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PETITION TO AMEND COMAR 10.42.03.03

I. Petitioner

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II. Introduction

My name is Nicholas Proy, and I am filing this Petition to Amend COMAR 10.42.03.03 (hereinafter the "Petition") pursuant to Md. State Government § 10-123(a), which provides that "any interested person may submit to an agency a petition for the adoption of a regulation."

Although "interested person" is not expressly defined in this statute, as a Maryland resident and potential (or current) client of therapeutic services, I qualify as an "interested person" for purposes of this Petition. This request is further consistent with the spirit of Article 13 of the Maryland Declaration of Rights¹, which guarantees an individual the right to petition for redress of grievances, as well as with the Maryland Administrative Procedure Act.

Specifically, I am filing this Petition to have the Board amend its rules to allow licensees and counselors (collectively "licensees" for ease of reading) permissive reporting of domestic abuse of competent adults and to expressly include disclosures permitted under the Extreme Risk Protective Order (hereinafter "ERPO") statute.

III. Executive Summary

This Petition requests an amendment to COMAR 10.42.03.03(B)(7) to resolve a confusing and inconsistent patchwork of regulations governing client confidentiality. These amendments are intended to provide discretionary authority to protect clients and others from foreseeable harm, without imposing new mandatory reporting duties

COMAR 10.42.03.03(B)(7) states that a licensee may not "[s]hare with another individual a confidence revealed by a client without a client's consent, except if there is danger to self or to another individual, or for a compelling professional reason."

I could not locate a definition of "compelling professional reason" within this Subtitle. Further, I could not locate a definition of "compelling professional reason" within the National Association of Social Workers (hereinafter "NASW") Code of Ethics.

NASW Code of Ethics 1.07(C) states that:

¹ Maryland Declaration of Rights, Article 13: "That every man hath a right to petition the Legislature for the redress of grievances in a peaceable and orderly manner."

Social workers should protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons. The general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or others. In all instances, social workers should disclose the least amount of confidential information necessary to achieve the desired purpose; only information that is directly relevant to the purpose for which the disclosure is made should be revealed. (emphasis added)

This lack of clarity forces social workers to guess whether disclosing information about domestic abuse or an ERPO threat would or would not be considered a “compelling professional interest” by the Board, resulting in inconsistent practice and potential disciplinary action for a professional acting in good faith.

Additionally, this Petition further seeks revision to COMAR 10.42.03.03 to allow licensees the discretionary reporting of abuse and/or domestic violence with regards to competent adults. COMAR 10.42.03.03(B)(7) states that a licensee may not “[s]hare with another individual a confidence revealed by a client without a client's consent, except if there is danger to self or to another individual, or for a compelling professional reason.”

As noted above, “compelling professional reason” remains undefined by both this Subtitle and the NASW Code of Ethics. Therefore, a competent adult who is the victim of domestic violence or the subject of domestic abuse may or may not fit within “danger to self or to another individual,” but that is unclear at best.

IV. Regulation to be Amended

COMAR 10.42.03.03, which states that:

A. The licensee shall:

- (1) Apprise the client of the risks, opportunities, and obligations associated with services available to the client;
- (2) Make the fee for service clear, maintain accurate financial records, stipulate payment schedules, and confirm arrangements for financial reimbursement with the client;
- (3) Notify the client promptly and seek the transfer, referral, or continuation of service in relation to the client's need or preference if the licensee anticipates the termination or interruption of service;
- (4) Prepare and disseminate to an identified colleague or record custodian a written plan for the transfer of clients and files in the event of the licensee's incapacitation, death, or termination of service; and
- (5) Maintain documentation in the client's record which:
 - (a) Is legible;
 - (b) Accurately reflects the services provided, including treatment plans, treatment goals, and contact notes;
 - (c) Indicates the time and date the services were provided;
 - (d) Protects the client's privacy by including only information directly relevant to the delivery of services;
 - (e) Is sufficient and timely to facilitate the delivery and continuity of future services;
 - (f) Is reasonably accessible for the period required in Health General Article, §4-403, Annotated Code of Maryland, after termination of services; and

(g) Ensures that no confidential information is disseminated and identities are protected when using technology to communicate or access client information.

