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January 25, 2024

The Honorable Susan K. McComas
Maryland House of Delegates
411 Lowe House Office Building
Annapolis, Maryland 21401
Via email

Dear Delegate McComas:

You have inquired whether a licensed certified social worker-clinical ("LCSW-C") may be qualified to testify as a witness on ultimate issues regarding matters within the scope of practice for clinical social work. As earlier advised by this office, (*see* Letter of Advice to the Honorable Samuel I. Rosenberg from Asst. Atty. Gen. Kathryn M. Rowe (Jan. 30, 2004) ("Rosenberg Letter")), a LCSW-C may be qualified to testify on matters within the scope of practice for clinical social work by a LCSW-C.

A LCSW-C is an individual licensed by the State Board of Social Work Examiners to practice clinical social work. Md. Code Ann., Health Occupations Article ("HO"), § 19-101(h). "Practice clinical social work" means to use the specialized education, training, and experience required under HO § 19-302(e) to practice social work. HO § 19-101(l). "Practice social work" is defined under HO § 19-101(n)(1), and specifically for a LCSW-C, the "practice of social work" also includes the: (1) supervision of other social workers; (2) "[e]valuation, diagnosis, and treatment of biopsychosocial conditions, mental and emotional conditions and impairments, and behavioral health disorders, including substance abuse disorders, addictive disorders, and mental disorders, as defined in § 7.5-101 of the Health-General Article;" (3) petitioning for emergency evaluation under Title 10, Subtitle 6 of the Health-General Article; and (4) provision of psychotherapy. HO § 19-101(n)(1) and (5).

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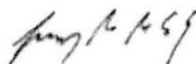
Maryland Rule 5-702 addresses the admissibility of expert testimony in State court proceedings. The rule allows a trial court to admit expert testimony "in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." Md. Rule 5-702. In making the determination, the rule requires a court to examine three factors: "(1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education[;] (2) the appropriateness of the expert testimony on the particular subject[;] and (3) whether a sufficient factual basis exists to support the expert testimony." *Id.*

In *In re Adoption/Guardianship No. CCJ14746*, in the Circuit Court for Washington County, 360 Md. 634 (2000), the Maryland Supreme Court held that the trial court in that case did not abuse its discretion in finding a licensed clinical social worker qualified as an expert and in admitting his opinion on the respondent's mental disorders. The Court relied on the then-existing statutory definition of the practice of social work under then HO § 19-101(f), which included "rendering a diagnosis based on a recognized manual of mental and emotional disorders[.]" as well as the advanced educational standards required for licensed clinical social workers. *Id.* at 642-43. Subsequent to the Court's opinion in that case, the General Assembly enacted Chapter 554 of the Acts of 2000, which modified the language of the scope of practice under former HO § 19-101(f), and added the scope of practice language for LCSW-Cs that is similar to the scope of practice language under existing HO § 19-101(n)(1) and (5). As this office has previously advised, "[t]his change provides [LCSW-Cs] with at least as broad diagnostic authority as the former law, and thus, does not alter the conclusions in *Adoption No. CCJ14746*." Rosenberg Letter at 2. See also *In re Yve S.*, 373 Md. 551, 615 (2003) ("A witness may not testify to the effect of making a diagnosis concerning mental illness unless he or she is a physician qualified to make such a diagnosis or prognosis, or unless they are otherwise authorized by statute to make such diagnosis.").

For these reasons, subject to the discretion of a trial court to determine the admissibility of expert testimony under Maryland Rule 5-702, a LCSW-C may be qualified to testify on matters within the scope of practice for clinical social work by a LCSW-C.

I hope this is responsive to your request. If you have any questions or need any additional information, please feel free to contact me.

Sincerely,



Jeremy M. McCoy
Assistant Attorney General

OP: HHS @ OAG. State MD. ^{US} ~~Gov~~