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ATTORNEY GENERAL OPINION NO. 92- 53

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.  
Cited herein: K.S.A. 1991 Supp. 60-1610.

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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

confidential information about the child  
from a mental health center."


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 rationale 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