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| <p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p> | <p style="text-align: center;">▲ COURT USE ONLY ▲</p> |
| <p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> | |
| <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #145 (“Establish Qualifications and Registration for Veterinary Professional Associate”)</p> <p>Petitioners: Will French and Diane Matt,</p> <p>v.</p> <p>Respondents: Apryl Steele and Ali Mickelson,</p> <p>and</p> <p>Title Board: Theresa Conley, Christy Chase, and Kurt Morrison</p> | |
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| <p style="text-align: center;">PETITIONERS’ OPENING BRIEF</p> | |

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

It contains 3375 words.

It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s Nathan Bruggeman
Nathan Bruggeman
Attorney for Petitioners

TABLE OF CONTENTS

| | |
|---|-----|
| Table of Authorities | iii |
| Introduction | 1 |
| Issues Presented | 1 |
| Statement of the Case..... | 2 |
| A. Statement of Facts..... | 2 |
| 1. The Initiative..... | 2 |
| B. Nature of the Case, Course of Proceedings, and Disposition Below. | 6 |
| C. Jurisdiction..... | 7 |
| Summary of Argument | 8 |
| Legal Argument | 9 |
| I. The titles set by the Board are incomplete and misleading. | 9 |
| A. Standard of Review; Preservation. | 9 |
| B. The Board erred by informing voters of only one substantive limitation on a VPA’s practice of veterinary medicine..... | 10 |
| 1. The Title Board erred by not describing both limitations on a VPA’s practice of veterinary medicine..... | 12 |
| 2. The Board inaccurately described the requirement for a licensing veterinarian’s supervision. | 14 |
| C. Voters need to know about the measure’s accountability features. | 15 |
| Conclusion | 17 |

TABLE OF AUTHORITIES

Cases

| | |
|--|--------|
| <i>In re Title, Ballot Title & Submission Clause, & Summary for 2005-2006 # 73, 135 P.3d 736 (Colo. 2006)</i> | 9 |
| <i>In re Title, Ballot Title & Submission Clause, & Summary for Petition on Campaign & Political Fin., 877 P.2d 311 (Colo. 1994)</i> | 9 |
| <i>In re Title, Ballot Title and Submission Clause, and Summary Adopted February 3, 1993, Pertaining to the Proposed Election Reform Amendment, 852 P.2d 28 (Colo. 1993)</i> | 13, 16 |
| <i>In re Title, Ballot Title and Submission Clause, and Summary for 1997-1998 #62, 961 P.2d 1077 (Colo. 1998)</i> | 10 |
| <i>In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 29, 972 P.2d 257 (Colo. 1999)</i> | 10 |
| <i>In re Title, Ballot Title and Submission Clause, and Summary Pertaining to Proposed Election Reform Amendment, 852 P.2d 28 (Colo. 1993)</i> | 13 |

Statutes

| | |
|----------------------------------|------|
| C.R.S. § 1-40-101(2)..... | 13 |
| C.R.S. § 1-40-106(3)(b) | 11 |
| C.R.S. § 1-40-107(1)..... | 7 |
| C.R.S. § 1-40-107(2)..... | 7 |
| C.R.S. § 12-315-104(14)(a) | 5 |
| C.R.S. § 12-315-104(18)..... | 9 |
| C.R.S. § 12-315-105(1)..... | 4, 9 |
| C.R.S. § 12-315-107(2)..... | 4 |

C.R.S. § 12-315-107(2)(a)9
C.R.S. § 12-315-107(2)(b)9
C.R.S. § 12-315-2014
C.R.S. § 12-315-2034
C.R.S. § 12-315-209(1).....9

Other Authorities

Feb. 21, 2024, Title Bd. Hr’g, available at <https://tinyurl.com/2687e63a>..... passim

INTRODUCTION

In Colorado, only a licensed veterinarian may “practice veterinary medicine”—unless Initiative #145 passes, in which case a new class of people, “veterinary professional associates,” will be able to practice it. The Initiative imposes few qualifications or licensure requirements for these new practitioners. Instead, the primary limitations on a veterinary professional associate’s practice are that it (1) occurs under the supervision of a licensed veterinarian and (2) be within their education and experience. The Title Board recognized that voters needed to know that this new professional class will practice under limitations, but it only described one of the two limitations. The titles nowhere inform voters that a veterinary professional associate’s practice is limited by their education and experience, and they provide no hint to voters that the measure has accountability provisions for these limitations. The Board erred, and the Court should order that the titles be corrected.

