

Texas State Board of Social Worker Examiners

BOARD MEETING BY VIDEOCONFERENCE

Friday, July 9, 2021, 8:30 a.m.
333 Guadalupe, Suite 3-900
Austin, Texas 78701

Due to Governor Greg Abbott's March 13, 2020, proclamation of a state of disaster affecting all counties in Texas due to the Coronavirus (COVID-19) and the Governor's March 16, 2020, suspension of certain provisions of the Texas Open Meetings Act, this meeting of the Texas State Board of Social Worker Examiners (Board) will be held by videoconference, as authorized under Texas Government Code §551.127. There will be no physical meeting location open to the public so long as the disaster declaration is in effect.

Members of the public will have access and a means to participate in this meeting with two-way communication by entering the URL address: [HTTPS://US02WEB.ZOOM.US/J/81293797872](https://us02web.zoom.us/j/81293797872) into a web browser or by calling

+1 346 248 7799 US (Houston)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

and entering meeting ID: 812 9379 7872.

An electronic copy of the agenda and any meeting materials will be available at <https://www.bhec.texas.gov/texas-state-board-of-social-worker-examiners/important-dates/index.html> before the meeting. A recording of the meeting will be available after the meeting is adjourned. To obtain a recording, please email your request to open.records@bhec.texas.gov.

FOR THOSE WHO WISH TO PROVIDE PUBLIC COMMENT: When the public comment agenda item is announced, if you have joined the meeting by computer, please use the “raise hand” feature to indicate you would like to provide a public comment. Those who raise a hand will then be unmuted to give public comment. After all those who raised a hand have been given an opportunity to provide public comment, staff will call upon and unmute those who have joined the meeting by telephone. When providing public comment, please identify yourself and whether you are speaking individually or on behalf of an organization. All public comments will be limited to 3 minutes, unless otherwise directed by the presiding officer. In lieu of providing public comment during the meeting, before the meeting you may submit written public comments via email to general@bhec.texas.gov with subject line “SW Public Comment – ATTN Board Administrator.” Any written public comment received is submitted to the Board members for their consideration during the meeting, but is not read aloud.

In the event Governor Greg Abbott's March 13, 2020, disaster declaration is not renewed or expires before July 9, 2021, then pursuant to Texas Government Code, §551.127, notice is hereby given that one or more Board members may appear at the scheduled meeting via videoconference, but the presiding officer will be physically present at the above-noticed location. This location will be open to the public only in the event the March 13 disaster declaration is not renewed.

Please note that the Board may request input during the meeting from any interested parties or members of the public during its discussion of an agenda item.

If you are planning to attend this meeting and need auxiliary aids, services or materials in an alternate format, please contact the Board at least 5 working days before the meeting date. PHONE: (512) 305-7700, EMAIL: general@bhec.texas.gov, or TTY/RELAY TEXAS: 711 or 1- 800-RELAY TX.

The Board may go into Executive Session to deliberate any item listed on this agenda if authorized under Texas Open Meetings Act, Government Code, Chapter 551.

The Board may discuss and take action concerning any matter on the agenda and in a different order from what it appears herein.

AGENDA

(Brumley, Andrade, Morris, Mosier, Ramsbacher, Rodgers, Saenz-Davila, Swords)

1. Call meeting to order.
2. Approval of minutes of the April 2, 2021, videoconference Board meeting.
3. Discussion and possible action concerning preparation and maintenance of meeting minutes or recording of each open meeting per Texas Government Code, §§551.021 and 551.022.
4. Board review and possible action regarding appeals of application for licensure denials, including Steven Johnson and Otha Norton.
5. Board review and possible action regarding agreed orders to be executed by the Board.
6. Board review and possible action regarding contested cases from the State Office of Administrative Hearings (SOAH), including proposal for decision in the matter of Kimberly Hanchett (SOAH Docket #510-21-0627).
7. Report of agreed orders executed by the Council's Executive Director, including 1072-16-0143 RM, 1072-17-0027 TO, 1072-17-0062 SD, 1072-17-0140 PS, 1072-18-0032 LP, 1072-19-0079 TR, 1072-19-0083 TG, 1072-20-0003 SB, and 2021-00237 MPS.
8. Report of cases dismissed by the Council's Executive Director.
9. Status report of quarterly enforcement case activities.
10. Report of compliance with agreed orders.
11. Report from Committee Chairs:
 - A. Report from Ethics Committee Chair Mr. Brumley.
 - B. Report from Licensing Standards and Qualification Committee Chair Ms. Mosier.
 - C. Report from Professional Development Committee Chair Mr. Brumley.
 - D. Report from Rules Committee Chair Ms. Mosier.
12. Discussion and possible action regarding jurisprudence exam:
 - A. Board review and possible action concerning the quarterly summary from the Texas State Board of Social Worker Examiners' Jurisprudence Exam vendor.
 - B. Discussion and possible action related to changes in the Board's Jurisprudence Exam.
13. Discussion and possible action regarding recommendation to the Texas Behavioral Health Executive Council concerning amendment to 22 Texas Administrative Code (22 TAC)
 - A. §781.206, concerning *Board Minutes* to align with operations if Board chooses to post recording of meetings instead of creating and posting meeting minutes;
 - B. §781.401 concerning *Qualifications for Licensure* to implement Board policy that at least one site must provide a minimum of four hours per week in which the LMSW delivers assessment, diagnosis, and treatment; to remove redundant text that requires supervised experience to occur no earlier than five years before date application for LCSW is received [see §781.406(c)(3)]; and to remove text concerning requirements for Licensed Master Social Worker-Advanced Practitioner (LMSW-AP);
 - C. §781.404, concerning *Recognition as a Council-approved Supervisor and the Supervision Process* to clarify minimum requirement for supervision hours; to delete sentence defining "month"; and to remove certain references to requirements for LMSW-AP;
 - D. §781.406(c)(3), regarding *Required Documentation of Qualifications for Licensure* to ease reinstatement application requirements such that supervised experience must have occurred within the five calendar years immediately preceding the date of an initial or upgrade application; and

- E. §781.412(b) and (c), concerning *Examination Requirement*, to align with recent operational changes that moved pre-authorization process to register for exam from the Council to ASWB, and with the Council's §882.6 *Limitation on Number of Examination Attempts*. The rule change also allows staff to accept an applicant's ASWB national examination score that is dated no more than two years before the date the initial or upgrade application is received.
- 14. Discussion and possible action concerning "safe-harbor" forms:
 - A. Clinical Supervision Plan and
 - B. Non-Clinical Supervision Plan for Independent Practice Recognition form
- 15. Discussion and possible action regarding news reports of migrant children held at the border.
- 16. Report from the Board Chair concerning current challenges and accomplishments; lawsuits; interaction with stakeholders, state officials, and staff; committee appointments and functions; workload of Board members; conferences; and general information regarding the routine functioning of the Board.
- 17. Report from the Board's Delegates to the Texas Behavioral Health Executive Council regarding the activities of the Executive Council.
- 18. Discussion and possible action regarding Attorney General opinion regarding Council's authority to adopt rules to impose disciplinary action for certain discriminatory conduct by licensees.
- 19. Report from the Board Administrator concerning operations, organization, and staffing; workload processing and statistical information; status of rulemaking; customer service accomplishments, inquiries, and challenges; media, legislative, and stakeholder contacts and concerns; special projects; and general information regarding the routine functioning of the program.
- 20. Discussion and possible action regarding future priorities and activities of the Board.
- 21. Public Comment.
- 22. Announcements and comments not requiring Board action, such as statements regarding conferences and other recent or upcoming events.
- 23. Adjournment.

This meeting is open to the public. No reservations are required and there is no cost to attend this meeting.

CONTACT: Sarah Faszholz, Board Administrator
Texas State Board of Social Worker Examiners
general@bhec.texas.gov

Agenda Item 3. Discussion and possible action concerning preparation and maintenance of meeting minutes or recording of each open meeting per Texas Government Code, §§551.021 and 551.022 (See Excerpt).

On March 5, 2021, the SW Board voted to table this matter until its next quarterly meeting when additional information would be available. Council and other boards' actions include:

- Jan 22, 2021, MFT Board voted to record with transcript and create minutes
- Feb 11, 2021, Psy Board voted to record its meetings
- May 4, 2021, BHEC voted to record its meetings
- May 7, 2021, LPC Board voted, but rule change required before staff can transition

BHEC rules, found in Title 22 of the Texas Administrative Code (22 TAC), include but may not be limited to:

§881.5 Conflicts of Interest and Recusals

(a) ... Any conflict disclosed by a board member shall be entered in the minutes or certified agenda of the meeting.

(b) ... Any conflict shall be entered in any minutes or notes kept by the committee, panel, or workgroup.

(c) ... A Council or board member who is disqualified under this subsection shall be recused from any voting or discussions on the matter, and the recusal shall be entered in the minutes or certified agenda of the meeting.

SW rules, found in Title 22 of the Texas Administrative Code, include but may not be limited to:

§781.206 Board Minutes

(a) The minutes of a board meeting are official only when affixed with the original signature of the chairperson.

(b) Drafts of the meeting minutes shall be forwarded to each board member for review and comments or corrections prior to the board's approval.

(c) The official board meeting minutes shall be posted on the publicly-accessible board website.

X. Records of Meetings

A. Minutes or Recordings of Open Meeting

Section 551.021 of the Government Code provides as follows:

- (a) A governmental body shall prepare and keep minutes or make a recording of each open meeting of the body.
- (b) The minutes must:
 - (1) state the subject of each deliberation; and
 - (2) indicate each vote, order, decision, or other action taken.⁴³⁰

Section 551.022 of the Government Code provides:

The minutes and recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee.⁴³¹

If minutes are kept instead of a recording, the minutes should record every action taken by the governmental body.⁴³² If open sessions of a commissioners court meeting are recorded, the recordings are available to the public under the Public Information Act.⁴³³ (For a discussion of record retention laws, refer to Part XII.F of this *Handbook*).

In 2019, the 86th Legislature added a special posting provision applicable to special purpose districts subject to chapters 51, 53, 54, or 55 of the Water Code with populations of 500 or more.⁴³⁴

⁴³⁰ TEX. GOV'T CODE § 551.021; *see also* Tex. Att'y Gen. Op. No. GA-0727 (2009) at 2 (opining that Texas State Library and Archives Commission rule requiring written minutes of every open meeting of a state agency is likely invalid as inconsistent with section 551.021(a), which authorizes a governmental body to make a recording of an open meeting).

⁴³¹ TEX. GOV'T CODE § 551.022; *see York v. Tex. Guaranteed Student Loan Corp.*, 408 S.W.3d 677, 688 (Tex. App.—Austin 2013, no pet.) (concluding that exceptions in the Public Information Act do not operate to prevent public disclosure of minutes requested under section 551.022).

⁴³² *See York*, 408 S.W.3d at 687 (defining “minutes” to refer “to the record or notes of a meeting or proceeding, whatever they may contain”).

⁴³³ Tex. Att'y Gen. Op. No. JM-1143 (1990) at 2–3 (concluding that tape recording of open session of commissioners court meeting is subject to Open Records Act); *see* Tex. Att'y Gen. ORD-225 (1979) at 3 (concluding that handwritten notes of open meetings made by secretary of governmental body are subject to disclosure under Open Records Act); ORD-32 (1974) at 2 (concluding that audio tape recording of open meeting of state licensing agency used as aid in preparation of accurate minutes is subject to disclosure under Open Records Act).

⁴³⁴ *See* Act of May 10, 2019, 86th Leg., R.S., ch. 105, § 2, 2019 Tex. Sess. Law Serv. 176, 177 (to be codified at TEX. GOV'T CODE § 551.1283).

COMPLAINT NO. 1072-16-0143

IN THE MATTER OF

RAVIN MCCALLUM

§ BEFORE THE TEXAS BEHAVIORAL
§ HEALTH EXECUTIVE COUNCIL
§
§ THE TEXAS STATE BOARD
§ OF SOCIAL WORKER
§ EXAMINERS

AGREED ORDER

Pursuant to the authority under §507.305 of the Texas Occupations Code, §2001.056 of the Government Code, and 22 Texas Administrative Code §884.12(e), the Executive Director for the Texas Behavioral Health Executive Council ("Council") hereby approves, ratifies, and enters this Agreed Order with the following Findings of Fact, Conclusions of Law, and Order of the Council, which have been approved and accepted by **Ravin McCallum** ("Respondent") and which constitutes a full settlement and compromise of the complaint(s) currently pending against Respondent before the Council in the above-referenced and numbered matter(s).

FINDINGS OF FACT

1. Respondent is licensed as a Licensed Master Social Worker (#57861) in the State of Texas and is, therefore, subject to the jurisdiction of the Council.
2. Respondent failed to maintain professional boundaries and entered into a dual relationship.

CONCLUSIONS OF LAW

1. Respondent voluntarily received a license from the Council and, therefore, is bound by the provisions of Chapters 505 and 507 of the Texas Occupations Code and the Rules of the Council, 22 Texas Administrative Code Parts 34 and 41.
2. Violation of the Council's Rules is unprofessional conduct and constitutes grounds for the imposition of sanctions under §§ 505.451, 507.301, and 507.351 of the Texas Occupations Code.
3. Based on the above Findings of Fact, the Council finds that Respondent violated Council Rules 22 Tex. Admin. Code §§ 781.201(a)(3), (8) and 781.204(d), (e), (j), (l).
4. This Agreed Order is a Settlement Agreement under the Texas Rules of Evidence and is not admissible for the purposes of civil litigation. By entering into this Agreed Order, Respondent does not admit the foregoing Findings of Fact or Conclusions of Law, but agrees to resolve this matter to avoid the expense and uncertainty of further proceedings.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Respondent's license is SUSPENDED for a period of one (1) year from the effective date of this order. However, the one (1) year of suspension shall be PROBATED, so long as Respondent complies with all state and federal statutes and regulations pertaining to the practice of Social Work. Although the probated suspension ordered herein will result in Respondent's license being restricted, Respondent shall take all steps necessary to renew and maintain Respondent's license while this order is in effect.
2. Respondent shall be required to practice under the supervision of a practice monitor for a period of one (1) year from the date this order is ratified. Respondent shall, within fourteen (14) days of the date this order is ratified, submit to the Council or its designee for approval the name and qualifications of a Social Worker who has agreed to serve as a practice monitor. The practice monitor shall (1) be a Texas-licensed social worker that is a council approved supervisor with no record of disciplinary history; (2) have no business, professional, personal, or other relationship with Respondent that would interfere with the practice monitor's function or duties; and (3) possess specialized knowledge, education and experience in the same field of practice as that of Respondent.