B. The licensee may not:

- (1) Participate or condone dishonesty, fraud, deceit, or misrepresentation;
- (2) Misrepresent professional qualifications, education, experience, or affiliation;
- (3) Exploit a relationship with a client for personal advantage or satisfaction;
- (4) Engage in solicitation which amounts to fraud, intimidation, or undue influence;
- (5) Practice, condone, facilitate, or collaborate with discrimination on the basis of race, gender, sexual orientation, age, religion, national origin, socioeconomic status, disability, or any other basis proscribed by law;
- (6) Engage or participate in an action that violates or diminishes the civil or legal rights of a client;
- (7) Share with another individual a confidence revealed by a client without a client's consent, except if there is danger to self or to another individual, or for a compelling professional reason; or
- (8) Share a fee or accept or give something of value for receiving or making a referral.

Note: Nothing in this regulation, as currently written, provides clear guidance for licensee's permissive reporting of domestic abuse of competent adult. Additionally, this regulation, as currently written, does not expressly authorize disclosures related to ERPOs (Md. Public Safety § 5-601, *et. seq.*).

V. **Current Regulatory Framework**

As it currently stands, a licensee may disclose confidential information only under the following specific circumstances:

- **Client Consent:** When authorized by the client (COMAR 10.42.03.03(B)(7)).
- **Child Abuse:** When a licensee has reason to believe that a child has been abused or neglected (Md. Human Services § 1-202(c)(3) and Md. Family Law § 5-704).
- **Elder Abuse:** When a licensee has reason to believe that a vulnerable adult has been abused or neglected (Md. Family Law § 14-302).
- **“Duty to Warn:”** When a licensee determines that an immediate disclosure is necessary to protect the patient or another individual (Md. Health-General § 4-305(b)(6) and Md. Courts and Judicial Proceedings § 5-609).

Absent the above exceptions, there is neither a mandatory nor a permissive reporting mechanism for reporting abuse when the victim is a competent adult. While the “duty to warn” applies to imminent threats, it does not provide an avenue for reporting ongoing patterns of abuse that may not involve an explicit and imminent threat of violence. Similarly, a “compelling professional reason” remains undefined by both regulation (COMAR 10.42.03.03) and the NASW Code of Ethics.

VI. Argument for Amendment of COMAR 10.42.03.03

Maryland's laws governing licensee-client confidentiality are contradictory, inconsistent, and confusing, creating serious ethical and professional dilemmas for licensees. The current framework mandates reporting for abuse against children and vulnerable adults but provides absolutely no mechanism, either mandatory or discretionary, for licensees to address abuse against competent, adult clients. This lack of any reporting mechanism places competent, vulnerable adults at risk of harm and forces licensees to navigate ethical challenges without guidance, undermining both client safety and professional integrity.

These inconsistencies extend to the State's sexual assault statutes. Reporting obligations for sexual contact with minors shift solely based upon the client's age, producing a confusing and illogical set of rules. Sexual activity with a 13-year-old requires mandatory reporting, while the same conduct with a 14-or 15-year-old may not, depending on the other participant's age. Once a minor turns 16, sexual activity with anyone 14 or older is permitted. Therefore, if a 14-or 15-year-old client discloses sexual activity, the licensee may or may not be required to make a report, depending solely on the other individual's age. This patchwork, as codified in Md. Criminal Law § 3-307, highlights the absence of a coherent, consistent reporting framework and underscores the need for a logical approach that protects all victims. The proposed amendment will correct this illogical and inconsistent patchwork of reporting.

This poses an issue with Md. General Provisions § 1-401(a)(1) that states the "age of majority is 18 years." An individual between 16 and 18 years of age is legally able to consent to sexual activity with any person over the age of 16, under the Family Law Article, but also under the age of majority pursuant to Md. General Provisions § 1-401(a)(1). Therefore, a licensee with a client between 16 and 18 years of age is placed in a legal and ethical dilemma: mandatory reporting is not required because the client is over the age of consent, but they are still a "minor."

A flummoxed licensee might face a situation where a 16-year-old client discloses a harmful, but not unlawful relationship. The licensee knows they do not have a mandatory duty to report it as child abuse, but they also have no clear legal authority to disclose this information to the parents or other authorities, even if they believe the client is in danger. A permissive or optional reporting scheme will fully address this legal and ethical conundrum.