ISSUES PRESENTED

1. Whether the Title Board erred in setting titles that are incomplete and misleading by omitting from the titles that a veterinary professional associate may only practice veterinary medicine within their education and experience.

2. Whether the Title Board erred in setting titles that are incomplete by failing to explain a supervising veterinarian may only delegate duties and actions to a veterinary professional associate that are within the associate’s training and experience.

3. Whether the Title Board erred in setting titles that are incomplete by failing to explain the accountability measures in the Initiative for a supervising veterinarian or veterinary professional associate who violates their duties.

STATEMENT OF THE CASE

A. Statement of Facts.

Apryl Steele and Ali Mickelson (hereafter “Proponents”) proposed Initiative 2023-2024 #145 (the “Initiative” or “Initiative #145). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, Proponents submitted a final version of the Initiative to the Secretary of State for purposes of submission to the Title Board.

1. The Initiative.

Initiative #145 creates a new profession within the state’s occupational code: a veterinary professional associate—a “VPA”—who is “an individual who holds a master’s degree in veterinary clinical care, or the equivalent, and who is subject to the requirements in section 12-315-203.7.” (Proposed C.R.S. § 12-315-104(21.7)

(CF p. 3.) The measure sets minimal standards for a person to obtain a VPA registration, requiring that the aspiring VPA be (1) over the age of 18 and (2) have an appropriate educational degree. (*Id.* § 12-315-203.7(2) (CF p. 5).)

The measure suggests that established standards apply to VPAs through the authorization for the state board of veterinary medicine to recognize a national credentialing organization. (*Id.* § 12-315-106(5)(j) (CF p. 4).) This organization would set an educational standard and require an applicant to pass a national examination. (*Id.* § 12-315-106(5)(j)(I) & (II) (CF p. 4).) This “credentialing” requirement is, however, illusory, as obtaining a national credential is neither a requirement (a “qualification”) to become a VPA nor required to renew a VPA’s registration. (*Id.* §§ 12-315-203.7(2) (establishing qualifications for registration) & 12-315-206(3) (requiring for renewal only that the VPA meets the initial qualifications for registration) (CF p. 5, 7).)

Proponents admitted before the Title Board that the credentialing suggested by the measure is nonexistent. They disclosed that no national credentialing organization exists:

Because this is a new profession, there are no existing credentialing organizations, although there is national work creating those. And so we couldn’t identify who that would be or even if they would exist at the point this would be implemented.

(Feb. 21, 2024, Title Bd. Hr'g (“Feb. 21 Hr'g”) at 1:00:48-1:01:02.¹) They further conceded that the measure does not require a credential, and for credentialing to play any role in regulating the VPA profession, it would require legislative action:

This initiative does not require that veterinary professional associate obtain a credential of any sort. Credentialing is not a key component of the initiative. It is not one of the qualifications that we cite.

...

We are not establishing this requirement at this time, even if such credentialing organizations existed at this time, we're not establishing that power [for the board to require a credential]. We are not making that a requirement to be a veterinary professional associate. That is something that this measure does not do.

(*Id.* at 55:53-56:05, 1:04:44-1:05:00.)

Yes, if at some point it's a requirement, it would have to be modified, but it's hard to make it a requirement if it's not possible at this point in time.

(*Id.* at 1:02:55-1:03:05.)

In other words, the guardrails on who can be a VPA are not what they appear, and they stand in contrast to the qualifications and credentialing for veterinarians and veterinary technicians. *See* C.R.S. § 12-315-107(2) (veterinarians); *id.* C.R.S. § 12-315-201 & 12-315-203 (veterinarian technicians).

¹ The hearing recording is available at <https://tinyurl.com/2687e63a>.

(*See also* Feb. 21 Hr’g at 1:00:20-1:00:46, 1:01:28-1:02:11 (explaining qualifications and credentialing of veterinarians and veterinarian technicians).) The lack of meaningful guardrails is significant because VPAs will be able to “practic[e] veterinary medicine,” (Proposed C.R.S. §§ 12-315-105(1)(r) & 12-315-209.7(1) (CF p. 4, 9))—that is, provide the same clinical care that, under current law, only a licensed veterinarian can provide. *See* C.R.S. § 12-315-105(1). The measure thus allows a VPA to provide, *inter alia*, the following types of veterinary care:

The diagnosing, treating, correcting, changing, relieving, or preventing of animal disease, deformity, defect, injury, or other physical or mental conditions, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique and the use of any manual or mechanical procedure for artificial insemination, for ova transplantation, for testing for pregnancy, or for correcting sterility or infertility or to render advice or recommendation with regard thereto

Id. § 12-315-104(14)(a) (defining practice of veterinary medicine).

