

**BEFORE THE COLORADO BALLOT TITLE SETTING BOARD**

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Will French and Diane Matt,  
Objectors,

v.

Apryl Steele and Ali Mickelson,  
Designated Representatives of Initiative 2023-2024 #144.

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**MOTION FOR REHEARING ON  
INITIATIVE 2023-2024 #144**

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Through their legal counsel, Will French, a registered elector of Douglas County, and Diane Matt, a registered elector of Denver County, hereby file this motion for rehearing on Initiative 2023-2024 #144.

On February 7, 2024, the Title Setting Board set the following ballot title and submission clause for Initiative 2023-2024 #144:

*Shall there be a change to the Colorado Revised Statutes concerning veterinary telehealth, and, in connection therewith, 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?*

In setting this title, the Board erred in the ways set forth below.

**I. The Board lacked jurisdiction to set a title for #144.**

A. Initiative #144 is so confusingly written that it is inherently contradictory, and, therefore, the Board cannot set a title.

Initiative #144 suffers from a fundamental problem: on the one hand, it suggests that the authorization to practice veterinary telehealth applies to Colorado-licensed veterinarians, while on the other, as drafted, its authorization to practice veterinary telehealth extends to any “veterinarian” regardless of whether they hold a Colorado license.

Proposed C.R.S. § 12-315-127(1) provides that a “veterinarian holding an active Colorado license may practice veterinary telehealth on a patient located in Colorado.” The measure, however, does not limit its reach to a Colorado-licensed veterinarian as its substantive provisions apply to “veterinarians” and not “*licensed* veterinarians.”<sup>1</sup>

This was a significant choice by the Proponents because “veterinarian” and “licensed veterinarian” are defined terms under Colorado’s Veterinary Practice Act, with the former meaning only someone who has a doctor’s degree in veterinary medicine and the latter as someone licensed in Colorado.

“Veterinarian”	“Licensed Veterinarian”
<p>“(18) ‘Veterinarian’ means a person who has received a doctor’s degree in veterinary medicine, or its equivalent, from a school of veterinary medicine.”</p> <p>C.R.S. § 12-315-104(18)</p>	<p>“(11) ‘Licensed veterinarian’ means a person licensed pursuant to this part 1 [of the Colorado Veterinary Practice Act].”</p> <p>C.R.S. § 12-315-104(11)</p>

There is no way to reconcile, based on the Proponents’ use of a defined term, the limited authorization in proposed C.R.S. § 12-315-127(1) for a Colorado-licensed veterinarian with the remainder of the measure’s language that authorizes *any* veterinarian to practice “veterinary telehealth” on an animal in Colorado.

Since the measure’s language is internally contradictory—it applies to Colorado-licensed veterinarians but also to any veterinarian—the Board cannot set a title. As the Supreme Court has recognized, where the Board cannot identify how a measure’s key features will operate, it is unable to identify the measure’s single subject and lacks jurisdiction over the initiative. *In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #25*, 974 P.2d 458, 468-49 (Colo. 1999).

**B. Initiative #144 has multiple subjects.**

If the Board determines that it can understand #144, it still lacks jurisdiction because the measure contains multiple subjects in violation of the Constitution’s single subject requirement.

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<sup>1</sup> See, e.g., Proposed C.R.S. § 12-315-104(26) (defining “veterinary telehealth” as involving a “veterinarian”); *id.* § 12-315-127(2) (“... at the time the veterinarian practices telehealth...”); *id.* § 12-315-127(3) (“... jurisdiction over a veterinarian practicing veterinary telehealth...”); *id.* § 12-315-127(4) (“...the veterinarian shall inform the owner...”); *id.* § 12-315-127(5) (“A veterinarian practicing telehealth shall...”); *id.* § 12-315-127(6) (“... a veterinarian may not be disciplined...”); *id.* 12-315-127(7)(a) & (b) (“...a veterinarian practicing veterinary telehealth...”).

1. *The initiative's first subject: authorizing Colorado-licensed veterinarians to provide care through veterinary telehealth.*

The Initiative grants a new licensing privilege to veterinarians licensed in Colorado: the ability to provide care through “veterinary telehealth”:

A veterinarian holding an active Colorado License may practice veterinary telehealth on a patient located in Colorado.

Proposed C.R.S. § 12-315-127(1). That is a straightforward and simple change to the Colorado Veterinary Practice Act. However, as explained above, through the Proponents’ decision to use the defined word “veterinarian” in the measure, its reach exceeds that limited purpose.