Once approved, the practice monitor shall submit to the Council or its designee a monitoring contract and plan by which Respondent's practice shall be monitored for compliance with ethical and legal practice standards, as well as the terms of this Order. Monitoring shall consist of at least one (1) hour of individual face-to-face meetings every quarter. The Respondent shall provide the practice monitor with a copy of this Order and access to Respondent's records. Respondent shall execute a release authorizing the practice monitor to divulge any information the Council or its designee may request.

It shall be Respondent's responsibility to assure the practice monitor submits written reports to the Council or its designee on a quarterly basis verifying that monitoring has taken place and providing an evaluation of Respondent's performance. At the Council's discretion, if any of these reports provides sufficient concern, the Council may impose further monitoring requirements and/or take other appropriate actions to ensure the safety of the public.

In the event Respondent's monitor indicates that Respondent is fit to practice Social Work, but makes recommendations concerning reasonable steps Respondent must or should take to enhance or maintain Respondent's fitness to practice Social Work, Respondent shall comply with any and all recommendations made by Respondent's monitor. If Respondent refuses or fails to follow the recommendations, Respondent agrees that Respondent's license shall be SUSPENDED, without further hearings, informal settlement procedures, or any right of appeal for judicial review; pending further review of Respondent by the Council, or its designee.

If the monitor concludes there is sufficient concern or need to impose further requirements, restrictions, and/or take other appropriate actions to ensure the safety of the public the Council, or its designee, may do so at its own discretion. In the event Respondent refuses or fails to follow the additional requirements or restrictions imposed by the Council, or its designee, Respondent agrees that Respondent's license shall be SUSPENDED, without further hearings, informal settlement procedures, or any right of appeal for judicial review; pending further review of Respondent by the Council, or its designee.

If the practice monitor cannot continue the monitoring engagement, Respondent shall get approval from the Council or its designee for a new practice monitor. If no new practice monitor is approved, Respondent shall not practice until a new practice monitor has been approved. Respondent shall pay all costs associated with this practice monitoring requirement. RESPONDENT AGREES THAT ANY FAILURE TO COMPLY WITH THE PRACTICE MONITORING REQUIREMENTS SHALL CONSTITUTE IMMEDIATE GROUNDS FOR REVOCATION OF RESPONDENT'S LICENSE.

WARNING


RESPONDENT'S FAILURE TO COMPLY WITH ONE OR MORE TERMS OF THIS ORDER MAY CONSTITUTE A VIOLATION OF 22 TEXAS ADMINISTRATIVE CODE §884.55 REQUIRING FURTHER DISCIPLINARY ACTION.

WAIVERS

On the underlying investigative file, Respondent has waived his or her right to an informal settlement conference, a formal hearing before an Administrative Law Judge at the State Office of Administrative Hearings (SOAH), and judicial review pursuant to Texas Government Code Chapter 2001, in exchange for the conditions set out in this Agreed Order.


THE RESPONDENT, BY SIGNING THIS ORDER, AGREES TO ITS TERMS, ACKNOWLEDGES UNDERSTANDING OF THE FORMAL NOTICES, FINDINGS OF FACT, AND CONCLUSIONS OF LAW SET FORTH HEREIN AND COVENANTS TO SATISFACTORILY COMPLY WITH THE MANDATES OF THIS ORDER IN A TIMELY MANNER. RESPONDENT FURTHER ACKNOWLEDGES AND AGREES THAT HE OR SHE HAS AGREED TO THIS ORDER UPON THE ADVICE AND CONSENT OF COUNSEL, OR THAT HE OR SHE HAS HAD THE OPPORTUNITY TO HAVE THIS ORDER REVIEWED BY COUNSEL OF HIS OR HER CHOICE.

FOR THE RESPONDENT:


Ravin McCallum
License# 57861

DATE SIGNED: 12/15/2020

FOR THE STAFF OF THE COUNCIL:


Andrew Hurt
Texas Bar No. 24091699
Staff Attorney
Texas Behavioral Health Executive Council
333 Guadalupe, Ste. 3-900
Austin, Texas 78701

DATE SIGNED: 3/12/21

APPROVED, RATIFIED, AND ENTERED THIS 17th DAY OF March, 2021.


Darrel Spinks
Executive Director
Texas Behavioral Health Executive Council

COMPLAINT NO. 1072-17-0027

IN THE MATTER OF

TARA O'CONNELL

§ **BEFORE THE TEXAS BEHAVIORAL**
§ **HEALTH EXECUTIVE COUNCIL**
§
§ **THE TEXAS STATE BOARD**
§ **OF EXAMINERS OF**
§ **SOCIAL WORKERS**

AGREED ORDER

Pursuant to the authority under §507.305 of the Texas Occupations Code, §2001.056 of the Government Code, and 22 Texas Administrative Code §884.12(e), the Executive Director for the Texas Behavioral Health Executive Council ("Council") hereby approves, ratifies, and enters this Agreed Order with the following Findings of Fact, Conclusions of Law, and Order of the Council, which have been approved and accepted by **TARA O'CONNELL** ("Respondent") and which constitutes a full settlement and compromise of the complaint(s) currently pending against Respondent before the Council in the above-referenced and numbered matter(s).

FINDINGS OF FACT

1. Respondent is licensed as a Social Worker (#41945) in the State of Texas and is, therefore, subject to the jurisdiction of the Council.
2. Respondent ended communications with a dissatisfied client without providing proper referrals to qualified individuals for further treatment.
3. Respondent failed to maintain complete and accurate records.
4. Respondent negotiated fees for services during phone conversations, emails, and text messages.

CONCLUSIONS OF LAW

1. Respondent voluntarily received a license from the Council and, therefore, is bound by the provisions of Chapters 505 and 507 of the Texas Occupations Code and the Rules of the Council, 22 Texas Administrative Code Parts 34 and 41.
2. Violation of the Council's Rules is unprofessional conduct and constitutes grounds for the imposition of sanctions under §§505.451, 507.301, and 507.351 of the Texas Occupations Code.
3. Based on the above Findings of Fact, the Council finds that Respondent violated Council Rules 781.201 (a)(13), 781.201(6), 781.204(a) and (f), and 781.209 (1) and (5).

4. This Agreed Order is a Settlement Agreement under the Texas Rules of Evidence and is not admissible for the purposes of civil litigation. By entering into this Agreed Order, Respondent does not admit the foregoing Findings of Fact or Conclusions of Law, but agrees to resolve this matter to avoid the expense and uncertainty of further proceedings.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Respondent's license is hereby REPRIMANDED.

WARNING


RESPONDENT'S FAILURE TO COMPLY WITH ONE OR MORE TERMS OF THIS ORDER MAY CONSTITUTE A VIOLATION OF 22 TEXAS ADMINISTRATIVE CODE §884.55 REQUIRING FURTHER DISCIPLINARY ACTION.

WAIVERS


On the underlying investigative file, Respondent has waived his or her right to an informal settlement conference, a formal hearing before an Administrative Law Judge at the State Office of Administrative Hearings (SOAH), and judicial review pursuant to Texas Government Code Chapter 2001, in exchange for the conditions set out in this Agreed Order.

THE RESPONDENT, BY SIGNING THIS ORDER, AGREES TO ITS TERMS, ACKNOWLEDGES UNDERSTANDING OF THE FORMAL NOTICES, FINDINGS OF FACT, AND CONCLUSIONS OF LAW SET FORTH HEREIN AND COVENANTS TO SATISFACTORILY COMPLY WITH THE MANDATES OF THIS ORDER IN A TIMELY MANNER. RESPONDENT FURTHER ACKNOWLEDGES AND AGREES THAT HE OR SHE HAS AGREED TO THIS ORDER UPON THE ADVICE AND CONSENT OF COUNSEL, OR THAT HE OR SHE HAS HAD THE OPPORTUNITY TO HAVE THIS ORDER REVIEWED BY COUNSEL OF HIS OR HER CHOICE.

FOR THE RESPONDENT:


TARA O'CONNELL

FOR THE STAFF OF THE COUNCIL:


JOHN MARSHALL BRIDGES


Social Worker
License #41945

Texas Bar No. 24006898
Staff Attorney
Texas Behavioral Health Executive Council
333 Guadalupe, Ste. 3-900
Austin, Texas 78701

DATE SIGNED: May 6, 2021

DATE SIGNED: May 6/2021

APPROVED, RATIFIED, AND ENTERED THIS 6th DAY OF May, 2021.



Darrel Spinks
Executive Director
Texas Behavioral Health Executive Council

COMPLAINT NO. 1072-17-0062

IN THE MATTER OF

STEPHANIE DEWOLFE

§
§
§
§
§
§

BEFORE THE TEXAS BEHAVIORAL
HEALTH EXECUTIVE COUNCIL

THE TEXAS STATE BOARD
OF SOCIAL WORKER
EXAMINERS

AGREED ORDER

Pursuant to the authority under §507.305 of the Texas Occupations Code, §2001.056 of the Government Code, and 22 Texas Administrative Code §884.12(e), the Executive Director for the Texas Behavioral Health Executive Council ("Council") hereby approves, ratifies, and enters this Agreed Order with the following Findings of Fact, Conclusions of Law, and Order of the Council, which have been approved and accepted by **Stephanie DeWolfe** ("Respondent") and which constitutes a full settlement and compromise of the complaint(s) currently pending against Respondent before the Council in the above-referenced and numbered matter(s).

FINDINGS OF FACT

1. Respondent is licensed as a Licensed Clinical Social Worker (#26990) in the State of Texas and is, therefore, subject to the jurisdiction of the Council.
2. On or about January 21, 2011, Respondent failed to include a fee schedule when family therapy services commenced.
3. On or about February 11, 2011, Respondent failed to obtain consent to therapy signed by the client when services commenced.
4. On or about May 16, 2018, Respondent failed to facilitate the transfer of the client by providing the name and contact information of three referrals when services were terminated.

CONCLUSIONS OF LAW

1. Respondent voluntarily received a license from the Council and, therefore, is bound by the provisions of Chapters 505 and 507 of the Texas Occupations Code and the Rules of the Council, 22 Texas Administrative Code Parts 34 and 41.
2. Violation of the Council's Rules is unprofessional conduct and constitutes grounds for the imposition of sanctions under §§ 505.451, 507.301, and 507.351 of the Texas Occupations Code.

3. Based on the above Findings of Fact, the Council finds that Respondent violated Council Rules 22 Tex. Admin. Code §§ 781.203(2), (7), (9).
4. This Agreed Order is a Settlement Agreement under the Texas Rules of Evidence and is not admissible for the purposes of civil litigation. By entering into this Agreed Order, Respondent does not admit the foregoing Findings of Fact or Conclusions of Law, but agrees to resolve this matter to avoid the expense and uncertainty of further proceedings.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Respondent's license is hereby REPRIMANDED.
2. Respondent SHALL complete the Jurisprudence exam and submit a certificate of completion to the Board within six (6) months of the date this order is ratified.

WARNING


RESPONDENT'S FAILURE TO COMPLY WITH ONE OR MORE TERMS OF THIS ORDER MAY CONSTITUTE A VIOLATION OF 22 TEXAS ADMINISTRATIVE CODE §884.55 REQUIRING FURTHER DISCIPLINARY ACTION.

WAIVERS

On the underlying investigative file, Respondent has waived his or her right to an informal settlement conference, a formal hearing before an Administrative Law Judge at the State Office of Administrative Hearings (SOAH), and judicial review pursuant to Texas Government Code Chapter 2001, in exchange for the conditions set out in this Agreed Order.


THE RESPONDENT, BY SIGNING THIS ORDER, AGREES TO ITS TERMS, ACKNOWLEDGES UNDERSTANDING OF THE FORMAL NOTICES, FINDINGS OF FACT, AND CONCLUSIONS OF LAW SET FORTH HEREIN AND COVENANTS TO SATISFACTORILY COMPLY WITH THE MANDATES OF THIS ORDER IN A TIMELY MANNER. RESPONDENT FURTHER ACKNOWLEDGES AND AGREES THAT HE OR SHE HAS AGREED TO THIS ORDER UPON THE ADVICE AND CONSENT OF COUNSEL, OR THAT HE OR SHE HAS HAD THE OPPORTUNITY TO HAVE THIS ORDER REVIEWED BY COUNSEL OF HIS OR HER CHOICE.

FOR THE RESPONDENT:


Stephanie DeWolfe
LCSW# 26990


DATE SIGNED: 04/13/2021

FOR THE STAFF OF THE COUNCIL:


Andrew Hurt
Texas Bar No. 24091699
Staff Attorney
Texas Behavioral Health Executive Council
333 Guadalupe, Ste. 3-900
Austin, Texas 78701

DATE SIGNED: 4/14/21

APPROVED, RATIFIED, AND ENTERED THIS 15th DAY OF April, 2021.


Darrel Spinks
Executive Director
Texas Behavioral Health Executive Council

COMPLAINT NO. 1072-17-0140

IN THE MATTER OF

PAMELA SCHOTT

§ BEFORE THE TEXAS BEHAVIORAL
§ HEALTH EXECUTIVE COUNCIL
§
§ THE TEXAS STATE BOARD
§ OF SOCIAL WORKER
§ EXAMINERS

AGREED ORDER

Pursuant to the authority under §507.305 of the Texas Occupations Code, §2001.056 of the Government Code, and 22 Texas Administrative Code §884.12(e), the Executive Director for the Texas Behavioral Health Executive Council ("Council") hereby approves, ratifies, and enters this Agreed Order with the following Findings of Fact, Conclusions of Law, and Order of the Council, which have been approved and accepted by **Pamela Schott** ("Respondent") and which constitutes a full settlement and compromise of the complaint(s) currently pending against Respondent before the Council in the above-referenced and numbered matter(s).