As VPA “qualifications” are limited and there is no national credentialing or examination for the profession, the only meaningful limitation on a VPA’s “practice of veterinary medicine” is that it (1) occurs under a licensed veterinarian’s supervision and (2) be within the VPA’s education and experience:

This article 315 does not prohibit:

(r) a veterinary professional associate from practicing veterinary medicine that is:

(i) within the veterinary professional associate's advanced education and experience; and

(ii) performed while under the supervision of a licensed veterinarian who is responsible for the veterinary professional associate's performance.

(Proposed C.R.S. § 12-315-105(1)(r) (CF p. 4); *see also id.* § 12-315-209.7(1) & (2) (CF p. 9).) The measure then includes accountability provisions for these limitations. The supervising veterinarian and/or VPA can be disciplined and/or be liable for monetary damages. (*Id.* § 12-315-209.7(3) & (4) (CF p. 9-10).)

B. Nature of the Case, Course of Proceedings, and Disposition Below.

The Title Board heard the measure on February 7, 2024, at which time it set titles. On February 14, 2024, Petitioners filed a Motion for Rehearing, alleging that the Board lacked jurisdiction to set titles and that the titles set by the Board are misleading and confusing as they do not fairly communicate the true intent and meaning of the measure.

The Title Board heard the Motion for Rehearing on February 21, 2024. Proponents stated during the hearing on the Motion that they did not oppose clarifying the titles as requested by Petitioners. (Feb. 21 Hr'g at 58:54-59:40.)

Nonetheless, the Board declined to amend the titles to describe the additional practice limitation and accountability measures to voters. The titles are left stating only the following in terms of the limitations on a VPA's practice of veterinary medicine: "allowing a registered veterinary professional associate to practice veterinary medicine under the supervision of a licensed veterinarian." (CF. p. 15.)

The Board granted the Motion for Rehearing only to the extent it made changes to the title and approved the following amended ballot title and submission clause for Initiative #145:

Shall there be a change to the Colorado Revised Statutes creating a new veterinary professional associate profession, and, in connection therewith, establishing qualifications including a master's degree in veterinary clinical care or the equivalent as determined by the state board of veterinary medicine to be a veterinary professional associate; requiring registration with the state board; allowing a registered veterinary professional associate to practice veterinary medicine under the supervision of a licensed veterinarian; and making it a misdemeanor to practice as a veterinary professional associate without an active registration?

(Id.)

C. Jurisdiction

Petitioners are entitled to review before this Court pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed their Motion for Rehearing with the Board. *See*

C.R.S. § 1-40-107(1). They timely filed their Petition for Review seven days from the date of the hearing on the Motion for Rehearing. *See* C.R.S. § 1-40-107(2).

SUMMARY OF ARGUMENT

The Title Board is right that voters should be told that, while VPAs will be able to practice veterinary medicine, they are not veterinarians themselves and, as a consequence, their practice of veterinary medicine comes with limitations. Where the Board erred, however, was in its description of the limitations that apply to a VPA's practice—there are two limitations, not one, and those limitations are enforced through the measure's accountability provisions.

The Initiative's requirement that a VPA only perform acts within his/her education and experience ensures that a VPA delivers care that meets the standard of care for the practice of veterinary medicine. So important is this requirement that the Initiative not only places an obligation on the VPA to adhere to the limitation, it also imposes an obligation on the supervising veterinarian not to delegate duties that exceed a VPA's education and experience. From the Board's titles, voters will not know the education and experience limitation exists. As such, the titles set by the Board do not meet the clear title requirement.

Nor do the titles inform voters that VPAs and supervising veterinarians operate under a set of accountability provisions. The titles only tell voters that an *unregistered* VPA faces potential criminal penalties. *Registered* VPAs, and the veterinarians who supervise them, face different administrative and civil liability provisions. Criminal penalties for unregistered VPAs do not imply administrative and civil accountability for a registered VPA or licensed veterinarian. Voters should know what accountability measures are in place for a new occupation when they are asked to approve its creation.

LEGAL ARGUMENT

I. The titles set by the Board are incomplete and misleading.

A. Standard of Review; Preservation.

An initiative title must “fairly summarize the central points” of the proposed measure. *In re Title, Ballot Title & Submission Clause, & Summary for Petition on Campaign & Political Fin.*, 877 P.2d 311, 315 (Colo. 1994). Titles must be “fair, clear, accurate, and complete” but are not required to “set out every detail of the initiative.” *In re Title, Ballot Title & Submission Clause, & Summary for 2005-2006 # 73*, 135 P.3d 736, 740 (Colo. 2006).

