to practice psychology as defined in K.S.A. 1990 Supp. 74-5302 which is a very broad definition. K.A.R. 102-1-10(b)(4) purports to limit the licensee to performing psychological services which are consistent with the licensee's pre-licensure educational emphasis area. While this idea may be considered commendable, the fact remains that the board has not been granted statutory authority to adopt this regulation.

In conclusion, we opine that when granting a license to practice psychology, the behavioral sciences regulatory board does not have the authority to designate an "area of emphasis" as a restriction or limitation of that license. In addition, it is our opinion that K.A.R. 102-1-10(b)(4) exceeds the statutory power of the board and is therefore void.

Very truly yours,



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