FINDINGS OF FACT

1. Respondent is licensed as a Licensed Clinical Social Worker (#09817) in the State of Texas and is, therefore, subject to the jurisdiction of the Council.
2. On or about July 28, 2017, Respondent failed to provide a referral when further services were indicated.

CONCLUSIONS OF LAW

1. Respondent voluntarily received a license from the Council and, therefore, is bound by the provisions of Chapters 505 and 507 of the Texas Occupations Code and the Rules of the Council, 22 Texas Administrative Code Parts 34 and 41.
2. Violation of the Council's Rules is unprofessional conduct and constitutes grounds for the imposition of sanctions under §§ 505.451, 507.301, and 507.351 of the Texas Occupations Code.
3. Based on the above Findings of Fact, the Council finds that Respondent violated Council Rules 11 Tex. Admin. Code § 781.203(2) (now at 781.303(2)).
4. This Agreed Order is a Settlement Agreement under the Texas Rules of Evidence and is not admissible for the purposes of civil litigation. By entering into this Agreed Order, Respondent does not admit the foregoing Findings of Fact or Conclusions of Law, but agrees to resolve this matter to avoid the expense and uncertainty of further proceedings.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Respondent's license is hereby REPRIMANDED.
2. Respondent, within sixty (60) days of the date this order is ratified, shall complete and submit proof of completion of three (3) hours of professional development relating to professional ethics. This professional development is in addition to the professional development hours required for license renewal. Respondent will pay all costs of the coursework.

WARNING

RESPONDENT'S FAILURE TO COMPLY WITH ONE OR MORE TERMS OF THIS ORDER MAY CONSTITUTE A VIOLATION OF 22 TEXAS ADMINISTRATIVE CODE §884.55 REQUIRING FURTHER DISCIPLINARY ACTION.

WAIVERS

On the underlying investigative file, Respondent has waived his or her right to an informal settlement conference, a formal hearing before an Administrative Law Judge at the State Office of Administrative Hearings (SOAH), and judicial review pursuant to Texas Government Code Chapter 2001, in exchange for the conditions set out in this Agreed Order.

THE RESPONDENT, BY SIGNING THIS ORDER, AGREES TO ITS TERMS, ACKNOWLEDGES UNDERSTANDING OF THE FORMAL NOTICES, FINDINGS OF FACT, AND CONCLUSIONS OF LAW SET FORTH HEREIN AND COVENANTS TO SATISFACTORILY COMPLY WITH THE MANDATES OF THIS ORDER IN A TIMELY MANNER. RESPONDENT FURTHER ACKNOWLEDGES AND AGREES THAT HE OR SHE HAS AGREED TO THIS ORDER UPON THE ADVICE AND CONSENT OF COUNSEL, OR THAT HE OR SHE HAS HAD THE OPPORTUNITY TO HAVE THIS ORDER REVIEWED BY COUNSEL OF HIS OR HER CHOICE.

FOR THE RESPONDENT:

Pamela Schott, LCSW-S, SEP.
Pamela Schott
LCSW# 09817

DATE SIGNED: 4/27/2021

FOR THE STAFF OF THE COUNCIL:

Andrew Hurt
Andrew Hurt
Texas Bar No. 24091699
Staff Attorney
Texas Behavioral Health Executive Council
333 Guadalupe, Ste. 3-900
Austin, Texas 78701

DATE SIGNED: 5/5/21

APPROVED, RATIFIED, AND ENTERED THIS 5th DAY OF May, 2021.

Darrel Spinks
Darrel Spinks
Executive Director
Texas Behavioral Health Executive Council

COMPLAINT NO. 1072-18-0032

IN THE MATTER OF

**LINDA PEREZ, LCSW
LICENSE# 22314**

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**BEFORE THE TEXAS BEHAVIORAL
HEALTH EXECUTIVE COUNCIL**

**THE TEXAS STATE BOARD
OF SOCIAL WORKER
EXAMINERS**

AGREED ORDER

Pursuant to the authority under §507.305 of the Texas Occupations Code, §2001.056 of the Government Code, and 22 Texas Administrative Code §884.12(e), the Executive Director for the Texas Behavioral Health Executive Council ("Council") hereby approves, ratifies, and enters this Agreed Order with the following Findings of Fact, Conclusions of Law, and Order of the Council, which have been approved and accepted by Linda Perez ("Respondent") and which constitutes a full settlement and compromise of the complaint(s) currently pending against Respondent before the Council in the above-referenced and numbered matter(s).

FINDINGS OF FACT

1. Respondent is licensed as a Licensed Clinical Social Worker (#22314) in the State of Texas and is, therefore, subject to the jurisdiction of the Council.
2. On or about October 25, 2017, Respondent falsified a Medicaid Title XIX form to obtain durable medical equipment for a discharging pediatric patient by forging the signature of the patient's physician.

CONCLUSIONS OF LAW

1. Respondent voluntarily received a license from the Council and, therefore, is bound by the provisions of Chapters 505 and 507 of the Texas Occupations Code and the Rules of the Council, 22 Texas Administrative Code Parts 34 and 41.
2. Violation of the Council's Rules is unprofessional conduct and constitutes grounds for the imposition of sanctions under §§505.451, 507.301, and 507.351 of the Texas Occupations Code.
3. Based on the above Findings of Fact, the Council finds that Respondent violated Council Rules 22 Tex. Admin Code §§ 781.201(a), 781.210(c), 781.409(a), 781.602(a)(1); and Texas Penal Code §37.10(1), (2), and (5).
4. This Agreed Order is a Settlement Agreement under the Texas Rules of Evidence and is

not admissible for the purposes of civil litigation. By entering into this Agreed Order, Respondent does not admit the foregoing Findings of Fact or Conclusions of Law, but agrees to resolve this matter to avoid the expense and uncertainty of further proceedings.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Respondent's license is SUSPENDED for a period of two (2) years from the effective date of this order. However, the two (2) years of suspension shall be PROBATED, so long as Respondent complies with all state and federal statutes and regulations pertaining to the practice of Social Work. Although the probated suspension ordered herein will result in Respondent's license being restricted, Respondent shall take all steps necessary to renew and maintain Respondent's license while this order is in effect.
2. Respondent, within twelve (12) months of the date this order is ratified, shall complete and submit proof of completion of six (6) hours of professional development relating to professional ethics and six (6) hours of professional development relating to billing. This professional development is in addition to the professional development hours required for license renewal. Respondent will pay all costs of the coursework.

WARNING

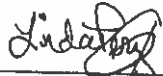
RESPONDENT'S FAILURE TO COMPLY WITH ONE OR MORE TERMS OF THIS ORDER MAY CONSTITUTE A VIOLATION OF 22 TEXAS ADMINISTRATIVE CODE §884.55 REQUIRING FURTHER DISCIPLINARY ACTION.

WAIVERS

On the underlying investigative file, Respondent has waived his or her right to an informal settlement conference, a formal hearing before an Administrative Law Judge at the State Office of Administrative Hearings (SOAH), and judicial review pursuant to Texas Government Code Chapter 2001, in exchange for the conditions set out in this Agreed Order.

THE RESPONDENT, BY SIGNING THIS ORDER, AGREES TO ITS TERMS, ACKNOWLEDGES UNDERSTANDING OF THE FORMAL NOTICES, FINDINGS OF FACT, AND CONCLUSIONS OF LAW SET FORTH HEREIN AND COVENANTS TO SATISFACTORILY COMPLY WITH THE MANDATES OF THIS ORDER IN A TIMELY MANNER. RESPONDENT FURTHER ACKNOWLEDGES AND AGREES THAT HE OR SHE HAS AGREED TO THIS ORDER UPON THE ADVICE AND CONSENT OF COUNSEL, OR THAT HE OR SHE HAS HAD THE OPPORTUNITY TO HAVE THIS ORDER REVIEWED BY COUNSEL OF HIS OR HER CHOICE.

FOR THE RESPONDENT:



Linda Perez
Licensed Clinical Social Worker
License #22314

DATE SIGNED: 11/16/2020

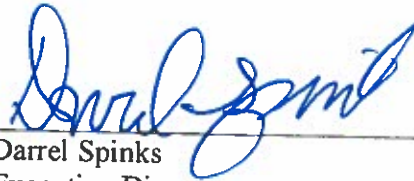
FOR THE STAFF OF THE COUNCIL:



Andrew Hurt
Texas Bar No. 24091699
Staff Attorney
Texas Behavioral Health Executive Council
333 Guadalupe, Ste. 3-900
Austin, Texas 78701

DATE SIGNED: 3/22/2021

APPROVED, RATIFIED, AND ENTERED THIS 23rd DAY OF MARCH, 2021.



Darrel Spinks
Executive Director
Texas Behavioral Health Executive Council

COMPLAINT NO. 1072-19-0079

IN THE MATTER OF

TASCHA REESE

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BEFORE THE TEXAS BEHAVIORAL
HEALTH EXECUTIVE COUNCIL

THE TEXAS STATE BOARD
OF SOCIAL WORKER
EXAMINERS

AGREED ORDER

Pursuant to the authority under §507.305 of the Texas Occupations Code, §2001.056 of the Government Code, and 22 Texas Administrative Code §884.12(e), the Executive Director for the Texas Behavioral Health Executive Council ("Council") hereby approves, ratifies, and enters this Agreed Order with the following Findings of Fact, Conclusions of Law, and Order of the Council, which have been approved and accepted by **Tascha Reese** ("Respondent") and which constitutes a full settlement and compromise of the complaint(s) currently pending against Respondent before the Council in the above-referenced and numbered matter(s).

FINDINGS OF FACT

1. Respondent is licensed as a Licensed Clinical Social Worker (# 25108) in the State of Texas and is, therefore, subject to the jurisdiction of the Council.
2. Respondent was arrested for Driving While Intoxicated on October 18, 2018 and November 2, 2018 and notified the Board within thirty (30) days.
3. Respondent failed to provide written notice to the Board of a conviction for Driving While Intoxicated on July 24, 2019 within thirty (30) days.

CONCLUSIONS OF LAW

1. Respondent voluntarily received a license from the Council and, therefore, is bound by the provisions of Chapters 505 and 507 of the Texas Occupations Code and the Rules of the Council, 22 Texas Administrative Code Parts 34 and 41.
2. Violation of the Council's Rules is unprofessional conduct and constitutes grounds for the imposition of sanctions under §§ 505.451, 507.301, and 507.351 of the Texas Occupations Code.
3. Based on the above Findings of Fact, the Council finds that Respondent violated Council Rules 22 Tex. Admin. Code § 781.301(10), 884.32(a)(1).
4. This Agreed Order is a Settlement Agreement under the Texas Rules of Evidence and is

not admissible for the purposes of civil litigation. By entering into this Agreed Order, Respondent does not admit the foregoing Findings of Fact or Conclusions of Law, but agrees to resolve this matter to avoid the expense and uncertainty of further proceedings.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Respondent's license is SUSPENDED for a period of six (6) months from the effective date of this order. However, the six (6) months of suspension shall be PROBATED, so long as Respondent complies with all state and federal statutes and regulations pertaining to the practice of Social Work. Although the probated suspension ordered herein will result in Respondent's license being restricted, Respondent shall take all steps necessary to renew and maintain Respondent's license while this order is in effect.
2. Respondent shall enter a substance abuse treatment program approved by Council, or its designee. Respondent shall attend treatment program meetings five (5) days per week for six (6) months. Respondent shall submit proof of attendance to the Council as evidenced by meeting leader signing an attendance sheet for Respondent. The attendance sheet shall be submitted to the Council, or its designee, upon completion of the program. Respondent shall complete this treatment program and submit all required documentation within six (6) months of the ratification of this order.

WARNING

RESPONDENT'S FAILURE TO COMPLY WITH ONE OR MORE TERMS OF THIS ORDER MAY CONSTITUTE A VIOLATION OF 22 TEXAS ADMINISTRATIVE CODE §884.55 REQUIRING FURTHER DISCIPLINARY ACTION.

WAIVERS

On the underlying investigative file, Respondent has waived his or her right to an informal settlement conference, a formal hearing before an Administrative Law Judge at the State Office of Administrative Hearings (SOAH), and judicial review pursuant to Texas Government Code Chapter 2001, in exchange for the conditions set out in this Agreed Order.

THE RESPONDENT, BY SIGNING THIS ORDER, AGREES TO ITS TERMS, ACKNOWLEDGES UNDERSTANDING OF THE FORMAL NOTICES, FINDINGS OF FACT, AND CONCLUSIONS OF LAW SET FORTH HEREIN AND COVENANTS TO SATISFACTORILY COMPLY WITH THE MANDATES OF THIS ORDER IN A TIMELY MANNER. RESPONDENT FURTHER ACKNOWLEDGES AND AGREES THAT HE OR SHE HAS AGREED TO THIS ORDER UPON THE ADVICE AND CONSENT OF COUNSEL, OR THAT HE OR SHE HAS HAD THE OPPORTUNITY TO HAVE THIS ORDER

REVIEWED BY COUNSEL OF HIS OR HER CHOICE.

FOR THE RESPONDENT:

Tascha Reese, LCSW-S

Tascha Reese
LCSW# 25108

DATE SIGNED: 4/19/2021

FOR THE STAFF OF THE COUNCIL:

Andrew Hurt

Andrew Hurt
Texas Bar No. 24091699
Staff Attorney
Texas Behavioral Health Executive Council
333 Guadalupe, Ste. 3-900
Austin, Texas 78701

DATE SIGNED: 4/19/21

APPROVED, RATIFIED, AND ENTERED THIS 29th DAY OF April, 2021.

