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PETITION TO AMEND COMAR 10.58.03.08

I. Petitioner

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II. Introduction

My name is Nicholas Proy, and I am filing this Petition to Amend COMAR 10.58.03.08 (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 Rights[1], 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 therapists and counselors (collectively "therapists" 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 10.58.03.08 to resolve a confusing and inconsistent patchwork of regulations governing therapist-client confidentiality. The current rules have created a legal environment where therapists face ambiguity, with mandatory reporting for some forms of abuse (children and elders), but no mechanism whatsoever for domestic abuse of competent adults. This petition seeks to create a clear, consistent framework by providing a permissive reporting provision for domestic abuse and by explicitly recognizing disclosures related to Extreme Risk Protective Orders (ERPOs), bringing COMAR into alignment with other state laws and empowering therapists to act as effective advocates for their clients.

The proposed amendment seeks to create a permissive reporting provision that would give therapists the professional discretion to report in good faith to legal authorities when a client is at risk. Additionally, the petition addresses a legal conflict surrounding ERPOs, which are permitted by statute, but not explicitly protected by current regulations. These changes would

[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."

provide a clear, consistent framework, empowering therapists to protect their clients while aligning Maryland's laws with other states that have similar reporting mechanisms.

IV. Regulation to be Amended

COMAR 10.58.03.08, which states that:

A. A counselor shall:

(1) Maintain the privacy and confidentiality of a client and a client's records;

(2) Release mental health records or information about a client only with a client's consent, or as permitted by Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland;

(3) Release alcohol and substance abuse records or information about a client only with a client's consent, or as permitted by State and federal law;

(4) Dispose of records in accordance with Health-General Article, Title 4, Annotated Code of Maryland;

(5) Provide sufficient information to a client to allow a client to make an informed decision regarding treatment, including the following:

(a) The purpose and nature of an evaluation or treatment process;

(b) Additional options to the proposed treatment;

(c) Potential reactions to the proposed treatment;

(d) The estimated cost of treatment;

(e) The right of a client to withdraw from treatment at any time, including the possible risks that may be associated with withdrawal; and

(f) The right of a client to decline treatment, if part or all of the treatment is to be recorded for research or review by another person;

(6) Obtain full informed consent of a client participating in a human research program; and

(7) Protect a client's autonomy and dignity to decide whether to participate in a human research program.

B. A counselor may not imply that a penalty may result if a client refuses to participate in a human research program.

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 therapist must disclose confidential information only under the following specific circumstances:

- Client Consent: When authorized by the client (Md. Health General § 4-302(d))
- Child Abuse: When a therapist 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 therapist has reason to believe that a vulnerable adult has been abused or neglected (Md. Family Law § 14-302).
- "Duty to Warn:" When a therapist 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.

VI. Argument for Amendment of COMAR 10.58.03.08

Maryland's laws governing therapist-client confidentiality are contradictory, inconsistent, and confusing, creating serious ethical and professional dilemmas for therapists. The current framework mandates reporting for abuse against children and vulnerable adults but provides absolutely no mechanism, either mandatory or discretionary, for therapists to address abuse against competent, adult clients. This lack of any reporting mechanism places competent, vulnerable adults at risk of harm and forces therapists 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 therapist 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 therapist 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 therapist might face a situation where a 16-year-old client discloses a harmful, but not unlawful relationship. The therapist 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 10.58.03.08 is silent on ERPOs and only authorizes disclosures under the Health-General Article. This creates a legal grey area in which therapists 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 therapists. This amendment will provide therapists 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 therapists, protecting them from disciplinary action for disclosing confidential information in good faith to legal authorities. Such a discretionary provision would empower therapists 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:

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

VIII. Proposed Amendment (red, underlined text)

I respectfully propose the following amendments to COMAR 10.58.03.08:

A. A counselor shall:

(1) Maintain the privacy and confidentiality of a client and a client's records;

(2) Release mental health records or information about a client only with a client's consent, ~~or~~ as permitted by Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland, or as necessary when filing or supporting an Extreme Risk Protective Order permitted by Public Safety Article Title 5, Subtitle 6;

(3) Release alcohol and substance abuse records or information about a client only with a client's consent, or as permitted by State and federal law;

(4) Dispose of records in accordance with Health-General Article, Title 4, Annotated Code of Maryland;

(5) Provide sufficient information to a client to allow a client to make an informed decision regarding treatment, including the following:

(a) The purpose and nature of an evaluation or treatment process;

(b) Additional options to the proposed treatment;

(c) Potential reactions to the proposed treatment;

(d) The estimated cost of treatment;

(e) The right of a client to withdraw from treatment at any time, including the possible risks that may be associated with withdrawal; and

(f) The right of a client to decline treatment, if part or all of the treatment is to be recorded for research or review by another person;

(6) Obtain full informed consent of a client participating in a human research program; and

(7) Protect a client's autonomy and dignity to decide whether to participate in a human research program.

B. A counselor may not imply that a penalty may result if a client refuses to participate in a human research program.

C. A counselor may disclose confidential information in good faith to appropriate legal authorities if the counselor 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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