

SUPREME COURT OF COLORADO
2 East 14th Avenue
Denver, Colorado 80203

Original Proceeding
Pursuant to Colo. Rev. Stat. §1-40-107(2), (2023)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2023-
2024, #144 (“Veterinary Telehealth”)

Petitioners: WILL FRENCH and DIANE
MATT

v.

Respondents: APRYL STEELE and ALI
MICKELSON

and

Ballot Title Board: THERESA CONLEY,
CHRISTY CHASE, and KURT MORRISON

▲ COURT USE ONLY ▲

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Supreme Court Case No.
2024SA65

RESPONDENTS’ ANSWER 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).

The brief contains 1,511 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/ Edward T. Ramey
Edward T. Ramey, #6748

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Respondents Apryl Steele and Ali Mickelson, the designated representatives of the proponents of Proposed Initiative 2023-2024 #144 (“Veterinary Telehealth”), respectfully submit their Answer Brief.

STATEMENT OF THE CASE

In their Statement of the Case in their Opening Brief (pp. 2-13), Petitioners identify one issue at the core of this review – whether the Proponents/Respondents, by intent or disregard, crafted the language of their measure to authorize both licensed and unlicensed veterinarians in Colorado to provide care to their animal patients through the use of veterinary telehealth.¹ Though omitting Proponents’ explanation of their language choices and revisions made in response to questions and suggestions at their Review & Comment hearing on the measure, they quote the attentive and detailed consideration given to their concerns by all three sitting members of the Title Board – resulting in a unanimous vote denying the motion for rehearing in its entirety, reaffirming their initial determination that the initiative contains a single subject, and reaffirming the title and ballot title set by the Board two weeks earlier.

¹ Concurrently they suggest that the language chosen by the Proponents would somehow insulate unlicensed veterinarians from professional discipline in connection with such practice.

The Proponents/Respondents do not contest the timeliness of Petitioners’ request for review by this Court.

SUMMARY OF THE ARGUMENT

1. The Title Board properly determined that Proposed Initiative 2023-2024 #144 (“Initiative 144”) contains a single subject.
2. The Title Board set a clear, succinct, and fair title for Initiative 144.
3. The title appropriately states that Initiative 144 includes parameters on prescribing controlled substances via veterinary telehealth.

ARGUMENT

I. The Title Board properly determined that Proposed Initiative 2023-2024 #144 contains a single subject.

A. Standard of Review and Preservation of Issues.

Respondents adopt their statement of the Standard of Review and Preservation of Issues in their Opening Brief.

B. Initiative 144 is not unclear as to its authorization of only “licensed veterinarians” to practice veterinary telehealth in Colorado.

The “Colorado Veterinary Practice Act” (“CVPA”) – article 315 of title 12 of the Colorado Revised Statutes – regulates “the practice of veterinary medicine” in the state of Colorado. §12-315-102, C.R.S. (2024). Per §12-315-105(1), C.R.S. (2024), “A person *shall not practice veterinary medicine in this state* if the person

is not a licensed veterinarian” (emphasis added). “Licensed veterinarian” is defined in §12-315-104(11), C.R.S. (2024), as “a person licensed pursuant to this part 1.” The power to confer a “license to practice veterinary medicine . . . in this state” is vested in a “state board of veterinary medicine” pursuant to §12-315-106, C.R.S. (2024).

Initiative 144 would add a new section to the current CVPA – new §12-315-127, C.R.S. – and associated definitions to current §12-315-104, C.R.S. (2024). Critically, these new provisions would become a part of *and subject to* the CVPA’s existing regulatory provisions and structure unless clearly specified otherwise.

Proposed new §12-315-127(1) would provide that “A *veterinarian holding an active Colorado license* may practice veterinary telehealth on a patient located in Colorado” (emphasis added). Proposed new §12-315-127(3) would explicitly confer “jurisdiction over a veterinarian practicing veterinary telehealth on a patient in Colorado” upon the state board of veterinary medicine.² And proposed new §12-315-104(26) would specifically define “veterinary telehealth” as “*the practice of*

² Per §12-315-106, C.R.S. (2024), the state board holds the authority to grant, suspend, or revoke licenses, conduct disciplinary proceedings, bring enforcement actions, issue cease-and-desist orders, and impose fines “to effectively supervise the practice of veterinary medicine” in Colorado.

veterinary medicine” – which, as noted above, is explicitly *prohibited* in Colorado unless the person so practicing is a “licensed veterinarian” under the CVPA.

