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March 26, 1992

ATTORNEY GENERAL OPINION NO. 92- 43

Mary Ann Gabel, Executive Director
Behavioral Sciences Regulatory Board
Landon State Office Bldg., 855-S
Topeka, Kansas 66612

Re: Public Health -- Social Workers -- Definition;
Social Work Practice; Psychotherapy; Authority to
Diagnose

Synopsis: Social workers are not prohibited from diagnosing
mental conditions other than psychological
disorders or mental illnesses. However, any
diagnostic work by a social worker must be
consistent with the social worker's training,
education and experience. Cited herein: K.S.A.
1991 Supp. 65-2869; 65-6301; 65-6302; 65-6311;
74-5340.

* * *

Dear Ms. Gabel:

As executive director for the behavioral sciences regulatory
board, you ask whether the term "psychotherapy" as used within
the social work practice act includes diagnosis and, if so,
whether social workers are able to diagnose.

As you note in Attorney General Opinion No. 87-184, in
response to the question of who may supervise registered
masters level psychologists, we opined:

"Persons who may supervise registered
masters level psychologists (RMLPs) must
meet two requirements: (1) They must be

licensed to provide mental health services and (2) their licensure must allow them to diagnose and treat psychological disorders. It is our opinion that licensed psychologists meet these requirements, but social workers and psychiatrists do not."

Specifically, in regard to social workers we said:

"Social workers provide mental health services and many are independent practitioners. However, as defined by statute, the practice of social work does not include diagnosing psychological disorders."

You inform us that the inclusion of the above wording has raised questions relative to the parameters of social work practice. It is in light of that opinion you now pose questions regarding the authority of social workers to make diagnoses.

As used in the social workers act, "social work practice" means:

"The professional activity of helping individuals, groups or communities enhance or restore their capacity for physical, social and economic functioning and the professional application of social work values, principles and techniques in such areas as psychotherapy, social work administration, social planning, social work consultation and social work research to one or more of the following ends: helping people obtain tangible services; counseling with individuals, families and groups, helping communities or groups provide or improve social and health service; and participating in relevant social actions. The practice of social work requires knowledge of human development and behavior; of social, economic and cultural institutions and forces; and of the interaction of all these factors. Social work practice includes the teaching of practicum courses in social work." K.S.A. 1991 Supp. 65-6302(b).

While "psychotherapy" is generally understood as the mode of treatment featuring verbal communication, 61 Am.Jur.2d Physicians and Surgeons, § 275 (1981), within the Kansas social workers act the term means:

"The use of psychological and social methods within a professional relationship, to assist the person or persons to achieve a better psychosocial adaptation to acquire greater human realization of psychosocial potential and adaptation; to modify internal and external conditions which affect individuals, groups or communities in respect to behavior, emotions and thinking, in respect to their intra-personal and inter-personal processes. Forms of psychotherapy include but are not restricted to individual psychotherapy, conjoint marital therapy, family therapy and group psychotherapy." K.S.A. 1991 Supp. 65-6302(c). (Emphasis added).

We assume the question you pose pertains to the diagnosis of mental, as opposed to physical, maladies. It is within this context we therefore address your question of whether the term "psychotherapy" as used in the social workers act implies the authority to diagnose.

The word "diagnose" means "to determine the diagnosis of; to ascertain, as a disease from its symptoms. The word etymologically and in its general interpretation signifies a discrimination, a passing of judgment, as to physical conditions." 26A C.J.S. Diagnose p. 932 (1956).

Regarding "diagnosis,"

"The word is derived from the Greek prefix 'dia,' meaning between, and 'gignoskeim,' which signifies to know thoroughly or to distinguish, or to discern. Hence, in its primary sense the word is used to designate a distinguishing between things, or a definition; a conclusion arrived at through critical perception or scrutiny." 26A C.J.S. Diagnosis pp. 932-933 (1956).

Psychotherapy is defined in K.S.A. 1990 Supp. 65-6302(c) in terms of a psychological or social method available to social workers to accomplish certain results beneficial to clients. In other words it is a tool or mode of treatment which may lawfully be used by social workers within a professional relationship. This method is available to social workers to assist persons in achieving certain results and to modify internal and external conditions in respect to intrapersonal and interpersonal processes. K.S.A. 1991 Supp. 65-6302(c).