A further regulatory conflict arises with Extreme Risk Protective Orders (ERPOs). Maryland law explicitly allows certain mental health professionals to file ERPOs under Md. Public Safety § 5-601, *et seq.*, yet COMAR 10.42.03.03 is silent on ERPOs and only authorizes disclosures under the Health-General Article. This creates a legal grey area in which licensees may be simultaneously permitted and restricted from acting, jeopardizing client safety and exposing practitioners to liability.

The proposed amendment resolves these serious inconsistencies without creating a new mandatory reporting requirement for licensees. This amendment will provide licensees with the discretion to disclose confidential information in good faith to legal authorities, protecting both clients and practitioners. By aligning statutes and professional regulations and establishing clear discretionary authority, Maryland can create a coherent, ethical framework that safeguards public welfare and preserves the integrity of the therapeutic relationship.

The proposed amendment is not intended to create a new mandatory reporting requirement, which could negatively impact the therapeutic relationship. Instead, it seeks to grant professional discretion to licensees, protecting them from disciplinary action for disclosing confidential information in good faith to legal authorities. Such a discretionary provision would empower

licensees to act as advocates for their clients' safety when they deem it appropriate, without compromising their professional integrity. This will protect both the public at large and the profession as a whole.

VII. Other States

I have done some preliminary legal research into other states' approaches to this topic and I was surprised to see that the following states have reporting mechanisms for competent, adult clients:

- o Mandatory Reporting for Domestic Violence: California; Colorado; New Hampshire; and Oklahoma
- o Optional/Permissive Reporting for Domestic Violence: Kentucky; Mississippi; and Pennsylvania

VIII. Proposed Amendment (red, underlined text)

I respectfully propose the following amendments to COMAR 10.42.03.03:

A. The licensee shall:

- (1) Apprise the client of the risks, opportunities, and obligations associated with services available to the client;
- (2) Make the fee for service clear, maintain accurate financial records, stipulate payment schedules, and confirm arrangements for financial reimbursement with the client;
- (3) Notify the client promptly and seek the transfer, referral, or continuation of service in relation to the client's need or preference if the licensee anticipates the termination or interruption of service;
- (4) Prepare and disseminate to an identified colleague or record custodian a written plan for the transfer of clients and files in the event of the licensee's incapacitation, death, or termination of service; and
- (5) Maintain documentation in the client's record which:
 - (a) Is legible;
 - (b) Accurately reflects the services provided, including treatment plans, treatment goals, and contact notes;
 - (c) Indicates the time and date the services were provided;
 - (d) Protects the client's privacy by including only information directly relevant to the delivery of services;
 - (e) Is sufficient and timely to facilitate the delivery and continuity of future services;
 - (f) Is reasonably accessible for the period required in Health General Article, §4-403, Annotated Code of Maryland, after termination of services; and
 - (g) Ensures that no confidential information is disseminated and identities are protected when using technology to communicate or access client information.

B. The licensee may not:

- (1) Participate or condone dishonesty, fraud, deceit, or misrepresentation;
- (2) Misrepresent professional qualifications, education, experience, or affiliation;
- (3) Exploit a relationship with a client for personal advantage or satisfaction;
- (4) Engage in solicitation which amounts to fraud, intimidation, or undue influence;

- (5) Practice, condone, facilitate, or collaborate with discrimination on the basis of race, gender, sexual orientation, age, religion, national origin, socioeconomic status, disability, or any other basis proscribed by law;
- (6) Engage or participate in an action that violates or diminishes the civil or legal rights of a client;
- (7) Share with another individual a confidence revealed by a client without a client's consent, or when otherwise permitted or required by law, ~~except if there is danger to self or to another individual, or for a compelling professional reason;~~ or
- (8) Share a fee or accept or give something of value for receiving or making a referral.

C. The licensee may:

(a) Disclose confidential information in good faith to appropriate legal authorities if the licensee has reasonable cause to believe that the client is an adult victim of domestic abuse, as defined in Family Law Article Title 4, Subtitle 5, and the disclosure is necessary to protect the current or future physical safety of the client, or other individuals within the household.

If you have any questions, comments or concerns regarding this Petition, or if you require more information, please do not hesitate to contact me at any time.

Respectfully Submitted,



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