Darrel Spinks

Darrel Spinks
Executive Director
Texas Behavioral Health Executive Council

COMPLAINT NO. 1072-19-0083

IN THE MATTER OF

TANIA GLENN
LCSW# 19557

§ BEFORE THE TEXAS BEHAVIORAL
§ HEALTH EXECUTIVE COUNCIL
§
§ THE TEXAS STATE BOARD
§ OF SOCIAL WORKER
§ EXAMINERS

AGREED ORDER

Pursuant to the authority under §507.305 of the Texas Occupations Code, §2001.056 of the Government Code, and 22 Texas Administrative Code §884.12(e), the Executive Director for the Texas Behavioral Health Executive Council ("Council") hereby approves, ratifies, and enters this Agreed Order with the following Findings of Fact, Conclusions of Law, and Order of the Council, which have been approved and accepted by **Tania Glenn** ("Respondent") and which constitutes a full settlement and compromise of the complaint(s) currently pending against Respondent before the Council in the above-referenced and numbered matter(s).

FINDINGS OF FACT

1. Respondent is licensed as a Licensed Clinical Social Worker (#19557) in the State of Texas and is, therefore, subject to the jurisdiction of the Council.
2. Respondent failed to make a written report to the Board within thirty (30) days of administrative or disciplinary action being initiated against Respondent by the Arizona Board of Behavioral Health Examiners.

CONCLUSIONS OF LAW

1. Respondent voluntarily received a license from the Council and, therefore, is bound by the provisions of Chapters 505 and 507 of the Texas Occupations Code and the Rules of the Council, 22 Texas Administrative Code Parts 34 and 41.
2. Violation of the Council's Rules is unprofessional conduct and constitutes grounds for the imposition of sanctions under §§ 505.451, 507.301, and 507.351 of the Texas Occupations Code.
3. Based on the above Findings of Fact, the Council finds that Respondent violated Council Rules 22 Tex. Admin. Code § 884.32(a)(3).
4. This Agreed Order is a Settlement Agreement under the Texas Rules of Evidence and is not admissible for the purposes of civil litigation. By entering into this Agreed Order,

Respondent does not admit the foregoing Findings of Fact or Conclusions of Law, but agrees to resolve this matter to avoid the expense and uncertainty of further proceedings.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Respondent's license is hereby REPRIMANDED.

WARNING

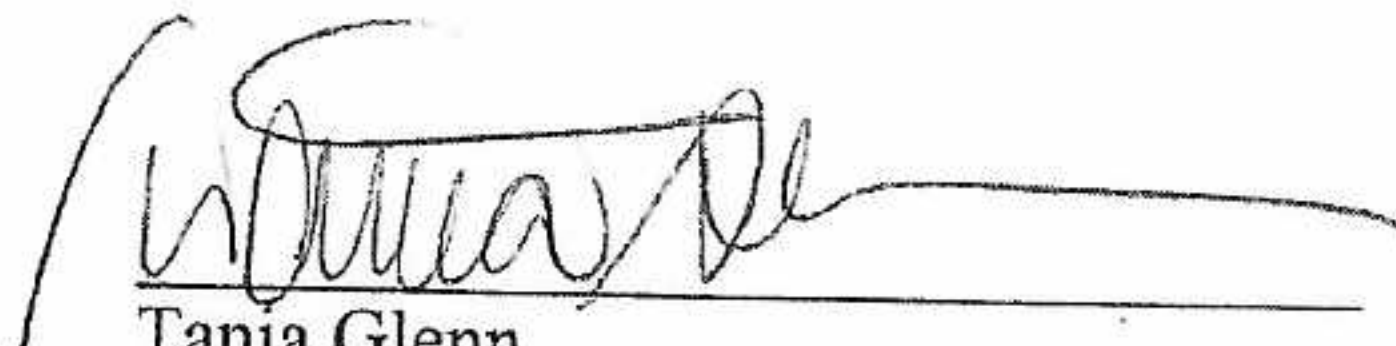
RESPONDENT'S FAILURE TO COMPLY WITH ONE OR MORE TERMS OF THIS ORDER MAY CONSTITUTE A VIOLATION OF 22 TEXAS ADMINISTRATIVE CODE §884.55 REQUIRING FURTHER DISCIPLINARY ACTION.

WAIVERS

On the underlying investigative file, Respondent has waived his or her right to an informal settlement conference, a formal hearing before an Administrative Law Judge at the State Office of Administrative Hearings (SOAH), and judicial review pursuant to Texas Government Code Chapter 2001, in exchange for the conditions set out in this Agreed Order.

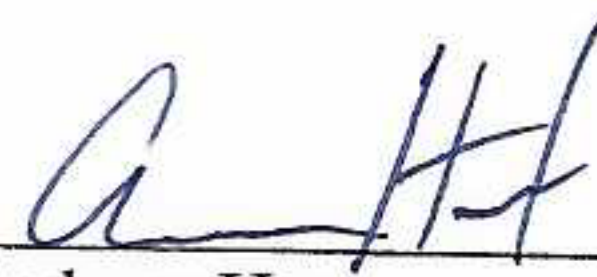
THE RESPONDENT, BY SIGNING THIS ORDER, AGREES TO ITS TERMS, ACKNOWLEDGES UNDERSTANDING OF THE FORMAL NOTICES, FINDINGS OF FACT, AND CONCLUSIONS OF LAW SET FORTH HEREIN AND COVENANTS TO SATISFACTORILY COMPLY WITH THE MANDATES OF THIS ORDER IN A TIMELY MANNER. RESPONDENT FURTHER ACKNOWLEDGES AND AGREES THAT HE OR SHE HAS AGREED TO THIS ORDER UPON THE ADVICE AND CONSENT OF COUNSEL, OR THAT HE OR SHE HAS HAD THE OPPORTUNITY TO HAVE THIS ORDER REVIEWED BY COUNSEL OF HIS OR HER CHOICE.

FOR THE RESPONDENT:


Tania Glenn
LCSW# 19557

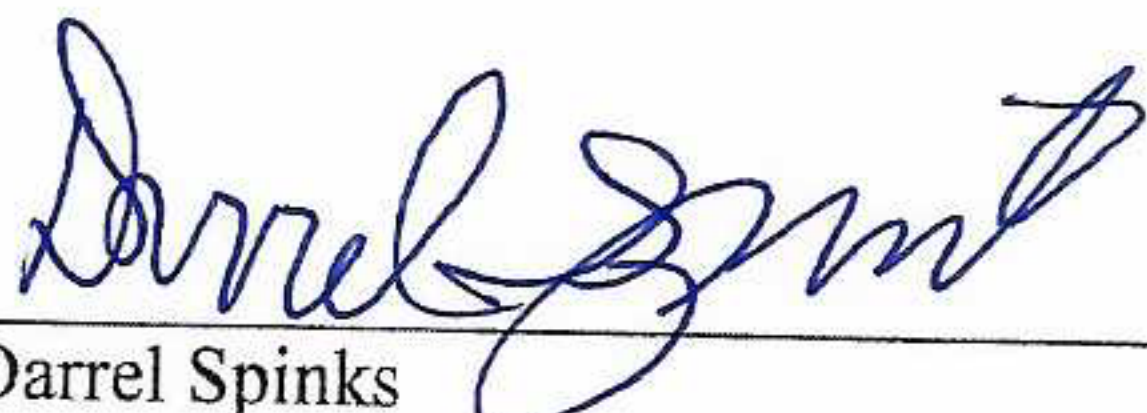
DATE SIGNED: 3/24/2021

FOR THE STAFF OF THE COUNCIL:


Andrew Hurt
Texas Bar No. 24091699
Staff Attorney
Texas Behavioral Health Executive Council
333 Guadalupe, Ste. 3-900
Austin, Texas 78701

DATE SIGNED: 4/9/21

APPROVED, RATIFIED, AND ENTERED THIS 9th DAY OF April, 2021.


Darrel Spinks
Executive Director
Texas Behavioral Health Executive Council

COMPLAINT NO. 1072-20-0003

IN THE MATTER OF

STEPHANIE BROTHERS

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BEFORE THE TEXAS BEHAVIORAL
HEALTH EXECUTIVE COUNCIL

THE TEXAS STATE BOARD
OF SOCIAL WORKER
EXAMINERS

AGREED ORDER

Pursuant to the authority under §507.305 of the Texas Occupations Code, §2001.056 of the Government Code, and 22 Texas Administrative Code §884.12(e), the Executive Director for the Texas Behavioral Health Executive Council ("Council") hereby approves, ratifies, and enters this Agreed Order with the following Findings of Fact, Conclusions of Law, and Order of the Council, which have been approved and accepted by **Stephanie Brothers** ("Respondent") and which constitutes a full settlement and compromise of the complaint(s) currently pending against Respondent before the Council in the above-referenced and numbered matter(s).

FINDINGS OF FACT

1. Respondent is licensed as a Licensed Baccalaureate Social Worker (#29950) in the State of Texas and is, therefore, subject to the jurisdiction of the Council.
2. Respondent failed to provide written notice of her arrests, convictions, or deferred adjudication for Driving While Intoxicated within thirty (30) days of November 13, 2018.

CONCLUSIONS OF LAW

1. Respondent voluntarily received a license from the Council and, therefore, is bound by the provisions of Chapters 505 and 507 of the Texas Occupations Code and the Rules of the Council, 22 Texas Administrative Code Parts 34 and 41.
2. Violation of the Council's Rules is unprofessional conduct and constitutes grounds for the imposition of sanctions under §§ 505.451, 507.301, and 507.351 of the Texas Occupations Code.
3. Based on the above Findings of Fact, the Council finds that Respondent violated Council Rules 22 Tex. Admin. Code §§ 781.416(a)(2) (now at 884.32(a)(1)).
4. This Agreed Order is a Settlement Agreement under the Texas Rules of Evidence and is not admissible for the purposes of civil litigation. By entering into this Agreed Order, Respondent does not admit the foregoing Findings of Fact or Conclusions of Law, but agrees to resolve this matter to avoid the expense and uncertainty of further proceedings.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Respondent's license is hereby REPRIMANDED.

WARNING

RESPONDENT'S FAILURE TO COMPLY WITH ONE OR MORE TERMS OF THIS ORDER MAY CONSTITUTE A VIOLATION OF 22 TEXAS ADMINISTRATIVE CODE §884.55 REQUIRING FURTHER DISCIPLINARY ACTION.

WAIVERS

On the underlying investigative file, Respondent has waived his or her right to an informal settlement conference, a formal hearing before an Administrative Law Judge at the State Office of Administrative Hearings (SOAH), and judicial review pursuant to Texas Government Code Chapter 2001, in exchange for the conditions set out in this Agreed Order.

THE RESPONDENT, BY SIGNING THIS ORDER, AGREES TO ITS TERMS, ACKNOWLEDGES UNDERSTANDING OF THE FORMAL NOTICES, FINDINGS OF FACT, AND CONCLUSIONS OF LAW SET FORTH HEREIN AND COVENANTS TO SATISFACTORILY COMPLY WITH THE MANDATES OF THIS ORDER IN A TIMELY MANNER. RESPONDENT FURTHER ACKNOWLEDGES AND AGREES THAT HE OR SHE HAS AGREED TO THIS ORDER UPON THE ADVICE AND CONSENT OF COUNSEL, OR THAT HE OR SHE HAS HAD THE OPPORTUNITY TO HAVE THIS ORDER REVIEWED BY COUNSEL OF HIS OR HER CHOICE.

FOR THE RESPONDENT:



Stephanie Brothers
LBSW# 29950

DATE SIGNED: 4/15/21

FOR THE STAFF OF THE COUNCIL:



Andrew Hurt
Texas Bar No. 24091699
Staff Attorney
Texas Behavioral Health Executive Council
333 Guadalupe, Ste. 3-900
Austin, Texas 78701

DATE SIGNED: 4/16/21

APPROVED, RATIFIED, AND ENTERED THIS 16th DAY OF April, 2021.



Darrel Spinks
Executive Director
Texas Behavioral Health Executive Council

COMPLAINT NO. 2021-00237

IN THE MATTER OF

MICHELE PARKER-SCHAUER
LCSW# 61754

§ **BEFORE THE TEXAS BEHAVIORAL**
§ **HEALTH EXECUTIVE COUNCIL**
§
§ **THE TEXAS STATE BOARD**
§ **OF SOCIAL WORKER**
§ **EXAMINERS**

AGREED ORDER

Pursuant to the authority under §507.305 of the Texas Occupations Code, §2001.056 of the Government Code, and 22 Texas Administrative Code §884.12(e), the Executive Director for the Texas Behavioral Health Executive Council ("Council") hereby approves, ratifies, and enters this Agreed Order with the following Findings of Fact, Conclusions of Law, and Order of the Council, which have been approved and accepted by **Michele Parker-Schauer** ("Respondent") and which constitutes a full settlement and compromise of the complaint(s) currently pending against Respondent before the Council in the above-referenced and numbered matter(s).

FINDINGS OF FACT

1. Respondent is licensed as a Licensed Clinical Social Worker (#61754) in the State of Texas and is, therefore, subject to the jurisdiction of the Council.
2. On or about February 11, 2021, Respondent experienced a mental health emergency that resulted in Respondent being hospitalized and receiving inpatient mental health treatment.

CONCLUSIONS OF LAW

1. Respondent voluntarily received a license from the Council and, therefore, is bound by the provisions of Chapters 505 and 507 of the Texas Occupations Code and the Rules of the Council, 22 Texas Administrative Code Parts 34 and 41.
2. Violation of the Council's Rules is unprofessional conduct and constitutes grounds for the imposition of sanctions under §§505.451, 507.301, and 507.351 of the Texas Occupations Code.
3. Based on the above Findings of Fact, the Council finds that Respondent violated Council Rule 22 Tex. Admin. § 781.301(10).

