

COLORADO SUPREME COURT
2 East 14th Avenue
Denver, CO 80203

Original Proceeding Pursuant to
§ 1-40-107(2), C.R.S.
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2023-2024 #145

Petitioners: Will French and Diane Matt,

v.

Respondents: Apryl Steele and Ali
Mickelson,

and

Title Board: Theresa Conley, Christy
Chase, and Kurt Morrison

PHILIP J. WEISER, Attorney General
EMILY OLIVE MONNETT,
Assistant Attorney General*
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
Telephone: (720) 508-6775
E-Mail: emily.monnett@coag.gov
Registration Number: 55444
*Counsel of Record
Attorney for the Title Board

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Case No. 2024SA64

THE TITLE BOARD'S OPENING BRIEF

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, I certify that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 1562 words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

s/ Emily Olive Monnett

EMILY OLIVE MONNETT, #55444

Assistant Attorney General

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ISSUES ON REVIEW

I. Whether the Title Board acted within its discretion and set a clear title for issue #145.

STATEMENT OF THE CASE

Proposed initiative 2023-2024 #145 seeks to create a mid-level veterinary practitioner career pathway similar to a physician's assistant for veterinarians called a veterinary professional associate. The measure sets forth the education and licensure requirements to become a veterinary professional associate. *See Record*, pp 2-9, filed Feb. 28, 2024.

To become a licensed veterinary professional associate, applicants would need to be at least eighteen years old and obtain a master's degree in veterinary clinical care or the equivalent, as determined by the Board of Veterinary Medicine. *Id.* at 5. Like a physician's assistant, veterinary professional associates would be authorized to practice veterinary medicine within the scope of their advanced education and experience and under the supervision of a licensed veterinarian. *Id.* at

4. The Initiative includes other related features to implement the veterinary professional associate profession such as making it a misdemeanor to practice as a veterinary professional associate without a license and giving the Board of Veterinary Medicine additional powers to regulate the new profession.

At its February 7, 2024, meeting, the Board concluded that the measure contained a single subject and set a title. *Id.* at 13. Petitioners, Will French and Diane Matt, filed a timely motion for rehearing. *Id.* at 17-20. The Board considered Petitioners' motion at its February 21, 2024 meeting. The Board granted the motion for rehearing, in part, and made changes to the original title.

The title fixed by the Board for #145 is as follows:

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. at 15.

Petitioners now challenge whether #145 complies with the clear title requirement.¹

SUMMARY OF ARGUMENT

The Title Board set an appropriate title for #145, and Petitioners' clear title objections fail to overcome the strong deference this Court extends to titles set by the Board. Petitioners raise three different arguments as to why title is not clear.

First, the title is complete even though it does not explain the accountability measures within the Initiative for a supervising veterinarian or veterinary professional associate. This is an implementation detail that follows from #145's primary feature — creating a new veterinary professional associate profession and

¹ Petitioners challenged the single subject requirement in their motion for rehearing, but they do not raise the issue in their petition for review. *See generally* Pet. for Review.

licensure pathway. The accountability measures for supervising veterinarians or veterinary professionals who violate their duties relate naturally to this primary feature and do not need to be spelled out separately in the title to make it complete.

Second, the title is not misleading or incomplete for failing to state that a veterinary professional associate may only practice veterinary medicine within the scope of their education and experience. The title accurately explains the education and licensing requirements to become a veterinary professional associate. It is expected that a veterinary professional associate would only be allowed to practice veterinary medicine within the scope of their training and experience, and this addition is not necessary to make the title complete.

Finally, the Petitioners argue that the title is misleading because it does not explain that a veterinarian may only delegate duties and actions to a veterinary professional associate for which the associate has the necessary training and experience. For the same reasons that the title is not incomplete for not stating that veterinary professional

associates can only practice within the scope of their training and experience, this omission does not rise to the level of making the title misleading or inaccurate.

Petitioners' objections to certain inconsequential omissions from the title are not enough to sustain a clear title objection.

ARGUMENT

I. The title set by the Board satisfies the clear title standard.

A. Standard of Review and preservation.

When considering a challenge to a title, the Court does not “consider whether the Title Board set the best possible title.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17. “The Title Board’s duty in setting a title is to summarize the central features of a proposed initiative.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24. The Board “is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *Id.* The Court will reverse the title set by the Board “only if a title is insufficient, unfair, or misleading.” *Id.* ¶ 8.

