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

Re: Procedure, Civil -- Divorce and Maintenance -- Decree; Authorized Orders; Sole Custody; Treatment of Child; Confidential Information About Child

Synopsis: When a court awards sole custody of a child, the noncustodial parent is not authorized to obtain treatment or receive confidential information about the child from a psychologist, a registered masters level psychologist, a professional counselor, a social worker or a marriage and family therapist.


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Dear Ms. Gabel:

As executive director of the behavioral sciences regulatory board, you ask whether the conclusion expressed in Attorney General Opinion No. 91-93 extends to other mental health care professionals.

In Attorney General Opinion No. 91-93, we concluded:

"It is our opinion that when a court awards sole custody of a child, the non-custodial parent is not authorized to obtain treatment for the child or receive"
You now ask whether this conclusion extends to psychologists, registered masters level psychologists, professional counselors, social workers and marriage and family therapists, all of whom are regulated by the behavioral sciences regulatory board.

Although two issues are presented - authority to consent to treatment of a minor child and authority to receive confidential information regarding a minor child - both may be resolved by an understanding of the nature of sole custody. K.S.A. 1991 Supp. 60-1610(a)(4)(B) authorizes a court to place custody of a child with one parent who then has "the right to make decisions in the best interests of the child, subject to the visitation rights of the noncustodial parent." Besides the right of visitation, the noncustodial parent retains the right to inherit from the child, the right to grant consent to an adoption, and the right to consent to a minor child's marriage. Yoder v. Yoder, 11 Kan.App.2d 330 (1986).

In our opinion the decision to obtain mental health services for a minor child and the decision to receive or release confidential information about the child are decisions which must be made according to the best interest of the child. As such, the right to make those decisions belongs to the custodial parent when sole custody has been granted. Accordingly, following the rational of Attorney General Opinion No. 91-93, it is our opinion that when a court awards sole custody of a child, the non-custodial parent is not authorized to obtain treatment for the child or receive confidential information about the child from a psychologist, a registered masters level psychologist, a professional counselor, a social worker or a marriage and family therapist.

Very truly yours,

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Camille Nohe
Assistant Attorney General