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ATTORNEY GENERAL OPINION NO. 92- 114

Steve A. Schwarm  
General Counsel  
Kansas Board of Healing Arts  
235 S. Topeka  
Topeka, Kansas 66603

Re: Public Health -- Healing Arts; Kansas Healing Arts  
Act -- Persons Deemed Engaged in Practice of  
Medicine and Surgery; Diagnosis of Psychological  
Disorders

Synopsis: Practitioners of medicine and surgery and  
practitioners of osteopathic medicine and surgery  
are authorized to diagnose psychological  
disorders. To the extent contrary to the  
discussion herein, Attorney General Opinions No.  
87-184 and 92-43 are hereby modified. Cited  
herein: K.S.A. 1991 Supp. 65-2869; K.S.A. 65-2870;  
K.S.A. 1987 Supp. 74-5362; L. 1988, ch. 251, § 5.

\* \* \*

Dear Mr. Schwarm:

As general counsel for the Kansas board of healing arts, you ask us to revisit Attorney General Opinion No. 92-43 insofar as it references that portion of Attorney General Opinion No. 87-184 pertaining to the authority of practitioners of medicine and surgery to diagnose psychological disorders. You direct our attention to L. 1988, ch. 251, sec. 5 which amended K.S.A. 65-2869 and ask whether such amendment alters our 1987 conclusion that practitioners of medicine and surgery are not allowed to diagnose and treat psychological disorders.

In 1987, K.S.A. 74-5362 permitted registered masters level psychologists to practice psychology in specified settings, so long as such practice was:

"under the direction of a person licensed to provide mental health services as an independent practitioner and whose licensure allows for the diagnosis and treatment of psychological disorders."

In 1987 we were asked by the Kansas behavioral sciences regulatory board the following questions: What persons are permitted by their licensure to diagnose and treat psychological disorders? Specifically, what persons may registered masters level psychologists practice "under the direction of"?

Based on a review of the law applicable at the time we concluded:

"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." Attorney General Opinion No. 87-184, Synopsis.

As acknowledged in that opinion, psychiatrists are practitioners of the healing arts licensed by the Kansas board of healing arts to practice medicine and surgery. Osteopathic physicians and surgeons are likewise licensed by the Kansas board of healing arts to practice medicine and surgery. K.S.A. 65-2870(b). The analysis in Attorney General Opinion No. 87-184 was based on the applicable definition of practitioners of medicine and surgery as then found at K.S.A. 65-2869:

"For the purpose of this act the following persons shall be deemed to be engaged in the practice of medicine and surgery:

. . . .

"(b) Persons who prescribe, recommend or furnish medicine or drugs, or perform any surgical operation of whatever nature by the use of any surgical instrument, procedure, equipment, or mechanical device for the diagnosis, cure or relief of any wounds, fractures, bodily injury, infirmity, disease or physical or mental illness, of human beings." (Emphasis added).

In addition, in discussing the distinctions between the practice of psychology and the practice of medicine and surgery, we said:

"These factors suggest that the practice of diagnosing and treating psychological disorders is not the same as that concerning mental illness. While a physician may, in diagnosing and treating mental illness, use tools and methods that a psychologist uses, a physician is precluded from practicing psychology. Thus, it does not appear that a psychiatrist's license - which is a license to practice the medicine and surgery branch of the healing arts - allows for the 'diagnosis and treatment of psychological disorders.'" Attorney General Opinion No. 87-184, p. 7.

In a 1992 Attorney General opinion (which addressed the authority of social workers to make diagnoses) this line of reasoning was continued:

"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." Attorney General Opinion No. 92-43, p. 4.

Subsection (b) of K.S.A. 65-2869 was amended in 1988 to include the following as persons deemed to be engaged in the practice of medicine and surgery:

"Persons who prescribe, recommend or furnish medicine or drugs, or perform any

surgical operation of whatever nature by the use of any surgical instrument, procedure, equipment or mechanical device for the diagnosis, cure or relief of any wounds, fractures, bodily injury, infirmity, disease, physical or mental illness or psychological disorder, of human beings." L. 1988, ch. 251, sec. 5. (Emphasis added).

In light of this amendment you suggest that Attorney General Opinions No. 87-184 and 92-43 should be modified insofar as the conclusions pertain to authority of practitioners of medicine and surgery and practitioners of osteopathic medicine and surgery to diagnose psychological disorders. We agree. The 1988 amendment to K.S.A. 65-2869 altered the definition of medicine and surgery and now clearly authorizes practitioners of medicine and surgery and practitioners of osteopathic medicine and surgery to diagnose psychological disorders as well as mental illnesses. Those portions of Attorney General Opinions No. 87-184 and 92-43 which conflict with the discussion herein are hereby withdrawn.

In conclusion, practitioners of medicine and surgery and practitioners of osteopathic medicine and surgery are authorized to diagnose psychological disorders.

Very truly yours,



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