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OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 22, 2005

The Honorable Samuel I. Rosenberg
Room 225, 600 Wyndhurst Avenue
Baltimore, Maryland 21210

Dear Delegate Rosenberg:

You have asked for advice concerning the legality of a Licensed Certified Social Worker - Clinical ("LCSW-C") testifying as an expert witness on the issue of permanent impairment of injured workers in a Workers' Compensation proceeding. It is my view that the Workers' Compensation Commission ("the Commission") may permit LCSW-C's to testify on the issue of permanent impairment of injured workers. However, current law requires that an evaluation of permanent impairment be made by a physician.

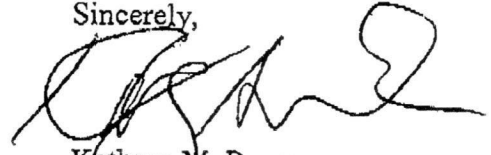
The Workers' Compensation law provides for compensation to be paid to a covered employee who is permanently partially disabled due to an accidental personal injury or occupational disease, Labor and Employment Article, § 9-625, or who is permanently totally disabled due to an accidental personal injury or an occupational disease, LE § 9-635. Hearings are held by the Commission if the employer or its insurer contests a claim and one or both parties request a hearing. LE §§ 9-713(a) and 9-714(a)(2). The Commission is not bound by any common law or statutory rule of evidence or any formal or technical rule of procedure, LE § 9-715(b), but has the authority to establish its own rules with respect to the nature and extent of evidence and proof and for the method of taking and providing evidence and proof to establish a right to compensation, LE § 9-701(4). Given this leeway, it is my view that the Commission could permit an LCSW-C to testify as an expert on the issue of permanent impairment consistent with the statutory practice limitations set forth in § 19-101(m) of the Health Occupations Article. In essence, the Commission could consider expert opinions from an LCSW-C if the issue under consideration related to the "practice of social work" as that term is defined in the statute. Of course, the Commission could also refuse to do so, either on a case-by-case basis or in all cases.

Labor and Employment Article § 9-721(a) provides that a "physician shall evaluate a permanent impairment and report the evaluation to the Commission in accordance with the regulations of the Commission." The evaluation is to include information about atrophy, pain, weakness, and loss of endurance, function, and range of motion. LE § 9-721(b). Commission regulations on these evaluations are found at COMAR 14.09.04.01 *et seq.* The language of the statute plainly states that an evaluation of permanent impairment is to be prepared by a physician,

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that is, an individual licensed to practice medicine under Health Occupations Article Title 14, Subtitle 3. The term would not include an LCSW-C. Therefore, it is my view that an LCSW-C may not perform evaluations and reports on permanent impairment under § 9-721(a).¹

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Rowe', written over a horizontal line.

Kathryn M. Rowe
Assistant Attorney General

KMR/kmr
rosenberg99.wpd

¹ House Bill 384 and Senate Bill 264 of 2005, if signed into law, will permit a licensed psychologist to perform evaluation of permanent impairment involving behavioral or mental disorders. House Bill 1289 and Senate Bill 856, which would have made a similar change for LCSW-Cs with respect to mental, emotional and behavioral disorders, did not pass the General Assembly.