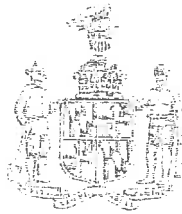


J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

DONNA HILL STATON
Deputy Attorney General



ROBERT A. ZARNOCH
Assistant Attorney General
Counsel to the General Assembly

RICHARD E. ISRAEL
KATHRYN M. ROWE
SANDRA J. COHEN
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

January 30, 2004

The Honorable Samuel I. Rosenberg
415 Lowe House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Rosenberg:

You have asked for advice concerning the views of this office as to whether a licensed clinical social worker may testify on ultimate issues such as sanity, competence to stand trial, and matters within the scope of practice of a licensed clinical social worker.¹ It is my view that a licensed clinical social worker may provide diagnostic testimony with respect to mental disorders and psychosocial conditions. This would generally mean that they may testify on issues of sanity and competence to stand trial and in other situations where a person's mental condition is at issue.

As you are aware, I wrote a letter in 1994 that concluded that a licensed clinical social worker was not qualified to testify on ultimate issues of fact such as criminal responsibility and competence to stand trial. Letter to the Honorable Virginia M. Thomas from Kathryn M. Rowe dated June 6, 1994. Since that time, the Court of Appeals has addressed this issue and has taken a different position. As a result, it is now my view that a licensed clinical social worker may be permitted to testify on ultimate issues such as sanity and competence to stand trial.

In *In re Adoption/Guardianship No. CCJ14746*, in the Circuit Court for Washington County, 360 Md. 634 (2000), the Court of Appeals addressed the issue of whether the Circuit Court for Washington County had erred in permitting a licensed clinical social worker to testify with respect to a diagnosis of an abused child as suffering from ADHD and borderline intellectual functioning and to the view that the mother's ability to manage and parent the child was impaired because of her own chronic mental illness. The Court relied on the language of Health Occupations Article § 19-101(f), which at that time provided that the practice of clinical social work included "rendering a diagnosis based on a recognized manual of mental and emotional disorders," and also on the advanced educational standards that the law imposed on licensed clinical social workers as opposed to other social workers. Chapter 554 of 2000, which took effect soon after the decision in *Adoption No. CCJ14746*, eliminated this language and added language which includes in the practice of social work by a licensed clinical social worker the "evaluation, diagnosis, and treatment of psychosocial

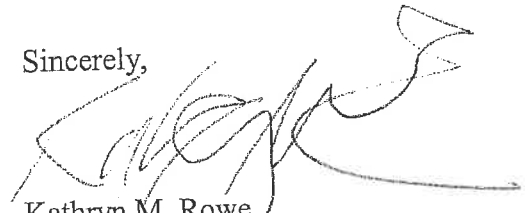
¹ I use the term "licensed clinical social worker" to refer to those licensees that the statute officially calls "licensed certified social worker - clinical."

The Honorable Samuel I. Rosenberg
January 30, 2004
Page 2

conditions and mental disorders as defined in § 10-101(f) of the Health - General Article” and the provision of psychotherapy. Health Occupations Article § 19-101(m)(4)(ii). This change provides licensed clinical social workers with at least as broad diagnostic authority as the former law, and thus, does not alter the conclusions in *Adoption No. CCJ14746. In re Yve S.*, 373 Md 551, 615 (2003).

In conclusion, it is my view that a licensed clinical social worker may be permitted to testify with respect to ultimate issues such as sanity and competence to stand trial.

Sincerely,



Kathryn M. Rowe
Assistant Attorney General

KMR/kmr
rosenberg81.wpd