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Based upon the foregoing, it is ORDERED that Respondent's license as a Licensed Clinical Social Worker (#61754) is hereby SUSPENDED. The suspension shall remain in effect until a Council-approved Texas licensed mental health provider conducts an evaluation that concludes Respondent is fit to practice Social Work, and the Council may then impose additional terms and conditions to enhance or maintain Respondent's fitness to practice.
2. Respondent shall complete and submit proof of completion of an inpatient or outpatient suicide prevention program.
3. Respondent shall, after completion of an inpatient or outpatient suicide prevention program, complete and submit a clinical diagnostic evaluation by a Council-approved Texas licensed mental health provider. The evaluator must be knowledgeable about the physical and mental requirements for the safe and competent practice of clinical social work. Respondent shall sign a release which authorizes the evaluator to furnish the Council or its designee a written report regarding the Respondent's mental competency, judgment, and ability to function safely as a licensee, and whatever other information the Council or its designee deems relevant (e.g. what physical and/or mental impairments and disorders may be present and what role they have in the safe delivery of mental health services to the public, whether the Respondent is competent to provide services with reasonable skill and safety to patients/clients, and what limitations or restrictions should be placed on Respondent's license to ensure the safe and competent practice of social work). If the Council, its designee, or the Council-approved Texas licensed mental health provider deems subsequent evaluations necessary, Respondent shall complete and submit a separate report for each evaluation. Each completed evaluation shall be the sole property of the Council or its designee. Respondent shall be responsible for all costs associated with or incurred to comply with this order.
4. If the Council or its designee concludes from the results of a report or an evaluation that there is sufficient concern or need to impose further requirements, restrictions, and/or take other appropriate actions to ensure the safety of the public the Council or its designee may do so at its own discretion. In the event Respondent refuses or fails to follow the additional requirements or restrictions imposed by the Council or its designee, Respondent agrees that Respondent's license shall be or remain SUSPENDED, without further hearings, informal settlement procedures, or any right of appeal for judicial review; pending further review of Respondent by the Council, or its designee.
5. In the event a report or evaluator indicates that Respondent is fit to practice, but makes recommendations concerning reasonable steps Respondent must or should take to enhance or maintain Respondent's fitness to practice, Respondent shall comply with any and all recommendations. If Respondent refuses or fails to follow the recommendations, Respondent agrees that Respondent's license shall be or remain SUSPENDED, without further hearings, informal settlement procedures, or any right of appeal for judicial review; pending further review of Respondent by the Council, or its designee.

WARNING


RESPONDENT'S FAILURE TO COMPLY WITH ONE OR MORE TERMS OF THIS ORDER MAY CONSTITUTE A VIOLATION OF 22 TEXAS ADMINISTRATIVE CODE §884.55 REQUIRING FURTHER DISCIPLINARY ACTION.

WAIVERS

On the underlying investigative file, Respondent has waived his or her right to an informal settlement conference, a formal hearing before an Administrative Law Judge at the State Office of Administrative Hearings (SOAH), and judicial review pursuant to Texas Government Code Chapter 2001, in exchange for the conditions set out in this Agreed Order.


THE RESPONDENT, BY SIGNING THIS ORDER, AGREES TO ITS TERMS, ACKNOWLEDGES UNDERSTANDING OF THE FORMAL NOTICES, FINDINGS OF FACT, AND CONCLUSIONS OF LAW SET FORTH HEREIN AND COVENANTS TO SATISFACTORILY COMPLY WITH THE MANDATES OF THIS ORDER IN A TIMELY MANNER. RESPONDENT FURTHER ACKNOWLEDGES AND AGREES THAT HE OR SHE HAS AGREED TO THIS ORDER UPON THE ADVICE AND CONSENT OF COUNSEL, OR THAT HE OR SHE HAS HAD THE OPPORTUNITY TO HAVE THIS ORDER REVIEWED BY COUNSEL OF HIS OR HER CHOICE.

FOR THE RESPONDENT:


Michele Parker-Schauer
LCSW# 61754

DATE SIGNED: 03/30/2021

FOR THE STAFF OF THE COUNCIL:


Andrew Hurt
Texas Bar No. 24091699
Staff Attorney
Texas Behavioral Health Executive Council
333 Guadalupe, Ste. 3-900
Austin, Texas 78701

DATE SIGNED: 3/30/21

APPROVED, RATIFIED, AND ENTERED THIS 31st DAY OF March, 2021.



Darrel Spinks
Executive Director
Texas Behavioral Health Executive Council

85 Cases Dismissed by Staff

• Allegation Type	• Resolution Type
○ 36 General Therapy	○ 67 Insufficient Evidence
○ 35 General Administrative	○ 7 Lack of Jurisdiction
○ 10 Miscellaneous	○ 6 Warning Letter
○ 2 Sexual Misconduct	○ 3 Conditional Letter of Agreement
○ 1 General Forensic	○ 1 Duplicate/Opened in Error
○ 1 Cease and Desist	○ 1 Complainant Withdrew
○ 1 Forensic Child Custody	
1. 1072-14-0032 – General Administrative	Conditional Letter of Agreement
2. 1072-16-0034 – General Therapy	Lack of Jurisdiction
3. 1072-16-0036 – Miscellaneous	Lack of Jurisdiction
4. 1072-16-0180 – General Therapy	Insufficient Evidence
5. 1072-16-0200 – General Administrative	Insufficient Evidence
6. 1072-17-0032 – General Therapy	Lack of Jurisdiction
7. 1072-17-0063 – General Administrative	Conditional Letter of Agreement
8. 1072-17-0132 – General Administrative	Insufficient Evidence
9. 1072-17-0136 – General Administrative	Conditional Letter of Agreement
10. 1072-18-0009 – General Therapy	Insufficient Evidence
11. 1072-18-0015 – General Administrative	Warning Letter
12. 1072-18-0019 – General Therapy	Insufficient Evidence
13. 1072-18-0029 – General Therapy	Warning Letter
14. 1072-18-0036 – General Administrative	Insufficient Evidence
15. 1072-18-0048 – General Therapy	Insufficient Evidence
16. 1072-18-0049 – General Therapy	Insufficient Evidence
17. 1072-18-0049 – General Therapy	Insufficient Evidence
18. 1072-18-0050 – General Therapy	Warning Letter
19. 1072-18-0056 – General Therapy	Insufficient Evidence
20. 1072-18-0066 – General Administrative	Insufficient Evidence
21. 1072-18-0069 – General Therapy	Insufficient Evidence
22. 1072-18-0075 – General Therapy	Insufficient Evidence
23. 1072-18-0077 – General Administrative	Insufficient Evidence
24. 1072-18-0090 – General Therapy	Insufficient Evidence
25. 1072-18-0091 – General Therapy	Insufficient Evidence
26. 1072-18-0094 – General Therapy	Insufficient Evidence
27. 1072-18-0113 – General Administrative	Insufficient Evidence
28. 1072-18-0114 – General Therapy	Insufficient Evidence
29. 1072-18-0119 – General Therapy	Insufficient Evidence
30. 1072-18-0121 – General Therapy	Warning Letter
31. 1072-18-0123 – General Therapy	Insufficient Evidence
32. 1072-18-0124 – General Therapy	Insufficient Evidence
33. 1072-18-0126 – General Administrative	Insufficient Evidence

Texas State Board of Social Worker Examiners
 July 9, 2021 Board Meeting
 FY2021 Third Quarter Complaint Summary – Dismissed by Executive Director

34. 1072-18-0127 – General Administrative	Insufficient Evidence
35. 1072-18-0128 – Miscellaneous	Insufficient Evidence
36. 1072-18-0129 – Miscellaneous	Insufficient Evidence
37. 1072-18-0131 – General Administrative	Warning Letter
38. 1072-18-0139 – General Administrative	Insufficient Evidence
39. 1072-18-0140 – General Therapy	Insufficient Evidence
40. 1072-18-0141 – General Therapy	Insufficient Evidence
41. 1072-18-0145 – Miscellaneous	Insufficient Evidence
42. 1072-18-0146 – General Therapy	Insufficient Evidence
43. 1072-18-0149 – General Therapy	Insufficient Evidence
44. 1072-18-0151 – General Therapy	Insufficient Evidence
45. 1072-18-0152 – General Administrative	Insufficient Evidence
46. 1072-18-0153 – General Therapy	Insufficient Evidence
47. 1072-18-0154 – General Therapy	Insufficient Evidence
48. 1072-18-0155 – General Administrative	Insufficient Evidence
49. 1072-18-0159 – General Administrative	Insufficient Evidence
50. 1072-18-0160 – General Therapy	Insufficient Evidence
51. 1072-18-0167 – General Administrative	Insufficient Evidence
52. 1072-19-0013 – General Administrative	Warning Letter
53. 1072-19-0023 – Miscellaneous	Insufficient Evidence
54. 1072-19-0028 – General Administrative	Insufficient Evidence
55. 1072-19-0029 – General Administrative	Insufficient Evidence
56. 1072-19-0040 – General Therapy	Insufficient Evidence
57. 1072-19-0056 – General Administrative	Insufficient Evidence
58. 1072-19-0082 – General Administrative	Lack of Jurisdiction
59. 1072-19-0087 – General Administrative	Insufficient Evidence
60. 1072-20-0037 – General Administrative	Insufficient Evidence
61. 1072-20-0046 – Sexual Misconduct	Insufficient Evidence
62. 1072-20-0063 – General Therapy	Insufficient Evidence
63. 1072-20-0066 – Sexual Misconduct	Insufficient Evidence
64. 1072-20-0072 – Miscellaneous	Insufficient Evidence
65. 1072-20-0077 – General Therapy	Insufficient Evidence
66. 1072-20-0090 – General Administrative	Insufficient Evidence
67. 1072-20-0109 – General Administrative	Insufficient Evidence
68. 1072-20-0117 – General Administrative	Insufficient Evidence
69. 2020-00148 – General Therapy	Insufficient Evidence
70. 2021-00019 – General Forensic	Insufficient Evidence
71. 2021-00044 – General Therapy	Insufficient Evidence
72. 2021-00049 – General Administrative	Insufficient Evidence
73. 2021-00051 – General Administrative	Insufficient Evidence
74. 2021-00062 – General Therapy	Lack of Jurisdiction
75. 2021-00089 – General Administrative	Insufficient Evidence
76. 2021-00113 – Miscellaneous	Duplicate/Opened in Error
77. 2021-00137 – Miscellaneous	Lack of Jurisdiction
78. 2021-00138 – Miscellaneous	Lack of Jurisdiction

79. 2021-00139 – General Administrative	Insufficient Evidence
80. 2021-00144 – General Therapy	Insufficient Evidence
81. 2021-00150 – Cease and Desist	Insufficient Evidence
82. 2021-00152 – Forensic Child Custody	Complainant Withdrew
83. 2021-00161 – Miscellaneous	Insufficient Evidence
84. 2021-00196 – General Administrative	Insufficient Evidence
85. 2021-00241 – General Administrative	Insufficient Evidence

3rd QUARTER PERFORMANCE MEASURES

FISCAL YEAR 2021

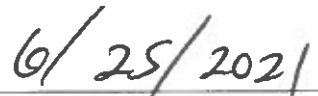
Submitted to the
Governor's Office of Budget and Planning
and the Legislative Budget Board

by

Texas Behavioral Health Executive Council

June 25, 2021


Executive Director


Date

Efficiency/Output Measures with Cover Page and Update Explanation
86th Regular Session, Performance Reporting
Automated Budget and Evaluation System of Texas (ABEST)

6/25/2021 2:30:38PM

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Output Measures					
<u>1-1-1 LICENSING</u>					
1 # NEW LICENSEES ISSUED					
Quarter 1	600.00	1,789.00	1,789.00	298.17 % *	120.00 - 180.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE

The performance for this measure for the first quarter of FY 2021 exceeds its target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will issue 7,000 new licenses. Using this target, during this quarter the Council would have met this measure by issuing 1,789 new licenses, or 26% of the target.

* Varies by 5% or more from target.

Efficiency/Output Measures with Cover Page and Update Explanation
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Automated Budget and Evaluation System of Texas (ABEST)

6/25/2021 2:30:38PM

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Output Measures					
I # NEW LICENSEES ISSUED					
Quarter 2	600.00	1,997.00	3,786.00	631.00 % *	270.00 - 330.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will issue 7,000 new licenses. Using this target, the Council would have met this measure by issuing 3,786 new licenses total year to date, or 54% of the target.

* Varies by 5% or more from target.

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6/25/2021 2:30:38PM

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
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Output Measures

1 # NEW LICENSEES ISSUED

Quarter 3	600.00	2,648.00	6,434.00	1,072.33 % *	420.00 - 480.00
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Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the third quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will issue 7,800 new licenses. Using this target, the Council would have exceeded this measure by issuing 6,434 new licenses total year to date, or 82% of the target.

2 # LICENSE RENEWALS

* Varies by 5% or more from target.

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Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Output Measures					
2 # LICENSE RENEWALS					
Quarter 1	8,800.00	8,907.00	8,907.00	101.22 % *	1,760.00 - 2,640.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE

The performance for this measure for the first quarter of FY 2021 exceeds its target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will renew 40,000 licenses. Using this target, during this quarter the Council would have met this measure by renewing 8,907 new licenses, or 23% of the target.

* Varies by 5% or more from target.

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6/25/2021 2:30:38PM

Agency code: 510 Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Output Measures					
2 # LICENSE RENEWALS					
Quarter 2	8,800.00	6,750.00	15,657.00	177.92 % *	3,960.00 - 4,840.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will renew 40,000 licenses. Using this target, the agency would have fallen short of this measure by renewing 15,657 licenses to date, or 40% of the target.

* Varies by 5% or more from target.

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6/25/2021 2:30:38PM

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Output Measures					
2 # LICENSE RENEWALS					
Quarter 3	8,800.00	7,421.00	23,078.00	262.25 % *	6,160.00 - 7,040.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the third quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will renew 42,000 licenses. Using this target, the agency would have fallen short of this measure by renewing 23,078 licenses to date, or 55% of the target. The Council will monitor this target to determine if it is too high, and make adjustments during the next LAR.

