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In re: Adoption/Guardianship No. CCJ14746:
Licensed Clinical Social Workers May Render Diagnoses and Testify as Experts in Parental Rights Termination Cases

By Victor A. Lembo

The Court of Appeals of Maryland held that a licensed clinical social worker was specifically authorized by the legislature to render diagnoses based on a recognized manual of mental and emotional disorders, and therefore, the social worker's testimony in a parental rights termination case was admissible. *In re: Adoption/Guardianship No. CCJ14746*, 360 Md. 634, 759 A.2d 755 (2000). In so holding, the court ruled that the trial court did not abuse its discretion and met the statutory definition set forth by the Maryland General Assembly, thus reflecting the majority of jurisdictions.

In August 1993, Shannon P. ("Petitioner"), gave birth to a daughter, also named Shannon P. ("Shannon"). Shannon was placed in foster care in November 1994 under the supervision of the Washington County Department of Social Services ("WCDSS"). Petitioner asked WCDSS to provide family assistance, but the case was closed after a few months due to her non-compliance. After a subsequent non-compliance in December 1996, WCDSS received a physical abuse report, which prompted them to open a Child Protective Services ("CPS") case. In November 1997, CPS determined that Shannon was neglected, and two months later was

placed in foster care, where she has remained in a prospective adoptive home. The foster parents wish to adopt Shannon, and the WCDSS plans to consent to the adoption should it obtain guardianship with the right to consent.

After a hearing in March 1998, Shannon was adjudicated as a child in need of assistance by the Circuit Court for Washington County, pursuant to MD. CODE ANN., CTS. & JUD. PROC. 3-812 (1998), and committed to the custody of the WCDSS. In July 1998, the WCDSS filed a petition in the circuit court for guardianship with the right to consent to adoption or long-term care short of adoption. Petitioner contested the petition, but the circuit court granted it and terminated parental rights. The court of special appeals affirmed the lower court's decision and denied petitioner's appeal. The court of appeals granted Petitioner's petition for writ of certiorari.

The subject of the appeal was the testimony of Dr. Carlton Munson, a Certified Social Worker-Clinical, licensed pursuant to MD. CODE ANN., HEALTH OCC. § 19-302(d)(2)(1994) of the Health Occupations Article (the "Act"). *In re: Adoption*, 360 Md. at 639, 759 A.2d at 757-58. WCDSS offered Dr. Munson as an expert in clinical social work to testify to his evaluation of Petitioner and Shannon.

Id., 759 A.2d at 758. Petitioner objected that he was not trained as a psychologist or psychiatrist, but the court overruled the objection and permitted Dr. Munson to testify as an expert. *Id.* Based on the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders ("DSM-IV"), he concluded that Shannon suffered from "attention deficit hyperactivity disorder" and "borderline intellectual functioning." *Id.* at 639-40, 759 A.2d at 758. He diagnosed Petitioner with schizophrenia, and stated that, in his opinion, Petitioner was an unfit mother. *Id.* at 640, 759 A.2d at 758. Dr. Munson also stated that it would be between three and five years before Petitioner would be able to care for Shannon. *Id.*

In order to determine if the testimony was proper, the court of appeals reviewed the legislative intent behind the statutory enactment of MD. CODE ANN., § 19-101 (f) and (g) (1994). *Id.* at 641, 759 A.2d at 759. The primary intent can be found in the plain language of the statute, with the words given their ordinary and natural meanings. *Id.* In addition, the court used the general policy or purpose behind the statute, as well as the development of the statute, to discern intent that might not be initially evident. *Id.*

The court examined the Act and found a critical distinction between a licensed social worker and a licensed clinical social worker. *Id.* Pursuant to MD. CODE ANN., HEALTH OCC. § 19-101 (f)(2)(1994), the practice of clinical social work includes rendering a diagnosis based on a recognized manual of mental and emotional disorders. *Id.* at 641-42, 759 A.2d at 759. Therefore, Petitioner's argument, pursuant to MD. CODE ANN., HEALTH OCC. § 19-302(g) (1994), failed because the statute only defines a licensed social worker. *Id.* at 642, 759 A.2d at 759. It is evident from the language of the statute that the legislature deemed licensed clinical social workers capable of providing diagnoses, such as those made by Dr. Munson based on the DSM-IV. *Id.*, 759 A.2d at 759-60.

The court then focused on the advanced educational standards adopted for clinical social work licenses. *Id.* at 643, 759 A.2d at 760. The requirements are more stringent than a non-clinical license, which does not include a similar grant to diagnose mental and emotional disorders. *Id.* This disparity in education and training standards is consistent with a legislative grant that allows the clinical social worker to render diagnoses based on a recognized manual of mental and emotional disorders. *Id.* at 643-44, 759 A.2d at 760.

The court dismissed Petitioner's argument that Dr. Munson's testimony was inadmissible as a medical diagnosis

because he is not a physician. *Id.* at 644, 759 A.2d at 760. The court stated that Petitioner's interpretation of the Act must be read in conjunction with the provisions upon which she relies. *Id.* Thus, MD. CODE ANN., HEALTH OCC. § 14-102 (1994) provides that an individual authorized to practice under this article is not precluded from rendering a diagnosis based on a recognized manual. *Id.*, 759 A.2d at 760-61.

The court then analyzed legislative history to further support its conclusion. *Id.*, 759 A.2d at 761. When promulgated in 1957, the Act did not include a separate license for clinical social workers. *Id.* However, the General Assembly enacted a bill that amended the Act and created a separate license for clinical social workers. *Id.* The bill specified requirements for a new clinical social worker license and authorized the licensees to "provide psychotherapy for a mental disorder and render a diagnosis based on [a recognized manual...]." *Id.* at 644-45, 759 A.2d at 761. Bill Analysis of H.B. 1087, Senate Econ. and Environ. Affairs Comm. (1992).

The court then reviewed the trial court's decision allowing Dr. Munson to testify as an expert witness and admitting his opinion testimony regarding Petitioner's mental disorders. *Id.* at 646, 759 A.2d at 762. The Maryland Code does not specifically address the admissibility of expert testimony by clinical social workers, and there is nothing in the Act that bars them from expressing an opinion as to the

existence of a mental disorder. *Id.* Therefore, the general rule that qualifications of expert witnesses are to be determined within the sound discretion of the court is applicable. *Id.* at 646-47, 759 A.2d at 762.

Maryland Rule 5-702 provides that expert testimony, in the form of an opinion or otherwise, is admissible if it will assist the trier of fact in understanding the evidence or in determining a fact in issue. *Id.* at 647, 759 A.2d at 762. In so doing, the court shall determine the witness's background, the appropriateness of the testimony on the subject, and whether a sufficient factual basis exists to support the testimony. *Id.* Therefore, the court ruled that the trial court has broad discretion to determine the admissibility of Dr. Munson's testimony. *Id.* (citing *Sippio v. State*, 350 Md. 633, 648, 714 A.2d 864, 872 (1998)). The court also agreed that Dr. Munson's extensive education and background in the field of clinical social work properly qualified him to testify as an expert. *Id.* at 648, 759 A.2d at 762.

In the case of *In re: Adoption/Guardianship No. CCJ14746*, the court held that a licensed clinical social worker qualified as an expert to render a diagnosis based on a recognized manual of mental and emotional disorders. Allowing social workers to testify enables them to extend their expertise into the courtroom and provide testimony that might not otherwise be available. However, it is necessary to ascertain whether they are acting in the best interest of the client or being

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biased for their own professional gain. Therefore, it is important for courts to give the appropriate discretion to legislative policy and evidence rules in order to effectuate justice for parties.

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