This Court reviews titles set by the Board “with great deference” but will reverse where “the titles are insufficient, unfair, or misleading.” *Id.* No such

deference is required where the titles “contain a material and significant omission, misstatement, or misrepresentation.” *In re Title, Ballot Title and Submission Clause, and Summary for 1997-1998* #62, 961 P.2d 1077, 1082 (Colo. 1998).

“Perfection [in writing a title] is not the goal; however, the Title Board’s chosen language must not mislead the voters.” *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000* # 29, 972 P.2d 257, 266 (Colo. 1999).

Petitioners preserved their clear title arguments in their Motion for Rehearing and during the hearing on their Motion. (CF p. 19-20; Feb. 21 Hr’g at 52:10-53:15.)

B. The Board erred by informing voters of only one substantive limitation on a VPA’s practice of veterinary medicine.

At its core, this measure is about authorizing a new category of veterinary professionals to “practice veterinary medicine.” Under current law, the “practice of veterinary medicine” is strictly limited to licensed veterinarians. *See* C.R.S. § 12-315-105(1). Colorado law already recognizes a veterinarian technician occupation, but these technicians may only “provide care to animals under the direction and supervision, as defined by the board by rule, of a licensed veterinarian who is responsible for the veterinary technician’s performance.” *Id.* § 12-315-209(1).

Initiative #145 makes a substantial change by allowing a new class of people to practice veterinary medicine, which is the full panoply of care that can be provided to an animal. Despite this change, the qualifications imposed on VPAs are minimal—an age requirement and some advanced education. (Proposed C.R.S. § 12-315-203.7(2) (CF p. 5).) This stands in contrast to licensed veterinarians, who obtain a “a doctor’s degree in veterinary medicine, *see* C.R.S. § 12-315-104(18) (defining “veterinarian”), generally from an accredited school of veterinary medicine, *id.* § 12-315-107(2)(a), and are required to pass an examination, *id.* § 12-315-107(2)(b).

In the absence of rigorous qualifications for the profession, the measure polices a VPA’s practice of veterinary medicine through two limitations: (1) it is under the supervision of a licensed veterinarian and (2) within the VPA’s education and experience. The Title Board recognized that voters need to know that a VPA’s practice of veterinary medicine is not unbounded, as they included within the titles the first limitation on a VPA’s practice: “allowing a registered veterinary professional associate to practice veterinary medicine under the supervision of a licensed veterinarian.” (CF p. 15.) But that was insufficient.

1. The Title Board erred by not describing both limitations on a VPA's practice of veterinary medicine.

As drafted, however, the titles are misleading because they state there is only one limitation on the VPA's practice of veterinary medicine when there is a second. Relatedly, the titles are incomplete because they do not inform voters of the second limitation. In fact, the titles do not even hint to voters that an additional limitation exists (e.g. by using the word "including"). As the measure itself recognizes, the second limitation plays a critical role in ensuring a VPA is meeting the standard of care when treating an animal:

(2) A veterinary professional associate shall perform only those duties or actions delegated by the licensed, supervising veterinarian for which the veterinary professional associate ***has the necessary training and experience, as determined by the supervising veterinarian, to meet generally accepted standards of veterinary care.***

(Proposed C.R.S. § 12-315-209.7(2) (CF p. 9) (emphasis added).)

At least one member of the Board recognized this was a potential problem during the rehearing. The Board representative from the Office of Legislative Legal Services raised this issue:

What do you all think about the next clause? The movant's raised the issue of, including, including both prongs of what it takes for, the requirements for practicing as a registered veterinary professional associate, means you have to be within your education and as well as under the supervision of a licensed veterinarian. ... The measure says,

within the veterinary professional associate's advanced education and experience and under supervision.

(Feb. 21 Hr'g at 1:10:30-1:11:13.) The Board Chair pushed back at the idea of including the second substantive limitation on a VPA's practice as "too much detail." (*Id.* at 1:11:38.) The limitation on the VPA's practice is not a detail but a core component of what the measure authorizes. While brevity is a goal in title drafting, *see* C.R.S. § 1-40-106(3)(b), that objective does not, as this Court has explained, supplant the overarching requirement that titles inform voters of a measure's "essential features":

[I]f a choice must be made between brevity and a fair description of essential features of a proposal, the decision must be made in favor of full disclosure to the registered electors. In the case of a complex measure embracing many different topics like the proposal now before us, the titles and summary cannot be abbreviated by omitting references to the measure's salient features.

