

March 6, 2023

**Maryland General Assembly**

**House Judiciary Committee**

**Chair Delegate Luke Clippinger**

**Vice Chair** Delegate David Moon, and Members of the Committee

Room 101

House Office Building

Annapolis, Maryland 21401

**House Bill -1070 Courts-Expert Witnesses –Licensed Certified Social Worker-Clinical**

***Position: Favorable Support***

Dear Chair Clippinger, Vice Chair Moon, and Members of the Judiciary Committee

**Disclaimer: The opinions and suggested amendments concerning HB-694 are my own and do not in any way, shape, form, or matter represent those of any other person, individual (LLC, S-Corp., etc.), Governmental agency, for, or not for Profit Corporation, or organization.**

Please note, I am testifying only as to the qualifications of the Licensed Certified Social Worker-Clinical (LCSW-C) level of licensee, who has completed appropriate training (see attached exhibit). Please note, the LCSW-C licensee has the independent authority to : Evaluate, diagnose and treat biopsychosocial conditions, mental and emotional conditions and impairments, and mental disorders as defined in Health-General Article, §10-101(f), Annotated Code of Maryland (exhibit 2).

Assistant Attorney General, Kathryn Rowe on 1/30/2004, provided an Advice of Counsel to Delegate Rosenberg, which affirmed “the LCSW-C may be permitted to testify with respect to ultimate issues such as sanity and competence to stand trial” (exhibit 3).

The Licensed Certified Social Worker-Clinical may on an individual basis be qualified as an expert witness concerning certain issues for which that LCSW-C has appropriate experience and training (Exhibit 4 and 4-A).

I have been qualified as a expert witness on certain matters in the Maryland District and Circuit Court of Maryland and the United States Federal Court 4<sup>th</sup> Circuit. And, I have provided evaluative services of defendants for the Public Defender’s Office (see exhibit 5). I have also been referred patients for outpatient care by the Community Forensic Aftercare Program, Office of Forensic Services, DHMH (Clifton T. Perkins Hospital) (Exhibit 6).

Because of the old statutory case law, it is difficult to affirm the qualifications of an LCSW-C, by attorneys involved in various types of cases (civil, criminal, administrative, etc.) where an expert opinion on ultimate issues are requested by the Court, or needed by Counsel. How many attorneys even know about the AG Advice of Counsel noted above?

In addition, over the years since this Advice of Counsel was provided to Del. Rosenberg, the Scope of Practice of the LCSW-C has substantially expanded, to include other Statutes (Emergency Petition, Guardianship, Involuntary Admission to a hospital, etc.). The LCSW-C who provides these functions must be able to defend the reasoning for their ultimate conclusions in Court if necessary as an Expert Witness.

Several statutes enacted many years ago, limit who may testify on ultimate issues as an expert witness, to a physician, psychiatrist, and or a psychologist. 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 as the Courts and Judicial Proceedings Article Sec. 9-120 to affirm in statute the authority to testify on ultimate issues.

The LCSW-C is respectfully asking to be included in the Courts and Judicial Proceedings Article Sec. 9-120 based upon individual qualifications. Please note the Courts and Judicial Proceedings Article Sec. 9-120 wording states **MAY**, not shall. This statute prevents arbitrarily barring a qualified psychologist from testifying as an expert witness; the Licensed Certified Social Worker-Clinical (LCSW-C) based upon individual qualifications is simply asking for the same permission.

Presently, this arbitrary exclusion appears to be a restraint of trade by not allowing a qualified LCSW-C to engage in an activity for which the individual LCSW-C is qualified, thus limiting **expert testimony arbitrarily** to a licensed psychologist or licensed psychiatrist.

**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 licensed clinical social workers 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 competency of special needs children, evaluations of functional mental or developmental impairments. 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, more time and expense and distress on all parties involved occurs.

Also, in cases involving poor defendants and 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 appear in Court 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 disproportionately than governmental agencies or insurance companies that employ physicians or have available psychiatric residents or psychologists in their budgets.

(Situations such as this may involve civil litigation such as mal-practice, child welfare, divorce proceedings, etc.).

In conclusion, the LCSW-C's, cannot be utilized to the full extent of available training and experience. And, again the statute to be amended specifies MAY not shall.

I hope this information is useful.

Sincerely,



Arthur Flax, LCSW-C, DCSW

410-653-6300

flaxcps@gmail.com