2. *The initiative's second subject: authorizing unlicensed veterinarians to provide care to animals in Colorado through “telehealth.”*

If Proponents intended to limit their measure to simply extending the privileges of veterinarians licensed in Colorado, they would have drafted their measure using the defined term “licensed veterinarian.” But they did not, as explained above, choosing instead to use the term, “veterinarian.” A “veterinarian” does not need to hold a Colorado license (or any state license), and instead means a person with a doctor’s degree in veterinary medicine. *Compare* C.R.S. § 12-315-104(11) *with id.* § 12-315-104(18).

The defined term “licensed veterinarian” appears nowhere in Initiative #144.<sup>2</sup> Instead, Proponents used the term “veterinarian” exclusively in their measure. In doing so, they have authorized veterinarians who do not have a Colorado license to practice veterinary telehealth on Colorado animals. The measure accomplishes this by:

- Giving the board jurisdiction over a “veterinarian” practicing telehealth, *see* proposed C.R.S. § 12-315-127(3);
- Allowing any “veterinarian” to provide disclosures to clients, *id.* § 12-315-127(4);
- Establishing the standards for a “veterinarian” to practice telehealth, including allowing any “veterinarian” to establish a “veterinary-client-patient-relationship” through telehealth; *id.* § 12-315-127(5);
- Immunizing a “veterinarian” from discipline for practicing telehealth, *id.* § 12-315-127(6); and,
- Authorizing a “veterinarian,” under certain limitations, to order prescription drugs, *id.* § 12-315-127(8).

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<sup>2</sup> Alternatively, Proponents could have written the measure using limiting language: “**Only** a veterinarian holding an active Colorado license may practice veterinary telehealth on a patient located in Colorado” or “**Only** a licensed veterinarian may practice veterinary telehealth on a patient located in Colorado.”

The Proponents' decision to use the word "veterinarian" instead of "licensed veterinarian" was intentional. This issue was brought to Proponents' attention during the review and comment process with legislative staff:

5. The proponents use the term "veterinarian" throughout the proposed initiative. Does the reference to "veterinarian" in the proposed initiative means a veterinarian licensed in this state? If so, the proponents should consider adding "licensed" before "veterinarian" in the proposed initiative to match the defined term "licensed veterinarian."

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15. Under the proposed initiative, is an individual who is not a licensed veterinarian able to deliver any veterinary health-care services through veterinary telehealth? If so, which services and under what conditions? If veterinary technicians are able to do so, part 2 of article 315 of title 12, C.R.S., should be amended as well.

Jan. 22, 2024, Mem. to Proponents at 2 ¶ 5 & 4 ¶ 15.<sup>3</sup> During the hearing with legislative staff, the Proponents said they would "consider doing that" with respect to using "licensed veterinarian," and they were "considering what to do with" the question regarding provision of veterinary telehealth by someone who is not a licensed veterinarian. Jan. 25, 2024, Review and Comment Hr'g at 10:05:23 and 10:13-10.<sup>4</sup> But after considering these issues, the Proponents *chose* to use the term "veterinarian" instead of "licensed veterinarian." In other words, they chose for their measure to apply to any veterinarian.

Whether to grant a limited license privilege to Colorado-licensed veterinarians stands wholly apart from whether any veterinarian—whether in Colorado, Alabama, or a foreign country—should be able to provide veterinary care to Colorado animals. Permitting unlicensed veterinarians, including those out of state, to provide care to Colorado animals is not connected to whether Colorado should take the modest step of allowing a licensed-Colorado veterinarian to provide telehealth.

Not only is there a facial disconnect between these subjects, this is the type of issue that is coiled into the folds of a measure and which would surprise a voter. One of the primary objectives of the single subject requirement is to "prevent surreptitious measures" and "prevent surprise and fraud from being practiced upon voters." C.R.S. 1-40-106.5(1)(e)(II). A voter would not understand that, in allowing licensed Colorado veterinarians to provide telehealth, the measure also authorizes telehealth by unlicensed veterinarians.

### *3. The measure alters the standard of care for veterinary practice.*

The measure states that veterinarians providing telehealth must inform clients that the "*same* standards of care apply to veterinary medicine services via telehealth and in-person veterinary medical services." Proposed C.R.S. § 12-315-127(4)(a) (emphasis added). The measure defines

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<sup>3</sup> Available at <http://tinyurl.com/mr2n65x6>.

<sup>4</sup> Available at <http://tinyurl.com/bdhxn3zx>.

the standard of care as the “prevailing quality of veterinary care for the particular patient presentation.” *Id.* § 12-315-127(5)(a). That, however, is not the standard that currently applies.

Under the current statute, a licensed veterinarian is required to meet the “generally accepted standards of veterinary practice.” C.R.S. § 12-315-112(1)(z) (providing for discipline by a licensed veterinarian for an “act or omission that fails to meet generally accepted standards of veterinary practice”). To make the standards the “same,” as Initiative #144 requires, would require the state board of veterinary medicine to now apply the new “prevailing quality of veterinary care for the particular patient presentation” standard from the measure.