In re Title, Ballot Title and Submission Clause, and Summary Pertaining to Proposed Election Reform Amendment, 852 P.2d 28, 32 (Colo. 1993). The Board recognized that it was necessary to explain to voters that VPAs cannot practice veterinary medicine without limitation, but then, despite Proponents' lack of objection to including the additional limitation, only told voters of one of the two limitations. That was error. *Cf. id.* 34-35 (holding the Board erred by describing

one aspect of how a measure limited contributions but omitting another limitation; describing both limitations was necessary to “correctly and fairly express the true intent and meaning of the proposed measure”).

2. The Board inaccurately described the requirement for a licensing veterinarian’s supervision.

And as to the requirement that a licensed veterinarian supervise a VPA’s practice of veterinary medicine, the Board misdescribed the requirement. The Board described the requirement as follows:

... allowing a registered veterinary professional associate to practice veterinary medicine under the supervision of a licensed veterinarian
...

(CF p. 15.) However, under the measure, supervision by a licensed veterinarian is not itself sufficient. A licensed veterinarian must ensure that the duties performed by the VPA are within the scope of the VPA’s “training and experience.”

(Proposed C.R.S. § 12-315-209.7(2) & (3) (CF p. 9.) The “training and experience” of the VPA is, by the measure’s own terms, a critical limiting factor. The VPA cannot exceed his/her training and education, and the licensed veterinarian cannot delegate duties beyond that training and education. The titles set by the Board do not apprise voters of this limitation at all, implying instead that, so long as care is “supervised,” the VPA may perform any veterinary care

allowed by the practice of veterinary medicine. That is not correct, and the titles should be corrected.

C. Voters need to know about the measure's accountability features.

The failure to inform voters of the second limitation on a VPA's practice is compounded by the Board's failure to inform voters of the accountability provisions of the measure. The titles provide no indication to voters of what, if any, provisions are in the measure to ensure that VPAs adhere to the limitations on their practice of veterinary medicine.

But the measure does include accountability measures for both supervising veterinarians and VPAs. As explained *supra*, a veterinarian must ensure that (s)he does not delegate duties to a VPA that exceeds that VPA's education and experience. (Proposed C.R.S. § 12-315-209.7(3) (CF p. 9).) If a supervising veterinarian impermissibly delegates to a VPA, the veterinarian can be disciplined and may be liable in damages for the VPA's acts. (*Id.*) And if a VPA performs an act that was not delegated by a supervising veterinarian or exceeds his/her education or experience, then the VPA can be disciplined and may be liable in damages. (*Id.* § 12-315-209.7(4) (CF p. 9).)

The titles, however, do not alert voters to the existence of these provisions. The only accountability measure included in the titles is that an *unregistered* person practicing as a VPA faces criminal penalties. (CF p. 15.) While it is certainly important to inform voters of the criminal penalty for practicing without a registration, it is equally important to inform voters as to how the measure polices compliance by *registered* VPAs to ensure they adhere to the limits on their practice of veterinary medicine.

This Court has previously concluded that titles should describe a measure's accountability features to meet the statutory responsibility to "unambiguously state the principle of the provision sought to be added, amended, or repealed." *In re Proposed Election Reform Amendment*, 852 P.2d at 31 (quoting C.R.S. § 1-40-101(2) (1993)). In that case, an election reform measure, included "mandatory, nonsuspendable fines for willful campaign contribution and election protection provision violations." *Id.* The Board omitted the fines from the titles along with other components of the measure. Although the Court approved excluding descriptions of other aspects of the measure, it held the Board erred by excluding the fines from the titles. *Id.* These accountability measures, the Court explained, "must appear in the titles." *Id.*

The same result should obtain here. The measure proposes a significant change to those who can practice veterinary medicine. In deciding whether to “support or oppose” that change, voters should know what accountability measures are in place to police the expansion of the practice of veterinary medicine.

CONCLUSION

Petitioners respectfully request that this Court determine that the titles are legally flawed and direct the Title Board to correct the title to address the deficiencies outlined in Petitioners’ briefs.

Respectfully submitted this 19th day of March, 2024.

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CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **PETITIONERS' OPENING BRIEF** was sent electronically via Colorado Courts E-Filing this day, March 19, 2024, to the following:

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