

2-28-2022

Delegate Luke Clippinger, Chair  
Delegate David Moon, Vice Chair  
**Judiciary Committee**  
Room 101  
House Office Building  
Annapolis, Maryland 21401

**RE: HB-1177 Courts – Expert Witnesses – Licensed Certified Social Worker-Clinical**

Position: **SUPPORT WITH TECHNICAL AMENDMENT**

Dear Delegate Clippinger and Members of the Committee:

Disclaimer: The opinions and suggested amendments concerning HB-1177 are my own and do not in any way, shape, form, or matter in any setting represent those of any other person, individual (LLC, S-Corp., etc.) or, Governmental agency, for, or not for Profit Corporation, or organization (professional or lay).

The Licensed Certified Social Worker-Clinical may, on an individual basis, be qualified as a expert witness concerning issues for which that LCSW-C has appropriate experience and training. have been qualified as a expert witness on certain matters in the Maryland District and Circuit Court and the United States Federal Court, 4<sup>th</sup> Circuit. However, because of the difficulties involved in affirming the qualifications of an LCSW-C by attorneys involved in the cases, I requested with the support of NASW-MD in 2004 an Attorney General's Opinion, which was obtained by Delegate Rosenberg, and provided by Kathryn Rowe on 1/30/2004. **This Advice of Counsel affirmed "the LCSW-C may be permitted to testify with respect to ultimate issues such as sanity and competence to stand trial"**. This Advice of Counsel was based on case law and one attorney's opinion. It was not a formal Attorney General Opinion.

Over the years since, this Advice of Counsel has helped expand the Scope of Practice of the LCSW-C (HO-19-101 Et. Seq.) and importantly, other Statutes which were amended to include the LCSW-C (Emergency Petition, Guardianship, Involuntary Admission to a hospital, etc.). It was also useful to Judge Cooksey (Ret.) in the formation of the Baltimore City Mental Health Court.

So technically yes, the LCSW-C may be qualified to testify on ultimate issues based on case law. So why is an amendment to the Courts and Judicial Proceedings Article Sec. 9-120 necessary?

Several statutes limit who may testify on ultimate issues, as an expert witness, to a physician, psychiatrist, and or a psychologist. Some statutes still limit the expert witness testimony to a physician. Therefore, no matter how qualified the LCSW-C is, the statute excludes the non authorized qualified person from testifying as an expert witness (not as a witness of fact). Therefore, Psychologists introduced an amendment, now cited in the Courts and Judicial Proceedings Article Sec. 9-120 to affirm in statute the authority to testify on ultimate issues.

As examples, the following statutes make it very difficult, if not impossible; to qualify as an expert witness concerning ultimate issues pertinent to the case if the witness is not a physician or psychologist, especially as to competency and criminal responsibility. These are not the only statutes affected.

1. **Labor and Employment: Article 9-721(c)** If a permanent impairment involves a behavioral or mental disorder, a licensed psychologist, or qualified physician shall:

2. **Juvenile Court Jurisdiction, Courts and Judicial Proceedings 3-8A-01(z)** “Qualified expert” means a licensed psychologist or licensed psychiatrist who:

3. **Maryland Judiciary – Mental Health Courts-Problem Solving Courts:** (9) Who may give an opinion on competency? An opinion on competency must be made by a psychiatrist or licensed psychologist. *Colbert v. State*, 18 Md. App. 632, 642, 308 A.2d 726, 732, cert. denied, 269 Md. 756 (1973). There is also legal foundation for allowing the Licensed Certified Social Worker-Clinical to provide an opinion on competency; however, the Department does not currently utilize clinical social workers for this purpose; Md. Health Occupations Code Ann. § 19-101 (m) (4) (2014) 10).

There are also issues in civil cases such as custody of special needs children, evaluations of functional mental or developmental impairments, as related to non-workers compensation accidents (auto, home owners-renters insurance covered injuries, etc.). Yes, the AG Advice of Counsel may be cited to the Court, but there is no affirmation in statute. Even though the LCSW-C may be the treating provider, and qualified, since there is no citation in statute; **however one case was appealed and affirmed in favor of the Licensed Certified Social Worker-Clinical (*In re: Tatianna B.*, 417 Md. 259, 9 A.3d 502 (2010) as an Expert Witness.**

Therefore, for the attorney(s) (either plaintiff or defendant) it is easier to engage a psychologist or physician (psychiatrist) as the expert witness. And, without a qualification statement in statute, State agencies continue to exclude the LCSW-C in mental disorder, et.al as the evaluator in the determination of competency cases.

Also, in cases involving poor defendants or plaintiff’s, represented by small not for profit agencies, with limited budgets, representing impaired (disabled) people, on various matters, the cost of a psychologist or physician to review the LCSW-C’s treatment records, then time in Court or Disposition proceedings to testify, is much more expensive.

In situations where the person (defendant or plaintiff) has to obtain an expert witness at their own expense, this limitation on expert testimony adversely affects poor and working people more so than governmental agencies or insurance companies that employ psychiatrists or have available psychiatric residents or psychologists.. (Situations such as this may involve criminal and civil litigation, child welfare, divorce proceedings, etc.).

In conclusion, unless cited in statute as qualified, LCSW-C’s will not be utilized to the full extent of their training and experience. This limits their ability render their opinion on matters and restricts employment functions in various settings. They will continue to be relegated to subordinate recognition of their expertise in areas where they are qualified.

I hope this information is useful.

Sincerely,



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Cc: **SUSAN K. McCOMAS, Esq.**

Cc: **Delegate Samuel Rosenberg;**

**Delegate Mike McKay**