2-1-1 ENFORCEMENT

1 COMPLAINTS RESOLVED

* Varies by 5% or more from target.

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Output Measures					
1 COMPLAINTS RESOLVED					
Quarter 1	130.00	104.00	104.00	80.00 % *	26.00 - 39.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE

The performance for this measure for the first quarter of FY 2021 exceeds its target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will resolve 800 complaints. Using this target, during this quarter the Council would not have met this measure by resolving 104 complaints, or 13%. The Council's investigators are still in a training state, trying to learn the statutes and rules of all four regulatory programs. However, the number of complaints resolved during the last month of this quarter has significantly increased to 71 from the 12 that were resolved during the first month of the quarter. Additionally, there are 1,379 complaints pending, 200 of which the investigation has been completed and sent to the legal division for review.

* Varies by 5% or more from target.

Efficiency/Output Measures with Cover Page and Update Explanation
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6/25/2021 2:30:38PM

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Output Measures					
1 COMPLAINTS RESOLVED					
Quarter 2	130.00	120.00	224.00	172.31 % *	58.50 - 71.50

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will resolve 800 complaints. Using this target, the Council would not have met this measure by resolving 224 complaints year to date, or 28% of the target. The Council's investigators and attorneys are still in a training state, trying to learn the statutes and rules of all four regulatory programs. Additionally, the Council is still trying to fill four vacant investigator positions. As of the end of this quarter, there are 1,339 complaints pending, 220 of which have since been closed and 145 of which the investigation has been completed and sent to the legal division for review.

* Varies by 5% or more from target.

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Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Output Measures					
1 COMPLAINTS RESOLVED					
Quarter 3	130.00	635.00	859.00	660.77 % *	91.00 - 104.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the third quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will resolve 1000 complaints. Using this target, the Council would have exceeded this measure by resolving 859 complaints year to date, or 86% of the target. The Council's investigators and attorneys are still in a training state, trying to learn the statutes and rules of all four regulatory programs. As of the end of this quarter, there are 801 complaints pending, 38 of which have since been closed and 84 of which the investigation has been completed and sent to the legal division for review.

Efficiency Measures

2-1-1 ENFORCEMENT

1 AVG TIME/COMPLAINT RESOLUTION

* Varies by 5% or more from target.

Efficiency/Output Measures with Cover Page and Update Explanation
86th Regular Session, Performance Reporting
Automated Budget and Evaluation System of Texas (ABEST)

6/25/2021 2:30:38PM

Agency code: 510

Agency name: **Behavioral Health Executive Council**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Efficiency Measures					
1 AVG TIME/COMPLAINT RESOLUTION					
Quarter 1	275.00	1,190.00	1,190.00	432.73 % *	261.25 - 288.75

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the first quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected an average complaint resolution time of 800 days. Using this target, during this quarter the Council would not have met this measure with an average complaint resolution time of 1,190 days, or 149%. The Council's investigators are still in a training state, trying to learn the statutes and rules of all four regulatory programs. Additionally, there were over 1,300 pending complaints that transferred over from HHSC, some of which dated back to FY 2008. This backlog will take time to clear, and will inevitably cause a higher average complaint resolution time than originally anticipated.

* Varies by 5% or more from target.

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
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Efficiency Measures**1 AVG TIME/COMPLAINT RESOLUTION**

Quarter 2	275.00	1,147.00	1,167.00	424.36 % *	261.25 - 288.75
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Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected an average complaint resolution time of 800 days. Using this target, during this quarter the Council would not have met this measure with an average complaint resolution time of 1,167 days, or 146% of the target. The Council's investigators and attorneys are still in a training state, trying to learn the statutes and rules of all four regulatory programs. Additionally, there were over 1,300 pending complaints that transferred over from HHSC, some of which dated back to FY 2008. This backlog will take time to clear, and will inevitably cause a higher average complaint resolution time than originally anticipated.

Quarter 3	275.00	837.00	922.00	335.27 % *	261.25 - 288.75
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Explanation of Variance: In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected an average complaint resolution time of 750 days. Using this target, during this quarter the Council would not have met this measure with an average complaint resolution time of 837 days, or 112% of the target. However, this performance is a decrease of the previous performance of 1,147 days. The Council's investigators and attorneys are still in a training state, trying to learn the statutes and rules of all four regulatory programs. Additionally, there were over 1,300 pending complaints that transferred over from HHSC, some of which dated back to FY 2008. This backlog will take time to clear, and will inevitably cause a higher average complaint resolution time than originally anticipated.

* Varies by 5% or more from target.

TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL
3rd QUARTER MEASURES
FY 2021

Number of New Licenses Renewed (from thpc24)

LSSP	471
LIC	632
LPA	104
LPC	2866
MFTA	36
MFT	405
LBSW	394
LMSW	1281
LCSW	1221
AP	11

Total 7421

Number of Licenses Issued (from thpc24)

LPA	10
LIC	126
LSSP	47
LPCA	581
LPC	146
LPC Upgrade	572
MFTA	60
MFT	46
MFT Upgrade	50
LBSW	35
LMSW	462
LCSW	179
AMEC Upgrade	3
LMSW Upgrade	32
LCSW Upgrade	281
TEMP SW	18

Total 2648

TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL
2nd QUARTER MEASURES
FY 2021

Number of Complaints Resolved (from BO report)

LP	64
LSSP	1
LPC	432
MFT	32
SW	106
Total	635

Percent of Complaint Resolved Within Six Months (from BO report)

1 st Qtr	5/104 =	5%
2 nd Qtr	9/120 =	8%
3 rd Qtr	85/635 =	14%
4 th Qtr		
YTD	99/859 =	12%

Percent of Complaints Resolved resulting in Disciplinary Action (from BO report)

1 st Qtr	33/104 =	33%
2 nd Qtr	29/120 =	25%
3 rd Qtr	58/635 =	10%
4 th Qtr		
YTD	120/859 =	14%

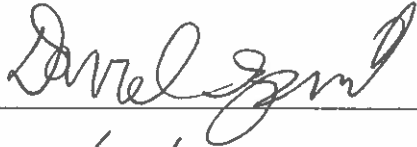
Average Time for Complaint Resolution (from BO report)

1 st Qtr	123,751 days to resolve 104 complaints =	1,189.91 days
2 nd Qtr	137,604 days to resolve 120 complaints =	1,146.70 days
3 rd Qtr	530,849 days to resolve 635 complaints =	836.99 days
4 th Qtr		
YTD	792,204 days to resolve 859 complaints =	922.24 days

Average Time for Application Processing (from BO report) (**Bold averages only**)

1 st Qtr	122,710 days to process 1,590 applications =	77.18 days
2 nd Qtr	149,768 days to process 1,576 applications =	95.03 days
3 rd Qtr	151,827 days to process 1,986 applications =	76.45 days
4 th Qtr		
YTD	424,305 days to process 5,152 applications =	82.36 days

Calculations reviewed by:



Date:

6/11/21

LPA Initial	614 days to process 22 applications =	27.91
LPA Final	1,926 days to process 11 applications =	175.09
Old LIC Final	15,060 days to process 21 applications =	717.15
LIC Initial	3,520 days to process 105 applications =	33.53
LIC Final	13,818 days to process 112 applications =	123.38
LSSP	947 days to process 32 applications =	29.60
LSSP Final	4,981 days to process 15 applications =	332.07
LPC Initial	15,282 days to process 146 applications =	104.68
LPCA Initial	39,594 days to process 582 applications =	68.03
LPC Upgrade	7,287 days to process 572 applications =	12.74
MFTA Exam	8,253 days to process 52 applications =	158.72
MFT License	4,887 days to process 46 applications =	106.24
MFTA License	4,711 days to process 60 applications =	78.52
MFTA Upgrade	2,594 days to process 50 applications =	51.88
SW Exam	38,746 days to process 137 applications =	282.82
SW License	60,333 days to process 407 applications =	148.24
SW OOS License	33,939 days to process 269 applications =	126.17
SW Upgrade	41,494 days to process 316 applications =	131.31
Temp SW License	1,051 days to process 19 applications =	55.32

- Those in **BOLD** are the applications we have more control over (i.e. we are not waiting for them to take and pass a national exam).

TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL
ANNUAL MEASURES
FY 2021

Number of Jurisdictional Complaints Received (from BO report)	90
Number of Complaints Pending (from BO report)	806
Closed	38
Investigation Completed	84
Under Investigation	684

Percent of Licensees With No Recent Violations

Total	74 disciplinary actions
Less duplicates	-9 duplicates

Total unduplicated	65 disciplinary actions
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Number of individuals licensed as of 8/31/2020: 8793

$$8793 - 65 = 8728$$

$$8728/8793 = 99.26\%$$


Recidivism Rate

Individuals with disciplinary actions FY 18 – FY 20	65
Individuals with 2 or more disciplinary actions	9

$$9/65 = 13.85\%$$

Calculation Reviewed by:

Date:



6/11/21

**PERFORMANCE MEASURES
FISCAL YEAR 2021**

OUTPUT	Target	1st	2nd	3rd	4th	YTD	YTD %	
# of New Lic. Issued	600	1789	1997	2648		6434	1072%	Y
# of Lic. Renewed	8800	8907	6750	7421		23078	262%	Y
# of Complaints Resolved	130	104	120	635		859	661%	Y
EFFICIENCY								
Ave. Time for Comp. Resolution	275	1190	1147	837		922	335%	N
Ave. Time for License Issuance		78	95	76		82		
OUTCOME								
% of Lic. who Renew Online	92%						0%	Y
% of Lic. w/no Recent Violations	99%						0%	
% of Comp. Resulting in Disp. Action		33%	25%	10%		14%		
% of Comp. Resolved w/ 6 mths	40%	5%	8%	14%		12%	30%	N
EXPLANATORY								
Total # of Individuals Licensed								
Jurisdictional Comp. Rec.	120	109	97	90		296	247%	Y
# of Disciplinary Actions						0		
# of Licensees								
# of Licenses								

LAR Target

OUTPUT	LAR	1st	2nd	3rd	4th	YTD	YTD %	
# of New Lic. Issued	7800	1789	1997	2648		6434	82%	Y
# of Lic. Renewed	42000	8907	6750	7421		23078	55%	N
# of Complaints Resolved	1000	104	120	635		859	86%	Y
EFFICIENCY								
Ave. Time for Comp. Resolution	750	1190	1147	837		922	123%	N
Ave. Time for License Issuance	60	78	95	76		82	137%	N
OUTCOME								
% of Lic. w/no Recent Violations	95%						0%	
% of Comp. Resulting in Disp. Action		33%	25%	10%		14%		
% of Comp. Resolved w/ 6 mths	15%	5%	8%	14%		12%	80%	N
EXPLANATORY								
Total # of Individuals Licensed								
Jurisdictional Comp. Rec.	600	109	97	90		296	49%	N
# of Disciplinary Actions		33	29	58		120		
# of Licensees								
# of Licenses								

Texas State Board of Social Worker Examiners
July 9, 2021 Board Meeting

Rule: 781.206. Minutes.

Action: Proposed Repeal

Comment: The proposed repeal is necessary since recordings of entire board meetings will be posted on a publicly accessible website; therefore this rule is no longer necessary.

~~§781.206. Minutes.~~

- ~~(a) The minutes of a board meeting are official only when affixed with the original signature of the chairperson.~~
- ~~(b) Drafts of the meeting minutes shall be forwarded to each board member for review and comments or corrections prior to the board's approval.~~
- ~~(c) The official board meeting minutes shall be posted on the publicly-accessible board website.~~

Rule: 781.401. Qualification for Licensure.

Action: Proposed Amendment

Comment: The proposed amendments implement a Board policy and simplify the requirements for gaining supervised experience. These rule amendments also propose the repeal of redundant and obsolete provisions. For example, new LMSW-APs are no longer being issued, therefore rule provisions regarding the education and experience to obtain one is no longer necessary. Additionally, the requirement that supervised experience for an LCSW must occur with five years immediately preceding the date of the application is proposed to be repealed because rule 781.406 also contains this same requirement, so this provision is redundant and is proposed to be repealed.

781.401. Qualifications for Licensure.

- (a) Licensure. The following education and experience is required for licensure as designated. If an applicant for a license has held a substantially equivalent license in good standing in another jurisdiction for one year immediately preceding the date of application, the applicant will be deemed to have met the experience requirement under this chapter.
 - (1) Licensed Clinical Social Worker (LCSW).
 - (A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited institution of higher learning acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.
 - (B) Has had 3000 hours of supervised professional clinical experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Hours accrued in non-clinical settings may be used to satisfy the requirements of this rule if the applicant works at least 4 hours per week providing clinical social work as defined in §781.102 of this title (relating to Definitions). Supervised professional experience must comply with §781.404 of this title (relating to Recognition as a Council approved Supervisor and the Supervision Process) and all other applicable laws and rules.
 - (C) Has had a minimum of 100 hours of supervision, over the course of the 3000 hours of supervised experience, with a

Council-approved supervisor. ~~Supervised experience must have occurred within the five calendar years immediately preceding the date of LCSW application.~~ If the social worker completed supervision in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

- (D) Has passed the Clinical examination administered nationally by ASWB.
- (2) Licensed Master Social Worker (LMSW).
 - (A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited university acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.
 - (B) Has passed the Master's examination administered nationally by ASWB.
- (3) Licensed Baccalaureate Social Worker (LBSW).
 - (A) Has been conferred a baccalaureate degree in social work from a CSWE accredited social work program.
 - (B) Has passed the Bachelors examination administered nationally by ASWB.
- (b) Specialty Recognition. The following education and experience is required for Independent Non-clinical Practice specialty recognitions.
 - ~~(1) Licensed Master Social Worker Advanced Practitioner (LMSW AP).~~
 - ~~(A) Is currently licensed in the State of Texas or meets the current requirements for licensure as an LMSW.~~
 - ~~(B) While fully licensed as a social worker, has had 3000 hours of supervised professional non-clinical social work experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.~~

- ~~(C)~~ Has had a minimum of 100 hours of supervision, over the course of the 3000 hours of experience, with a Council approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LMSW-AP application. If supervision was completed in another jurisdiction, the social worker must have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.
- ~~(D)~~ Has passed the Advanced Generalist examination administered nationally by the ASWB.
- ~~(2)~~ Independent Non-clinical Practice.

