



Colorado
Psychological
Association



We respectfully ask for a NO vote on SB20-075: Concerning the authority of certain advanced practice nurses to conduct competency evaluations

Background

There are stringent requirements for physicians and psychologists to perform competency evaluations, which include doctorate level training in forensic psychology and special qualifications as psychiatrists. These assessments require extensive training and experience in the sub-specialty of forensic psychology and forensic psychiatry, which no APN or other non-doctorate program provides or certifies.

At minimum, evaluators must have high standards in three areas:

- 1) clinical assessment of mental health conditions
- 2) psycho-legal understanding of criminal competency and related legal issues in the criminal justice system; and
- 3) experience and expertise in evaluating malingering, exaggeration, and secondary gain motives.

APNs do not have the foundational knowledge or experience in this specialized area of assessment and practice and therefore cannot be adequately trained in a brief continuing education experience.

Colorado has committed to improving and strengthening the qualifications, training, and continued quality review of evaluators. In response to the current consent decree involving a federal lawsuit against the state, a subcommittee on competency assessment and restoration with diverse stakeholders and experts, appointed by the Governor's office, was created and has been meeting since last summer. The subject of broadening the pool of potential evaluators was vetted by this group and rejected as a solution to the expanding number of competency assessments and competency restorations.

It is important to note the difference between doing forensic competency evaluations for the court (which is not a clinical task) and providing treatment for those adjudicated incompetent to proceed (ITP) by the courts after those assessments.

Currently APN's are involved in prescribing and treating those adjudicated ITP. But to enter the front end of competency assessments requires knowledge, skill, and training that goes far beyond what any APN or other non-doctorate program requires at this time.

Concerns

- C.R.S. 16-8.5-122 (SB 19-223) requires rigorous education and monitoring to ensure quality evaluators.ⁱ OBH and the University of Colorado Forensic training program are now partnered and working on enhancing the qualifications, certification process including review of reports of new evaluators, and a maintenance of certification program. Adding APNs is not in line with this effort.
- Reducing the quality of evaluations by allowing evaluators with little formal training, skills, or preparation will likely create an increased number of second and third opinion requests. This will increase costs as well as skepticism within the criminal justice system about the quality of assessments.
- An increase in contested findings will slow the adjudicative process down rather than improve its speed.

- The State Board of Nursing lacks the necessary expertise to define criteria and training needed and APNs do not have a training program or a national body that oversees their competency work like psychologists and psychiatrists do.ⁱⁱ Psychologists were once excluded from these forensic assessments, but over several decades have developed proper and extensive training programs in the specialty of forensic assessments, have journals and national educational organizations, and a robust dialogue nationally in this sub-specialty. They have mirrored the American Academy of Psychiatry and Law's development of the forensic sub-specialty and fellowship programs and are now partners in forensic practice.
- There are other proposed alternatives to address the shortage of evaluators on the Western Slope and in rural Colorado such as offering telepsychiatry evaluations for some low level and appropriate competency assessments.

The state has an obligation to provide a system that meets constitutional protections for those who may not be competent under the law. Adding minimally trained practitioners will compromise the quality of the evaluations that all defendants are constitutionally entitled.

ⁱ C.R.S. 16-8.5-122 Forensic evaluator training (SB 19-223)

By February 1, 2020, the department shall create a partnership with an accredited institution of higher education in the state to develop and provide rigorous training in forensic evaluation. On or before January 1, 2021, newly hired competency evaluators must complete a training that addresses competency, sanity, report writing, expert testimony, and other skills crucial for forensic evaluators; except that competency evaluators who are forensic psychiatrists certified or certification-eligible by the American board of psychiatry and neurology and forensic psychologists who are certified or certification-eligible by the American board of forensic psychology may be exempt from any training requirements as outlined in this section through an exemption process to be developed by the department. The state will manage an oversight program that will provide support and ensure quality of forensic evaluators.

ⁱⁱ 12-255-105. State board of nursing