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ATTORNEY GENERAL OPINION NO. 92- 99

The Honorable Jim Cates
State Representative, 52nd District
5500 W. 31st Terr.
Topeka, Kansas

Re: Public Health -- Professional Counselors --
Definitions; Registered Professional Counselor;
Meaning of Registration

Public Health -- Credentialing -- Credentialing
Health Care Professionals; Definitions; Meaning of
Registration; Meaning of Licensure

Synopsis: The professional counselors act is a registration
act, not a licensure act, as it does not make
unlawful the practice of professional counseling by
unregistered persons. However, it partakes of an
important aspect generally accepted as a purpose of
licensure in that it provides the public with a
substantial basis for relying on the services of a
registered professional counselor. Cited herein:
K.S.A. 1991 Supp. 65-5001; 65-5003; 65-5006;
65-5007; 65-5801; 65-5802; 65-5803; 65-5809.

* * *

Dear Representative Cates:

As representative for the 52nd district, you pose a question
regarding the professional counselors act, K.S.A. 1991 Supp.
65-5801 et seq. which provides for the registration of
professional counselors. In particular you request a

discussion of the distinction between registration and licensure, and ask whether the professional counselors act is actually a licensure act.

Within the professional counselor act is found K.S.A. 1991 Supp. 65-5803 which provides:

"(a) On and after July 1, 1988, no person shall represent that such person is a registered professional counselor, registered counselor or professional counselor without having first obtained a registration as a professional counselor under the professional counselors registration act.

"(b) Violation of this section is a class B misdemeanor."

A "registered professional counselor" is defined within the act to mean:

"a person who engages in the private practice of professional counseling and is registered under this act." K.S.A. 1991 Supp. 65-5802(g).

"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. 1991 Supp. 65-5802(c).

A person may obtain registration as a professional counselor upon meeting specified statutory requirements relating to education and supervised experience in professional counseling and upon passing an examination. K.S.A. 1991 Supp. 65-5804. Once registered as a professional counselor, such person may represent himself or herself as a "registered professional counselor," a "registered counselor" or a "professional counselor." Only persons so registered may represent themselves as a "registered professional counselor," a "registered counselor" or a "professional counselor." K.S.A.

1991 Supp. 65-5803. Further, registration may be refused, suspended, limited or revoked for specified reasons. K.S.A. 1991 Supp. 65-5809.

What resulted in the professional counselors act had its beginning in 1984 when the Kansas department of health and environment (KDHE) received a credentialing application from the Kansas mental health counselor association and the Kansas association for counseling and development to be taken through the credentialing review process pursuant to K.S.A. 1991 Supp. 65-5001 et seq. The credentialing application requested the state of Kansas to license the practice of professional counselors. (Minutes, Senate Committee on Public Health and Welfare, February 3, 1987, Attachment 5.

The Kansas credentialing act establishes a process by which a technical committee initially examines and investigates applications submitted by health care personnel groups seeking credentialing. "Credentialing" means "the formal recognition of professional or technical competence through the process of registration, licensure or other statutory regulation." K.S.A. 1991 Supp. 65-5001. The technical committee's first responsibility is to determine and recommend to the secretary of KDHE whether a particular profession should be credentialed at all. K.S.A. 1991 Supp. 65-5003. The responsibility is met by applying criteria set forth in K.S.A. 1991 Supp. 65-5006. If the committee determines that a professional group of health care personnel has met the criteria, the committee makes a recommendation to the secretary of KDHE regarding the appropriate level of credentialing "consistent with the policy that the least regulatory means of assuring the protection of the public is preferred." K.S.A. 1991 Supp. 65-5007. The secretary then reviews the committee's report and recommendations, and makes a report to the legislature either concurring or dissenting with the committee. K.S.A. 1991 Supp. 65-5005. Three levels of credentialing are recognized within the credentialing act:

(1) "Statutory regulation, other than registration or licensure, by the creation or extension of statutory causes of civil action, the creation or extension of criminal prohibitions or the creations or extension of injunctive remedies. This level is considered appropriate when such level will adequately protect the public's health, safety or welfare," K.S.A. 1991 Supp. 65-5007(a)(1);

(2) registration, which 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." K.S.A. 1991 Supp. 65-5001(c). This level is considered appropriate when statutory regulation under (1) "is not adequate to protect the public health, safety or welfare and when registration will adequately protect the public health, safety or welfare by identifying practitioners who possess certain minimum occupational or professional skills so that members of the public may have a substantial basis for relying on the services of such practitioners," K.S.A. 1991 Supp. 65-5007(a)(2);

(3) licensure, which means "a method or 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. 1991 Supp. 65-5007(d). This level is considered appropriate when statutory regulation under (1) and (2) "is not adequate to protect the public's health, safety and welfare and when the occupational or professional groups of health care personnel to be licensed perform functions not ordinarily performed by persons in other occupations or professions." K.S.A. 1991 Supp. 65-5007(a)(3).