 - ~~(1)(A)~~ Is currently licensed in the State of Texas as an LBSW or LMSW.
 - ~~(2)(B)~~ While fully licensed as a social worker has had 3000 hours of supervised full-time social work experience over a minimum two-year period, but within a maximum five-year period or its equivalent if the experience was completed in another state. Supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.
 - ~~(3)(C)~~ Has had a minimum of 100 hours of supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the 5 calendar years immediately preceding the date of application for IPR specialty recognition. If supervision was completed in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification.
- (c) Applicants for a license must complete the Council's jurisprudence examination and submit proof of completion at the time of application.

Rule: 781.404. Recognition as a Council-approved Supervisor and the Supervision Process.

Action: Proposed Amendment

Comment: The proposed amendments clarify and simplify the requirements for gaining supervised experience. These rule amendments also propose the repeal of obsolete provisions. For example, new LMSW-APs are no longer being issued, therefore rule provisions regarding the experience to obtain one is no longer necessary.

781.404. Recognition as a Council-approved Supervisor and the Supervision Process.

(a) Types of supervision include:

- (1) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;
- (2) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;
- (3) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;
- (4) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor; or
- ~~(5) non-clinical supervision of a Licensed Master Social Worker who is providing non-clinical social work service toward qualifications for the LMSW-AP; this supervision is delivered by a Council-approved supervisor; or~~

- ~~(5)(6)~~ Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.
- (b) A person who wishes to be a Council-approved supervisor must file an application and pay the applicable fee.
- (1) A Council-approved supervisor must be actively licensed in good standing by the Council as an LBSW, an LMSW, an LCSW, or be recognized as an Advanced Practitioner (LMSW-AP), or hold the equivalent social work license in another jurisdiction. The person applying for Council-approved status must have practiced at his/her category of licensure for two years. The Council-approved supervisor shall supervise only those supervisees who provide services that fall within the supervisor's own competency.
 - (2) The Council-approved supervisor is responsible for the social work services provided within the supervisory plan.
 - (3) The Council-approved supervisor must have completed a supervisor's training program acceptable to the Council.
 - (4) The Council-approved supervisor must complete three hours of continuing education every biennium in supervision theory, skills, strategies, and/or evaluation.
 - (5) The Council-approved supervisor must designate at each license renewal that he/she wishes to continue Council-approved supervisor status.
 - (6) The Council-approved supervisor must submit required documentation and fees to the Council.
 - (7) When a licensee is designated Council-approved supervisor, he or she may perform the following supervisory functions.
 - (A) An LCSW may supervise clinical experience toward the LCSW license, ~~non-clinical experience toward the Advanced Practitioner specialty recognition~~, non-clinical experience toward the Independent Practice Recognition (non-clinical), and Council-ordered probated suspension;
 - (B) An LMSW-AP may supervise ~~non-clinical experience toward the Advanced Practitioner specialty recognition~~; non-clinical experience toward the non-clinical Independent Practice Recognition; and Council-ordered probated suspension for non-clinical practitioners;

- (C) An LMSW with the Independent Practice Recognition (non-clinical) who is a Council-approved supervisor may supervise an LBSW's or LMSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW or LMSW (non-clinical) under Council-ordered probated suspension;
 - (D) An LBSW with the non-clinical Independent Practice Recognition who is a Council-approved supervisor may supervise an LBSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW under Council-ordered probated suspension.
- (8) The approved supervisor must renew the approved supervisor status in conjunction with the biennial license renewal. The approved supervisor may surrender supervisory status by documenting the choice on the appropriate Council renewal form and subtracting the supervisory renewal fee from the renewal payment. If a licensee who has surrendered supervisory status desires to regain supervisory status, the licensee must reapply and meet the current requirements for approved supervisor status.
- (9) A supervisor must maintain the qualifications described in this section while he or she is providing supervision.
- (10) A Council-approved supervisor who wishes to provide any form of supervision or Council-ordered supervision must comply with the following:
- (A) The supervisor is obligated to keep legible, accurate, complete, signed supervision notes and must be able to produce such documentation for the Council if requested. The notes shall document the content, duration, and date of each supervision session.
 - (B) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the Council.
 - (C) A Council-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.
 - (D) Before entering into a supervisory plan, the supervisor shall be aware of all conditions of exchange with the clients

served by her or his supervisee. The supervisor shall not provide supervision if the supervisee is practicing outside the authorized scope of the license. If the supervisor believes that a social worker is practicing outside the scope of the license, the supervisor shall make a report to the Council.

- (E) A supervisor shall not be employed by or under the employment supervision of the person who he or she is supervising.
- (F) A supervisor shall not be a family member of the person being supervised.
- (G) A supervisee must have a clearly defined job description and responsibilities.
- (H) A supervisee who provides client services for payment or reimbursement shall submit billing to the client or third-party payers which clearly indicates the services provided and who provided the services, and specifying the supervisee's licensure category and the fact that the licensee is under supervision.
- (I) If either the supervisor or supervisee has an expired license or a license that is revoked or suspended during supervision, supervision hours accumulated during that time will be accepted only if the licensee appeals to and receives approval from the Council.
- (J) A licensee must be a current Council-approved supervisor in order to provide professional development supervision toward licensure or specialty recognition, or to provide Council-ordered supervision to a licensee. Providing supervision without having met all requirements for current, valid Council-approved supervisor status may be grounds for disciplinary action against the supervisor.
- (K) The supervisor shall ensure that the supervisee knows and adheres to Subchapter B, Rules of Practice, of this Chapter.
- (L) The supervisor and supervisee shall avoid forming any relationship with each other that impairs the objective, professional judgment and prudent, ethical behavior of either.

- (M) Should a supervisor become subject to a Council disciplinary order, that person is no longer a Council-approved supervisor and must so inform all supervisees, helping them to find alternate supervision. The person may reapply for Council-approved supervisor status by meeting the terms of the disciplinary order and having their license in good standing, in addition to submitting an application for Council-approved supervisor, and proof of completion of a 40-hour Council-approved supervisor training course, taken no earlier than the date of execution of the Council order.
- (N) The Council may deny, revoke, or suspend Council-approved supervisory status for violation of the Act or rules. Continuing to supervise after the Council has denied, revoked, or suspended Council-approved supervisor status, or after the supervisor's supervisory status expires, may be grounds for disciplinary action against the supervisor.
- (O) If a supervisor's Council-approved status is expired, suspended, or revoked, the supervisor shall refund all supervisory fees the supervisee paid after the date the supervisor ceased to be Council-approved.
- (P) A supervisor is responsible for developing a well-conceptualized supervision plan with the supervisee, and for updating that plan whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided.
- (Q) All Council-approved supervisors shall have taken a Council-approved supervision training course by January 1, 2014 in order to renew Council-approved supervisor status. The Council recognizes that many licensees have had little, if any, formal education about supervision theories, strategies, problem-solving, and accountability, particularly LBSWs who may supervise licensees toward the IPR. Though some supervisors have functioned as employment supervisors for some time and have acquired practical knowledge, their practical supervision skills may be focused in one practice area, and may not include current skills in various supervision methods or familiarity with emerging supervisory theories, strategies, and regulations. Therefore, the Council values high-quality, contemporary, multi-modality supervision training to

ensure that all supervisors have refreshed their supervisory skills and knowledge in order to help supervisees practice safely and effectively.

- (11) A Council-approved supervisor who wishes to provide supervision towards licensure as an LCSW or towards specialty recognition in Independent Practice (IPR) ~~or Advanced Practitioner (LMSW-AP)~~, which is supervision for professional growth, must comply with the following:
 - (A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions, in group sessions, or in a combination of one-on-one and group sessions. Session may transpire in the same geographic location, or via audio, web technology or other electronic supervision techniques that comply with HIPAA and Texas Health and Safety Code, Chapter 611, and/or other applicable state or federal statutes or rules.
 - (B) Supervision groups shall have no fewer than two members and no more than six.
 - (C) Supervision shall occur in proportion to the number of actual hours worked for the 3,000 hours of supervised experience. ~~with a base line of one hour of supervision for every 40 hours worked. If the supervisee works full-time, supervision shall occur on average at least twice a month and for no less than four hours per month; if the supervisee works part-time (at least 20 hours per week), supervision shall occur on average at least once a month and no less than two hours per month. Supervisory sessions shall last at least one hour and no more than two hours per session.~~ No more than 10 hours of supervision may be counted in any one month, or 30-day period, as appropriate, towards satisfying minimum requirements for licensure or specialty recognition.
 - (D) The Council considers supervision toward licensure or specialty recognition to be supervision which promotes professional growth. Therefore, all supervision formats must encourage clear, accurate communication between the supervisor and the supervisee, including case-based communication that meets standards for confidentiality. Though the Council favors supervision formats in which the supervisor and supervisee are in the

same geographical place for a substantial part of the supervision time, the Council also recognizes that some current and future technology, such as using reliable, technologically-secure computer cameras and microphones, can allow personal face-to-face, though remote, interaction, and can support professional growth. Supervision formats must be clearly described in the supervision plan, explaining how the supervision strategies and methods of delivery meet the supervisee's professional growth needs and ensure that confidentiality is protected.

- (E) Supervision toward licensure or specialty recognition must extend over a full 3000 hours over a period of not less than 24 full months and a period of not more than 48 full months for LCSW ~~or LMSW-AP~~ or not more than 60 full months for Independent Practice Recognition (IPR). Even if the individual completes the minimum of 3000 hours of supervised experience and minimum of 100 hours of supervision prior to 24 months from the start date of supervision, supervision which meets the Council's minimum requirements shall extend to a minimum of 24 full months. ~~A month is a 30-day period or the length of the actual calendar month, whichever is longer.~~
 - (F) The supervisor and the supervisee bear professional responsibility for the supervisee's professional activities.
 - (G) If the supervisor determines that the supervisee lacks the professional skills and competence to practice social work under a regular license, the supervisor shall develop and implement a written remediation plan for the supervisee.
 - (H) Supervised professional experience required for licensure must comply with §781.401 of this title (relating to Qualifications for Licensure) and §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for ~~LMSW-AP~~ and Independent Practice Recognition) of this title and all other applicable laws and rules.
- (12) A Council-approved supervisor who wishes to provide supervision required as a result of a Council order must comply with this title, all other applicable laws and rules, and/or the following.

- (A) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:
 - (i) submit one supervisory plan for each practice location to the Council for approval by the Council or its designee within 30 days of initiating supervision;
 - (ii) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;
 - (iii) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and
 - (iv) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.
- (B) The supervisor who agrees to provide Council-ordered supervision of a licensee who is under Council disciplinary action must understand the Council order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those

professional behaviors that led to Council discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

- (C) Council-ordered and mandated supervision timeframes are specified in the Council order

Rule: 781.406. Required Documentation of Qualifications for Licensure.

Action: Proposed Amendment

Comment: The proposed amendment clarifies the requirements for gaining supervised experience.

781.406. Required Documentation of Qualifications for Licensure.

- (a) Application form. An applicant for licensure must submit a completed official application form with all requested information.
- (b) Education verification.
 - (1) The applicant's education must be documented by official college transcripts from social work educational units accredited by CSWE.
 - (2) Degrees for licensure as an LBSW or LMSW must be from programs accredited or in candidacy for accreditation by CSWE.
- (c) Experience verification.
 - (1) An applicant's experience for licensure or for specialty recognition must meet the requirements of §781.401 of this title (relating to Qualifications for Licensure), §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition), and §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process). The applicant must document the names and addresses of supervisors; beginning and ending dates of supervision; job description; and average number of hours of social work activity per week. The applicant must further document the appropriate supervision plan and verification form for each practice location.
 - (2) The applicant's experience must have been in a position providing social work services, under the supervision of a qualified supervisor, with written evaluations to demonstrate satisfactory performance.
 - (3) Supervised experience must have occurred within the five calendar years immediately preceding the date of an initial or upgrade application.

Commented [SF1]: Some may object to "upgrade" since LMSW and LCSW are categories of license rather than levels of license.

- (4) The applicant must maintain and upon request, provide to the Council documentation of employment status, pay vouchers, or supervisory evaluations.

Rule: 781.412. Examination Requirement.

Action: Proposed Amendment

Comment: The proposed amendment clarifies and simplifies the examination requirements for applicants.

781.412. Examination Requirement.

- (a) An applicant for licensure or specialty recognition must pass an examination designated by the Council.
- (b) Staff may only accept the applicant's ASWB national examination score that is dated no more than two (2) years before the date of the initial or upgrade application is received. When an applicant passes the examination, the individual has no more than one year from the date of passing the examination to complete the requirements for licensure, completing all documentation and paying all fees or the passing examination score will no longer count towards licensure.

[OR]

- (b) Applicants must have received a passing score on the ASWB national examination within the two-year period preceding the date of the initial or upgrade application. The Council will not accept an exam score received more than two years prior to the date of the initial or upgrade application. When an applicant passes the examination, the individual has no more than one year from the date of passing the examination to complete the requirements for licensure, completing all documentation and paying all fees or the passing examination score will no longer count towards licensure.
- (c) ~~If an applicant fails the examination on the first attempt of his/her lifetime, the individual may retake the examination no more than two additional times. An applicant who has failed the examination on the first, second, and third attempts must comply with Council §882.6 of this title (relating to Limitation on Number of Examination Attempts).~~
- (c)(d) The Council may waive the examination for an applicant with a valid certificate or license from another state if the certificate or license was issued before January 1, 1986, if petitioned in writing.
- (d)(e) On the basis of a verified report from ASWB that an applicant has cheated on the examination, the application shall be denied.