Notwithstanding all this, Petitioners submitted to the Title Board – and submit here – that the language of proposed Initiative 144 could be read as affirmatively authorizing *unlicensed* veterinarians – apparently free of disciplinary constraint – to practice “veterinary telehealth” in Colorado. The basis for this argument is apparently that the drafters of the initiative did not insert the word “licensed” before “veterinarian” each time the latter word appeared in the measure – notwithstanding the explicit definition of “veterinary telehealth” as “the practice of veterinary medicine” for which a Colorado license is explicitly and unequivocally required by the CVPA (of which proposed Initiative 144 would become a part).³

³ Petitioners point out that a comment in the Review & Comment Memorandum for Initiative 144 noted that the defined term “licensed veterinarian” was used generally (though not universally) throughout the CVPA, and suggested that proponents consider adopting that term throughout their own measure. Proponents did indeed consider this, but decided (in response to this and another comment in the Memorandum) to revise their proposed new §12-315-104(26) to explicitly define “veterinary telehealth” as “the practice of veterinary medicine.” As noted above, current §12-315-105(1) of the VPA states that “A person shall not practice veterinary medicine in this state if the person is not a licensed veterinarian.” Further, proposed new §12-315-127(1) provides only that “a veterinarian holding an active Colorado license may practice veterinary telehealth on a patient located in Colorado.”

C. The Title Board considered Petitioners’ objections and unanimously determined that it understood the measure and that Initiative 144 contained a single subject.

While the Title Board entertained discussion at the rehearing as to whether anything in the final text of Initiative 144 could arguably be susceptible to a post-adoption interpretation at odds with the Proponents’ expressed intent – particularly to limit the use of veterinary telehealth to licensed veterinarians – it had no difficulty with its own understanding of the measure. Thus it (unanimously) set and reaffirmed a title clearly reflecting that understanding – *i.e.*, “allowing a veterinarian licensed in Colorado to use telehealth to assess, diagnose, or treat an animal patient in Colorado.” *See also*, Title Board Opening Brief at p. 8.

As noted by the Title Board, “Petitioners’ concerns center on interpretation and implementation, which is not within the Board’s purview.” *Id.* “The Title Board is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *In re Title, Ballot Title and Submission Clause for 2013-2014 #85*, 2014 CO 62, ¶19, 328 P.3d 136, 144 (Colo. 2014). “At this stage, we do not address the merits of a proposed measure, interpret it, or construe its future legal effects.” *In re Title, Ballot Title and Submission Clause for 2007-2008 #57*, 185 P.3d 142, 145 (Colo. 2008) (emphasis added).

II. The title set by the Title Board satisfies the clear title standard.

A. Standard of Review and Preservation of Issues.

Respondents adopt their statement of the Standard of Review and Preservation of Issues in their Opening Brief.

B. The title set by the Title Board accurately informs voters that the Initiative would only authorize “a veterinarian licensed in Colorado” to practice veterinary telehealth.

As discussed above, Initiative 144 would not authorize unlicensed veterinarians to practice veterinary telehealth in Colorado.

C. The title accurately and sufficiently describes the proposed initiative.

The title as set accurately and sufficiently describes the true meaning and intent of the proposed initiative – “allowing a veterinarian licensed in Colorado to use telehealth to assess, diagnose, or treat an animal patient located in Colorado; allowing a veterinarian to establish a relationship with an animal patient and the owner or caretaker through the use of audio-video communication; and establishing parameters on prescribing controlled substances.” And – the title complies with the statutory admonition that “Ballot titles shall be brief.” §1-40-106(3)(b), C.R.S. (2024).

Petitioners’ primary objection on this point appears to be that the text – not the title – of Initiative 144 misuses the term “telehealth.” Though the Initiative

contains a precise definition of “veterinary telehealth” as used in the measure – at proposed new §12-315-104(26) – Petitioners apparently prefer alternative definitions and usages lifted from the wholly separate Colorado Medical Practice Act, §12-240-101, *et seq.*, C.R.S., or the National Coordinator for Health Information Technology website. The title, however, accurately reflects the term as defined and used in the measure itself.

D. The title accurately informs the voter that the Initiative “establish[es] parameters on prescribing controlled substances.”

Petitioners’ final objection appears to be that the title does not spell out the details of the authority conferred by the Initiative on veterinarians practicing veterinary telehealth to prescribe prescription drugs – which is identical to the existing authority of veterinarians generally under the CVPA – with the exception of controlled substances “unless the veterinarian has previously performed an in-person physical examination of the patient or made medically appropriate and timely visits to the premises where the patient is kept.” Proposed new §12-315-127(7)(a), (b). This is a quintessential implementation detail, appropriately and adequately flagged in the title. *Cf., In re Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 2014 CO 66, ¶23, 328 P.3d 172, 179 (Colo. 2014).

CONCLUSION

For the reasons set forth above and in these Respondents' and the Title Board's Opening Briefs, Respondents respectfully renew their request to this Court to affirm the actions of the Title Board in this case.

Respectfully submitted this 8th day of April, 2024.

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I hereby certify that on April 8, 2024, I electronically filed this Answer Brief with this Court via the Colorado Courts E-Filing system and electronically served a copy upon Counsel for the Petitioners and Counsel for the Ballot Title Board at:

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