Senate Bill No. 78, an act providing for the licensure of professional counselors, was introduced in 1987. Journal of the Senate, January 26, 1987, p. 45. The bill was referred to the Senate committee on public health and welfare (Journal of the Senate, January 27, 1987, p. 48) which conducted hearings on the bill. Minutes, Senate Committee on Public Health and Welfare, February 3, 1987, February 5, 1987 and February 6, 1987. KDHE presented testimony supporting the need for credentialing professional counselors based on reviews of the application for credentialing by "a five member technical committee, the Statewide Health Coordinating Council (SHCC) and former KDHE Secretary Barbara Sabol and current KDHE Secretary Jack D. Walker, M.D." However, while the former secretary had recommended registration as the appropriate level of credentialing, the then current secretary recommended licensure as the appropriate level. Minutes, Senate Committee on Public Health and Welfare, Attachment 5. Following the hearings, the Senate committee on public health and welfare amended SB 78 to provide for registration of professional counselors instead of licensure. The amended bill was enacted into law and has become the professional counselors act, K.S.A. 1991 Supp. 65-5801 et seq.

We have presented this fairly lengthy legislative review to clarify the distinction between registration and licensure within the context of the credentialing act from that which is frequently understood as the legal distinction.

A license is generally accepted to mean a right or permission granted by some competent authority to carry on a business or do an act which, without such license, would be illegal. 53 C.J.S. Licenses § 1 (1987). A major objective of a licensure scheme is to regulate an occupation "so as to subserve the public good or prevent its being conducted in a manner injurious to the public welfare," 53 C.J.S. Licenses § 3 (1987), by controlling "competence and integrity of a profession. . . . Obtaining a license requires the demonstration of certain skills, training and other characteristics by the applicant. The licensing may be withdrawn if the applicant fails to meet certain standards." Charles H. Koch, 1 Administrative Law and Practice, § 233 (1985).

This generally accepted meaning of and purpose for licensing is consistent with that established in the Kansas credentialing act of "permission to persons who meet predetermined qualifications to engage in an occupation or profession" and making the engagement "in such occupation or profession without a license" unlawful. K.S.A. 1991 Supp. 65-5001(d).

Registration generally means "to record formally and exactly; to enroll; to enter precisely in a list or the like." Gundaker v. Templer, 560 S.W. 2d 306, 309 (Mo. App. 1977). Thus,

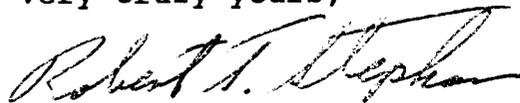
"[t]he basic, and commonly held, distinction between licensing and registration is that licensing regulates activity based on a determination of the personal qualifications of the licensee, while registration catalogs all persons with respect to an activity, or all things that fall within certain classifications. Thus, voter registration lists merely enumerate all those persons who satisfy the requirements to vote. (Citations omitted). Similarly, recording statutes provide for the listing of property titles and other documents. (Citations omitted)." Galvan v. The Superior Court

of the City and County of San Francisco,
452 P. 2d 930, 933-934 (Cal. 1969).

Pursuant to the Kansas credentialing act, however, registration imports more than a mere cataloging of all persons within a particular category. In relation to professional counselors, for instance, registration does not involve state identification and listing all professional counselors, but only those who make application for registration and who meet predetermined qualifications relating to education, experience and the passing of an examination. Unlike licensure, state permission is not required in order to engage in professional counseling. However, similar to licensing, registration of professional counselors is a state sanctioned method of protecting the public by providing a "substantial basis for relying on the services of such practitioner." K.S.A. 1991 Supp. 65-5007(a)(3). While the profession as a whole is not regulated by the state through licensure, those professional counselors who obtain registration provide assurance to the public of professional competence and integrity.

In conclusion, in answer to your specific question, the professional counselors act is a registration act, not a licensure act, as it does not make unlawful the practice of professional counseling by unregistered persons. However, it partakes of an important aspect generally accepted as a purpose of licensure in that it provides the public with a substantial basis for relying on the services of registered professional counselors.

Very truly yours,



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