The Title Board agrees this issue is preserved. *See Record at 19-20.*

B. The Title does not need to outline the accountability measures within the Initiative.

Petitioners argue that the title is incomplete because it does not include a description of the accountability measures contained within the Initiative for veterinarians or veterinary professional associates who violate their duties. The Initiative includes accountability measures if a veterinary professional associate performs duties beyond their training and experience or if a veterinarian delegates duties beyond the associate’s training experience. This includes that the veterinarian or associate may be liable for damages resulting from the negligence of the associate.

The General Assembly has instructed the Board that “[b]allot titles shall be brief.” § 1-40-106(3)(b). Accordingly, the title must “summarize the central features of a proposed initiative,” but it need not “include a description of every feature” of the measure. *In re 2019-2020 #3, 2019 CO 107, ¶ 16.*

Here, the title explains that the Initiative creates a new veterinary associate profession and summarizes the qualifications and licensure pathway. The portion of the Initiative that outlines the accountability measures follows naturally from the licensure process. If a new type of license is created, it is natural that there would be enforcement mechanisms or sanctions for violating the terms of the license. Given the Board’s broad “discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause,” the title reasonably focuses on the Initiative’s qualification and licensure procedures for veterinary professional associates and summarizes the central features of #145. *In re 2013-2014 #90*, 2014 CO 63, ¶ 24; *In re 2019-2020 #3*, 2019 CO 107, ¶ 16.

C. The title is not misleading for not clarifying that veterinary professional associates may only practice within the scope of their training and experience.

The Petitioners contend that the title is incomplete and misleading for omitting that a veterinary professional associate may

only practice veterinary medicine within the scope of their education and experience.

The title states that the Initiative would allow a registered “veterinary professional associate to practice veterinary medicine under the supervision of a licensed veterinarian.” Record, p 15. The title does not further explain that a veterinary professional associate would only be authorized to practice veterinary medicine within the scope of their training and experience. Record, pp 4; 9. It follows from the education and licensure requirements that a veterinary professional associate would only be able to practice veterinary medicine within the scope of their training and experience. Including this in the title is not necessary to make the title complete, nor is it misleading to not include it.

The title is not “insufficient, unfair, or misleading” and should be affirmed. *In re 2013-2014 #90*, 2014 CO 63, ¶ 8.

D. The Title Board did not need to specify that veterinarians may only delegate tasks for which the veterinary professional associate has the necessary training and experience.

Petitioners' argument that the title is incomplete for not referencing that veterinarians may only delegate tasks that are within the scope of the veterinary professional associate's advanced training and experience is similarly unpersuasive. The title accurately explains that the Initiative would allow "a registered veterinary professional associate to practice veterinary medicine under the supervision of a licensed veterinarian." Record, p 15. The title is complete without further explaining the scope of duties that may be delegated. It is natural that a veterinarian would only be able to delegate duties that the veterinarian professional associate is qualified to perform. Doctors supervise and delegate tasks to nurses and physician's assistants, yet no one would assume that a doctor would delegate tasks that a nurse or physician assistant is not qualified to perform.

The Board appropriately focused on the veterinarian supervision requirement, without clarifying that veterinarians may only delegate

tasks that an associate is qualified to perform. Given the Board's broad discretion in resolving issues of length, complexity, and clarity, the title should be affirmed. *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24

CONCLUSION

The Title Board set an appropriate title for #145. Therefore, the Court should affirm the title set by the Title Board on 2023-2024 #145

Respectfully submitted on this 19th day of March, 2024.

PHILIP J. WEISER
Attorney General

/s/Emily Olive Monnett

EMILY OLIVE MONNETT, 55444*

Assistant Attorney General
State Services Section
Attorney for the Title Board
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S OPENING BRIEF** upon the following parties electronically via CCEF this 19th day of March, 2024, addressed as follows:

Edward T. Ramey, #6748
Tierney Lawrence Stiles LLC
225 W 16th Avenue, Suite 350
Denver, CO 80203
eramey@TLC.legal
(303) 949-7676
Attorney for Proponents

Mark G. Grueskin
Nathan Bruggeman
1600 Stout Street, Suite 1400
Denver, CO 80202
mark@rklawpc.com
nate@rklawpc.com
(303) 573-1900
Attorneys for Petitioners

s/ Leslie Bostwick
