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To: SCAC Evidence Subcommittee
Fm: Roger W. Hughes
Date: August 3, 2023
Re: Amendment of TRE 510(a)(1) to cover “peer assistance programs”

1. The original AREC proposal was to amend TRE 510(a)(1) that defines who is a “professional” to include a person:

“(D) acting as an employee, member, or agent of an approved peer assistance program under Chapter 467 of the Texas Health and Safety Code;”

AREC’s proposal is limited to programs under Chapter 467; it would not extend to programs under the many other statutes listed in Ms. Angie Olalde’s Memo, dated Dec. 5, 2020; Tab Z1, p. 347, of June 16-17, 2023 SCAC materials.

2. The SCAC voted in favor of recognizing a peer assistance privilege and asked the Subcommittee discuss and propose further revision. This memo summarizes the issues discussed at the June 2023 meeting.
 - a. Levy – public policy to promote a risk-free dialogue for those seeking help. However, how would this apply to a suicide hot-line? Should we reach out to Board of Medical Examiners on this? Hoffman responded this already covered by statute.
 - b. Kelly – no one has ever subpoenaed TLAP records so we are just offering institutional support for TLAP.
 - c. Schaeffer – has there been research on peer assistance privileges in other states? Hoffman addressed that.
 - d. Miskel – “peer assistance” could be overbroad. Do we want it to extend to any peer assistance?
 - e. Bland – how will this apply in civil commitment proceedings?
3. My personal recommendation is an amended to cover approved programs authorized by statute. This is my suggestion for TRE 510(a)(1)(D):

“(D) acting as an employee, member, or agent of an approved peer assistance program authorized by law.”

This limits it to employees, etc., of peer assistance programs that are (1) authorized under a state statute, and (2) approved by the body responsible to

supervise or create the program. This will not extend the privilege to informal communications to peers or to *ad hoc* groups.

4. Involuntary Civil Commitment. My understanding is civil commitment for persons with mental health issues is handled by Probate Court. TRE 510 already applies the privilege in such cases. TRE 510(d)(5) provides the privilege does not apply if (1) the patient's physical, mental, or emotional health is part of a party's claim or defense, and (2) the communication is relevant to that condition. My opinion is that a "peer assistance program" privilege will not present for mental health commitments.

However, TRE 509(e)(6) provides that it does not apply to involuntary civil commitment and court-ordered treatment under H&S Code chap. 462 (chemical dependence, mental health, intellectual disability); AREC recommended amending Rule 509(e)(6) to exclude proceedings involving commitment of SVPs (sexually violent predator's) under H&S chap. 841. We may wish to consider a similar exclusion to Rule 510(d) to avoid questions over why Rule 509(e) expressly excludes involuntary commitment, but Rule 510(d) has no similar exclusion.