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MEMORANDUM 2g¹

FROM: Jane M. Ritter, Office of Legislative Legal Services

DATE: September 29, 2017

SUBJECT: Clarify language in the Mental Health Act concerning "generally accepted standards" of practice

Summary and Analysis

The Colorado Mental Health Act² provides the standards, licensing requirements, disciplinary provisions, and general expectations for professional practice for psychologists, social workers, marriage and family therapists, licensed professional counselors, registered psychotherapists, and addiction counselors.

Practitioners in the field brought to staff's attention that language related to "generally accepted standards" in the section concerning prohibited activities is vague and leaves practitioners with uncertainty about enforcement. Specifically, section 12-43-222 (1)(g)(I), C.R.S., states:

12-43-222. Prohibited activities - related provisions. (1) A person licensed, registered, or certified under this article 43 violates this article 43 if the person:

(g) (I) Has acted or failed to act in a manner that does not meet the generally accepted standards of the professional discipline under which the person practices. **Generally accepted standards may include, at the board's**

¹ This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

² Article 43 of title 12, C.R.S.

discretion, the standards of practice generally recognized by state and national associations of practitioners in the field of the person's professional discipline. (Emphasis added)

The preference by representative practitioners in the mental health field is to add clarifying detail to that language.

Statutory Charge³

Clarifying vague language meets the Statutory Revision Committee's statutory charge to recommend needed reforms to clarify statutory language.

Proposed Bill

The attached bill draft⁴ proposes adding language to section 12-43-222 (1)(g)(I) so that it would read: "Generally accepted standards of practice may include, at the board's discretion, **a malpractice judgment of a court of competent jurisdiction or the ethics code of an association where the practitioner holds membership** in the field of the person's professional discipline."

³ The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

⁴ See **Addendum A**.

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LLS NO. 18-####.## Jane Ritter x4342

COMMITTEE BILL

Statutory Revision Committee

A BILL FOR AN ACT

101 **CONCERNING CLARIFYING LANGUAGE IN THE MENTAL HEALTH**
102 **PRACTICE ACT CONCERNING GENERALLY ACCEPTED STANDARDS**
103 **OF PRACTICE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Statutory Revision Committee. The bill adds clarifying language to a section in the mental health practice act, article 43 of title 12, Colorado Revised Statutes, concerning prohibited activities. Specifically, the bill clarifies what is included in the phrase "generally accepted

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

standards of practice".

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** The general assembly
3 declares that its intent in enacting **House Bill/Senate Bill 18-** is to
4 effect a nonsubstantive change in statute to clarify language in section
5 12-43-222, Colorado Revised Statutes, concerning "generally accepted
6 standards of practice". The general assembly further declares that the
7 addition of such clarifying language to the section does not in any way
8 alter the scope or applicability of the statutory section involved.

9 **SECTION 2.** In Colorado Revised Statutes, 12-43-222, **amend**
10 (1)(g)(I) as follows:

11 **12-43-222. Prohibited activities - related provisions.** (1) A
12 person licensed, registered, or certified under this article 43 violates this
13 article 43 if he or she:

14 (g) (I) Has acted or failed to act in a manner that does not meet the
15 generally accepted standards of the professional discipline under which
16 the person practices. Generally accepted standards may include, at the
17 board's discretion, ~~the standards of practice generally recognized by state~~
18 ~~and national associations of practitioners~~ A MALPRACTICE JUDGMENT OF
19 A COURT OF COMPETENT JURISDICTION OR THE ETHICS CODE OF AN
20 ASSOCIATION WHERE THE PRACTITIONER HOLDS MEMBERSHIP in the field
21 of the person's professional discipline.

22 **SECTION 3. Act subject to petition - effective date.** This act
23 takes effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly (August
25 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a

1 referendum petition is filed pursuant to section 1 (3) of article V of the
2 state constitution against this act or an item, section, or part of this act
3 within such period, then the act, item, section, or part will not take effect
4 unless approved by the people at the general election to be held in
5 November 2018 and, in such case, will take effect on the date of the
6 official declaration of the vote thereon by the governor.