We recognize that in certain situations a diagnosis may be helpful or even necessary for psychotherapy to be effective as a method of treatment. However, statutory authorization to engage in a specific mode of treatment does not of itself either authorize or prohibit making a diagnosis. The real issue is what types of diagnoses, if any, social workers may make prior to using the treatment method of psychotherapy.

As we stated in Attorney General Opinion No. 87-184:

"[w]e think the 'practice of psychology' as defined by statute necessarily implies diagnosis and treatment of psychological disorders." p. 3.

Since one must be licensed as a psychologist to practice psychology, K.S.A. 1991 Supp. 74-5340, the realm of diagnosing psychological disorders is limited to licensed psychologists. Social workers are accordingly prohibited from diagnosing psychological disorders.

Additionally, as stated in Attorney General Opinion No. 87-184:

"[p]sychiatrists are licensed by the Board of Healing Arts as healing arts practitioners of medicine and surgery. Through advanced or specialized training, medical doctors may obtain the designation 'psychiatrist' from national professional organizations." p. 4-5.

K.S.A. 1991 Supp. 65-2869(b) provides that healing arts licensees, which includes psychiatrists, may diagnose mental illness. Such statutory authorization establishes a realm specifically reserved to psychiatrists as practitioners of medicine and surgery and accordingly precludes other persons, such as social workers, from making diagnoses of afflictions considered mental illnesses.

As a matter of law, therefore, social workers are prohibited from diagnosing either psychological disorders or mental illnesses. However, social workers are not legally prohibited from diagnosing mental conditions which are neither psychological disorders nor mental illnesses. Unfortunately, since neither term is defined by statute or regulation, a pragmatic problem arises regarding exactly what mental conditions remain as proper for social workers to diagnose.

This matter is further complicated by the classification system of "mental disorders" used in the Diagnostic and Statistical Manual of Mental Disorders, (Third Edition - Revised) (1987), generally known as the DSM-111-R, which is the primary diagnostic tool for clinicians. The DSM-111-R takes a "descriptive," as opposed to an etiological, approach using characteristic features of the disorders which "consist of easily identifiable behavioral signs or symptoms." DSM-111-R, Introduction, p. xxiii. Mental disorders are "conceptualized as a clinically significant behavioral or psychological syndrome or pattern. . . ." DSM-111-R, Introduction, p. xxii.

Which mental disorders are psychological disorders, which are mental illnesses and which are neither? The absence of legal definitions of "psychological disorders" and "mental illness," and the variance between statutory and DSM-111-R diagnostic terminology, presents a legally unresolvable dilemma regarding the exact limits of social worker diagnostic authority. This matter could be resolved by defining the terms "psychological disorder" and "mental illness" by statute or regulation, preferably in conformity with the language used in the DSM-111-R.

While our legal conclusion is that social workers are not prohibited from diagnosing mental conditions other than psychological disorders or mental illnesses, a strong caveat to social workers is in order. Social workers are reminded that the purpose of the social workers act is:

"to protect the public by setting standards of qualification, training and experience for those who seek to engage in the practice of social work and by promoting high standards of professional performance for those engaged in the profession of social work." K.S.A. 1991 Supp. 65-6301.


To ensure high standards of professional performance, K.S.A. 1991 Supp. 65-6311 permits the behavioral sciences

regulatory board to take disciplinary action against a social worker who is found guilty of negligence in the performance of duties or who has been found guilty of unprofessional conduct which includes "misrepresenting professional competency by performing, or offering to perform, services clearly inconsistent with training, education, and experience," K.A.R. 102-2-7(b)(10), and "practicing social work in an incompetent manner," K.A.R. 102-2-7(b)(45). The DSM-111-R itself contains a cautionary statement that "the proper use of the criteria requires specialized clinical training that provides both a body of knowledge and clinical skills." Additionally, appropriate treatment of an individual may necessitate the ruling out or ruling in of a psychological disorder or a mental illness. As a matter of law, such a diagnostic assessment is beyond a social worker's expertise and authority, and must be made by a psychologist or a psychiatrist. We also note that while the practice of social work requires knowledge of human development and behavior, K.S.A. 1991 Supp. 65-6302(b), inadequate diagnostic abilities may result in the loss of a social workers license to practice the profession, as well as civil liability.

In conclusion, social workers are not prohibited from diagnosing mental conditions other than psychological disorders or mental illnesses. However, any diagnostic work by a social worker must be consistent with the social worker's training, education and experience.

Very truly yours,


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