



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

February 17, 1978

ATTORNEY GENERAL OPINION NO. 78- 76

Mr. Jerry G. Larson
Pawnee County Attorney
Pawnee County Courthouse
Larned, Kansas 67550

Re: Probate Code - Care and Treatment for Mentally
Ill Persons - Review of Medical Records of
Involuntary Patients

Synopsis: When the district court reviews the summary of
the medical records of an involuntary patient
pursuant to K.S.A. 1977 Supp. 59-2917a(a), this
review need not be conducted as an adversary
hearing.

* * * *

Dear Mr. Larson:

K.S.A. 59-2917a(a) states in pertinent part that:

"[A]ny person receiving treatment as an
involuntary patient shall be entitled to
a review of a summary of his or her medical
records at the end of each ninety-day
period of treatment to determine whether
or not such involuntary patient continues
beyond a reasonable doubt to be a mentally
ill person."

As the county attorney of Pawnee County, you have asked my
opinion as to what procedures should be used in conducting
reviews of this nature. More specifically, you have asked
whether or not this statute requires that an adversary
hearing be held at the end of each ninety-day period.

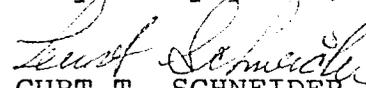
Mr. Larson
Page Two
February 17, 1978

While K.S.A. 1977 Supp. 59-2917a(a) makes no reference to the manner in which the review is to be conducted, it does set forth certain procedures which must be followed at the end of each ninety-day period of treatment. The head of the treatment facility must provide the medical records summary to the court two (2) weeks before the expiration of the ninety-days. The court must notify the patient's attorney once he has received the summary; should there be no attorney of record, the court must appoint an attorney and notify him of receipt of the summary. There are no provisions for delivery of the summary to the patient's attorney, and we must presume that the court has no duty to do so. However, should the patient's attorney request to see the summary, the court would be obliged to provide access to the document. Once the court has reviewed the summary, it must file an appropriate order only if it finds that there is reasonable doubt that the patient continues to be a mentally ill person.

After reviewing these procedures, it seems apparent that the legislature did not intend that these review procedures be conducted in an adversary setting, such as that which occurs when an application for determination of a mentally ill person is heard. Rather, the district court is specifically authorized to conduct reviews on its own, and further, it need only file an order if it determines that an involuntary patient should be discharged. That is not to say that an adversary hearing may not occur, for the patient's attorney may take issue with the conclusions drawn in the summary of medical records and desire to examine either the head of the facility or the case worker who prepared the summary. It is also possible that the presiding judge may desire to receive other evidence or testimony and thus require that the patient, his attorney and the applicant and/or his attorney proceed in open court. Similarly, a district court judge may, as a matter of policy, decide to conduct all reviews in an adversary setting. But, while a judge may elect to conduct the reviews in this manner, the decision to do so will be dictated only by the discretion of that judge, and not by any statutory mandate.

It is therefore my opinion that K.S.A. 1977 Supp. 59-2917a(a) does not require that an adversary hearing need not be conducted when the court reviews summaries of the medical records of involuntary patients, rather the decision to conduct reviews in this manner lies within the discretion of the presiding district court judge who may make the determination on an ad hoc basis.

Very truly yours,


CURT T. SCHNEIDER
Attorney General

CAB:ksn