Altering the standard that generally applies to veterinary care is a change that extends beyond what is necessary to authorize “veterinary telehealth.” As the Supreme Court has recently explained in an analogous case involving animal care standards, a measure violates the single subject requirement where, under the guise of making a discrete change, it in fact alters or creates a broadly applicable standard. *See In re Title, Ballot Title & Submission Clause for 2021-2022 #1*, 2021 CO 55 ¶¶ 39-41 (holding that, in a measure meant to include livestock in the animal cruelty statute, creating a new definition of “sexual assault on an animal” that applies to all animals violated the single subject requirement).

This is, again, an intentional decision by the Proponents. The difference between the standard of care articulated in the measure and current law was raised during the review and comment process. *See* Jan. 22 Mem. at 3 ¶ 10. The Proponents said they would consider “clarifying that” in their measure. Jan. 25 Hr’g at 10:08:26. They chose not to, and in doing so, their measure violates the constitutional single subject requirement.

## **II. The titles set are incomplete and misleading.**

The titles set by the Board are incomplete and misleading for the following reasons:

- If the Board determines that it has jurisdiction, then at a minimum the titles must inform voters that the Initiative authorizes telehealth not only by Colorado-licensed veterinarians but all “veterinarians” can practice it on a Colorado animal.
- If the Board determines that it has jurisdiction, then at a minimum the titles must inform voters that the Initiative creates a new standard of care for veterinary medicines that applies to both telehealth and all other veterinary care.
- The titles are misleading because it states that “a veterinarian licensed in Colorado” may use telehealth without informing voters that other, unlicensed veterinarians can use telehealth to treat an animal in Colorado.
- The titles are incomplete and misleading because it provides only a partial definition of “veterinary telehealth,” which is a substantial and controversial new standard, by omitting from the titles that, under the measure’s definition, “veterinary telehealth” is “the practice of veterinary medicine.” Instead of informing voters that “veterinary telehealth” is the

practice of veterinary *medicine*, the titles state only that those using “veterinary telehealth” may “assess, diagnose, or treat an animal.”

It is particularly important to explain the scope of the definition because, under general terminology, “telehealth” means the broad set of services related to healthcare whereas “telemedicine” means the provision of clinical care. *See, e.g.*, Office of the National Coordinator for Health Information Technology, last visited Feb. 13, 2024, <https://www.healthit.gov/faq/what-telehealth-how-telehealth-different-telemedicine> (explaining that telehealth refers “to a broader scope of remote healthcare services . . . including remote non-clinical services, such as providing training, administrative meetings, and continuing medical education,” telemedicine “refers specifically to remote clinical services). Colorado law recognizes this distinction in the medical context, as the “practice of medicine” includes “telemedicine,” which is distinct from the concept of providing “telehealth.” *See* C.R.S. § 12-240-107(1)(a) & (1)(g).

- The titles are incomplete and misleading because they state that a veterinarian may establish a “relationship” with an animal and owner. “Relationship” describes the reach of the measure in a vague manner. The measure in fact allows a veterinarian to establish a full “veterinarian-client-patient relationship,” which is the foundational relationship between a veterinarian and an animal and its owner.
- The titles are incomplete because they do not explain that the board of veterinary medicine is being granted some authority over “veterinarians” practicing telehealth.
- The titles are incomplete because they do not inform voters that a veterinarian practicing veterinary telehealth cannot be disciplined for providing telehealth.
- The titles are incomplete and misleading due to the description of the prescribing authority of a veterinarian. *First*, the titles are misleading because it states only that a veterinarian can prescribe “controlled substances,” which refers to and most voters would understand as meaning a small subset of drugs such as opioids. However, under the measure, the prescribing authority extends to prescribing any “prescription drug” in accordance with any applicable law. *See* Proposed C.R.S. § 12-315-127(7)(a).

*Second*, the titles are incomplete because it vaguely refers to some parameters on the veterinarian’s ability to prescribe “controlled substances” without explaining what the parameters are. Controlled substance abuse is a significant public policy issue, and, for voters to understand whether such drugs should be allowed to be prescribed *remotely*, they need to be informed what specific restrictions are being placed on this authority.

WHEREFORE, Objectors seek appropriate relief in light of the above claims, including the striking of the titles set and return of Initiative #144 to Proponents for failure to comply with the single subject requirement of Article V, sec. 1(5.5) of the Colorado Constitution, or correction of the misleading and incomplete ballot title that has been set.

Respectfully submitted this 14th day of February, 2024.

RECHT KORNFELD, P.C.

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**CERTIFICATE OF SERVICE**

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2023-2024 #144** was sent this day, February 14, 2024, via first-class mail, postage paid and via email to:

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*s/ Erin Mohr*