Commented [SF1]: Delete "of"

Commented [SF2]: Some may object to "upgrade" since LMSW and LCSW are categories of license rather than levels of license.

Commented [PH3]: This version was approved by the Rules Committee, staff is recommending the option below for purposes of greater clarity and conformity to general rule drafting standards.

Commented [SF4]: Some may object to "upgrade" since LMSW and LCSW are categories of license, rather than levels of license.

Commented [SF5]: Same as above.

STATUS REPORT Mid 3rd Quarter	3Q FY21 Mar 1, 2020 to April 26, 2021	2Q FY21 Dec 1, 2020 to Feb 28, 2021	1Q FY21 Sep 1, 2020 to Nov 30, 2020	4Q FY20 Jun 1, 2020 to Aug 31, 2020
Number of Pending Complaints	972	1341	1379	1359
Pending Complaint per Member Board	TSBEP-477 TSBSWE- 317 TSBEMFT-91 TSBEP-87	TSBEP-778 TSBSWE- 346 TSBEMFT-102 TSBEP-115	TSBEP-826 TSBSWE-339 TSBEMFT-106 TSBEP-108	TSBEP-846 TSBSE-316 TSBEMFT-109 TSBEP-98
Number of New Complaints Received	41	97	111	107
Pending Priority 1 Cases	32	55	105	134
Pending Priority 2 Cases	81	128	116	101
Pending Priority 3 Cases	4	7	11	9
Cases Resolved this Quarter	428	125	106	143
Agreed Orders Signed	35	28	33	20
Cases Dismissed by Staff	393	97	73	122
Cases Dismissed by member Boards	0	0	0	1
Cases Reviewed at an ISC this Quarter	14	21	7	10

Pending Cases by Fiscal Year		3Q FY21 (as of 4/26/21)	2Q FY21 (as of 02/28/21)	1Q FY21 (as of 11/30/20)	4Q FY20 (as of 08/31/20)
FY2009	3 going to SOAH	3	3	3	3
FY2010	2 going to SOAH	2	2	4	4
FY2011	1 going to SOAH	1	1	1	1
FY2012	1 going to SOAH	2	2	3	3
FY2013	1 going to SOAH	3	3	5	5
FY2014	4 going to SOAH	6	10	11	13
FY2015	3 going to SOAH	12	20	20	24
FY2016	10 going to SOAH	22	34	47	67
FY2017	9 going to SOAH	50	80	111	136
FY2018	9 going to SOAH	92	220	264	296
FY2019	8 going to SOAH	241	321	340	351
FY2020	3 going to SOAH	363	450	462	456
FY2021	0 going to SOAH	175	195	108	
Total		972	1341	1379	1359

STATUS REPORT May 2021 Council Meeting	2Q FY21 Dec 1, 2020 to Feb 28, 2021	1Q FY21 Sep 1, 2020 to Nov 30, 2020	4Q FY20 Jun 1, 2020 to Aug 31, 2020	3Q FY20 Mar 1, 2020 to May 31, 2020
Number of Pending Complaints	1341	1379	1359	
Pending Complaint per Member Board	TSBEPC-778 TSBSWE- 346 TSBEMFT-102 TSBEP-115	TSBEPC-826 TSBSWE-339 TSBEMFT-106 TSBEP-108	TSBEPC-846 TSBSE-316 TSBEMFT-109 TSBEP-98	
Number of New Complaints Received	97	111	107	
Pending Priority 1 Cases	55	105	134	
Pending Priority 2 Cases	128	116	101	
Pending Priority 3 Cases	7	11	9	
Cases Resolved this Quarter	125	106	143	
Agreed Orders Signed	28	33	20	
Cases Dismissed by Staff	97	73	122	
Cases Dismissed by member Boards	0	0	1	
Cases Reviewed at an ISC this Quarter	21	7	10	

Pending Cases by Fiscal Year		2Q FY21 (as of 02/28/21)	1Q FY21 (as of 11/30/20)	4Q FY20 (as of 08/31/20)	3Q FY0x (as of 05/31/0x)
FY2009	3 going to SOAH	3	3	3	
FY2010	2 going to SOAH	2	4	4	
FY2011	1 going to SOAH	1	1	1	
FY2012	1 going to SOAH	2	3	3	
FY2013	1 going to SOAH	3	5	5	
FY2014	4 going to SOAH	10	11	13	
FY2015	3 going to SOAH	20	20	24	
FY2016	10 going to SOAH	34	47	67	
FY2017	5 going to SOAH	80	111	136	
FY2018	4 going to SOAH	220	264	296	
FY2019	5 going to SOAH	321	340	351	
FY2020	0 going to SOAH	450	462	456	
FY2021	0 going to SOAH	195	108		
Total		1341	1379	1359	

TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL
2nd QUARTER MEASURES
FY 2021

Number of New Licenses Renewed (from thpc24)

LSSP	392
LIC	643
LPA	91
LPC	2474
MFTA	29
MFT	323
LBSW	443
LMSW	1249
LCSW	1083
AP	23

Total	6750
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Number of Licenses Issued (from thpc24)

LPA	13
LIC	192
LSSP	13
LPCA	403
LPC	58
LPC Upgrade	316
MFTA	48
MFT	29
MFT Upgrade	44
LBSW	34
LMSW	427
LCSW	135
LMSW Upgrade	28
LCSW Upgrade	219
TEMP SW	38

Total	1997
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TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL
2nd QUARTER MEASURES
FY 2021

Number of Complaints Resolved (from BO report)

LP	0
LPC	106
MFT	11
SW	3

Total	120
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Percent of Complaint Resolved Within Six Months (from BO report)

1 st Qtr	5/104 =	5%
2 nd Qtr	9/120 =	8%
3 rd Qtr		
4 th Qtr		
YTD	14/224	7%

Percent of Complaints Resolved resulting in Disciplinary Action (from BO report)

1 st Qtr	33/104 =	33%
2 nd Qtr	29/120 =	25%
3 rd Qtr		
4 th Qtr		
YTD	62/224 =	28%


Average Time for Complaint Resolution (from BO report)

1 st Qtr	123,751 days to resolve 104 complaints =	1,189.91 days
2 nd Qtr	137,604 days to resolve 120 complaints =	1,146.70 days
3 rd Qtr		
4 th Qtr		
YTD	261,355 days to resolve 224 complaints =	1,166.77 days

Average Time for Application Processing (from BO report) (**Bold averages only**)

1 st Qtr	122,710 days to process 1,590 applications =	77.18 days
2 nd Qtr	149,768 days to process 1,576 applications =	95.03 days
3 rd Qtr		
4 th Qtr		
YTD	272,478 days to process 3,166 applications =	86.07 days

Calculations reviewed by:



Date:

3/31/21

LPA Initial	562 days to process 15 applications =	37.47
LPA Final	2,446 days to process 13 applications =	188.15
LIC Initial	4,304 days to process 100 applications =	43.04
LIC Final	13,818 days to process 112 applications =	123.38
LSSP	369 days to process 14 applications =	26.36
LPC Initial	4,693 days to process 58 applications =	80.91
LPCA Initial	35,553 days to process 403 applications =	88.22
LPC Upgrade	9,002 days to process 316 applications =	28.49
MFTA Exam	9,767 days to process 52 applications =	187.83
MFT License	3,167 days to process 29 applications =	109.21
MFTA License	5,598 days to process 48 applications =	116.63
MFTA Upgrade	2,793 days to process 44 applications =	63.48
SW Exam	51,521 days to process 333 applications =	154.72
SW License	80,570 days to process 393 applications =	205.01
SW OOS License	29,803 days to process 203 applications =	146.81
SW Upgrade	48,281 days to process 247 applications =	195.47
Temp SW License	1,401 days to process 38 applications =	36.87

- Those in **BOLD** are the applications we have more control over (i.e. we are not waiting for them to take and pass a national exam).

2nd QUARTER PERFORMANCE MEASURES

FISCAL YEAR 2021

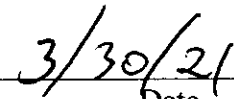
Submitted to the
Governor's Office of Budget and Planning
and the Legislative Budget Board

by

TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

March 30, 2021


Executive Director


Date

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Output Measures					
<u>1-1-1 LICENSING</u>					
1 # NEW LICENSEES ISSUED					
Quarter 1	600.00	1,789.00	1,789.00	298.17 % *	120.00 - 180.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE

The performance for this measure for the first quarter of FY 2021 exceeds its target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will issue 7,000 new licenses. Using this target, during this quarter the Council would have met this measure by issuing 1,789 new licenses, or 26% of the target.

* Varies by 5% or more from target.

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Output Measures					
1 # NEW LICENSEES ISSUED					
Quarter 2	600.00	1,997.00	3,786.00	631.00 % *	270.00 - 330.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will issue 7,000 new licenses. Using this target, the Council would have met this measure by issuing 3,786 new licenses total year to date, or 54% of the target.

2 # LICENSE RENEWALS

* Varies by 5% or more from target.

Efficiency/Output Measures with Cover Page and Update Explanation
86th Regular Session, Performance Reporting
Automated Budget and Evaluation System of Texas (ABEST)

3/30/2021 10:41:41AM

Agency code: **510** Agency name: **Behavioral Health Executive Council**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Output Measures					
2 # LICENSE RENEWALS					
Quarter 1	8,800.00	8,907.00	8,907.00	101.22 % *	1,760.00 - 2,640.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE

The performance for this measure for the first quarter of FY 2021 exceeds its target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will renew 40,000 licenses. Using this target, during this quarter the Council would have met this measure by renewing 8,907 new licenses, or 23% of the target.

* Varies by 5% or more from target.

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Output Measures					
2 # LICENSE RENEWALS					
Quarter 2	8,800.00	6,750.00	15,657.00	177.92 % *	3,960.00 - 4,840.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will renew 40,000 licenses. Using this target, the agency would have fallen short of this measure by renewing 15,657 licenses to date, or 40% of the target.

2-1-1 ENFORCEMENT

1 COMPLAINTS RESOLVED

* Varies by 5% or more from target.

Efficiency/Output Measures with Cover Page and Update Explanation
86th Regular Session, Performance Reporting
Automated Budget and Evaluation System of Texas (ABEST)

3/30/2021 10:41:41AM

Agency code: **510** Agency name: **Behavioral Health Executive Council**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Output Measures					
1 COMPLAINTS RESOLVED					
Quarter 1	130.00	104.00	104.00	80.00 % *	26.00 - 39.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE

The performance for this measure for the first quarter of FY 2021 exceeds its target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will resolve 800 complaints. Using this target, during this quarter the Council would not have met this measure by resolving 104 complaints, or 13%. The Council's investigators are still in a training state, trying to learn the statutes and rules of all four regulatory programs. However, the number of complaints resolved during the last month of this quarter has significantly increased to 71 from the 12 that were resolved during the first month of the quarter. Additionally, there are 1,379 complaints pending, 200 of which the investigation has been completed and sent to the legal division for review.

* Varies by 5% or more from target.

Efficiency/Output Measures with Cover Page and Update Explanation
86th Regular Session, Performance Reporting
Automated Budget and Evaluation System of Texas (ABEST)

3/30/2021 10:41:41AM

Agency code: **510** Agency name: **Behavioral Health Executive Council**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Output Measures					
1 COMPLAINTS RESOLVED					
Quarter 2	130.00	120.00	224.00	172.31 % *	58.50 - 71.50

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will resolve 800 complaints. Using this target, the Council would not have met this measure by resolving 224 complaints year to date, or 28% of the target. The Council's investigators and attorneys are still in a training state, trying to learn the statutes and rules of all four regulatory programs. Additionally, the Council is still trying to fill four vacant investigator positions. As of the end of this quarter, there are 1,339 complaints pending, 220 of which have since been closed and 145 of which the investigation has been completed and sent to the legal division for review.

Efficiency Measures

2-1-1 ENFORCEMENT

1 AVG TIME/COMPLAINT RESOLUTION

* Varies by 5% or more from target.

Efficiency/Output Measures with Cover Page and Update Explanation
86th Regular Session, Performance Reporting
Automated Budget and Evaluation System of Texas (ABEST)

3/30/2021 10:41:41AM

Agency code: **510** Agency name: **Behavioral Health Executive Council**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
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Efficiency Measures

1 AVG TIME/COMPLAINT RESOLUTION

Quarter 1	275.00	1,190.00	1,190.00	432.73 % *	261.25 - 288.75
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Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the first quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected an average complaint resolution time of 800 days. Using this target, during this quarter the Council would not have met this measure with an average complaint resolution time of 1,190 days, or 149%. The Council's investigators are still in a training state, trying to learn the statutes and rules of all four regulatory programs. Additionally, there were over 1,300 pending complaints that transferred over from HHSC, some of which dated back to FY 2008. This backlog will take time to clear, and will inevitably cause a higher average complaint resolution time than originally anticipated.

* Varies by 5% or more from target.

Efficiency/Output Measures with Cover Page and Update Explanation
86th Regular Session, Performance Reporting
Automated Budget and Evaluation System of Texas (ABEST)

3/30/2021 10:41:41AM

Agency code: **510** Agency name: **Behavioral Health Executive Council**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
Efficiency Measures					
1 AVG TIME/COMPLAINT RESOLUTION					
Quarter 2	275.00	1,147.00	1,167.00	424.36 % *	261.25 - 288.75

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected an average complaint resolution time of 800 days. Using this target, during this quarter the Council would not have met this measure with an average complaint resolution time of 1,167 days, or 146% of the target. The Council's investigators and attorneys are still in a training state, trying to learn the statutes and rules of all four regulatory programs. Additionally, there were over 1,300 pending complaints that transferred over from HHSC, some of which dated back to FY 2008. This backlog will take time to clear, and will inevitably cause a higher average complaint resolution time than originally anticipated.

* Varies by 5% or more from target.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 14, 2021

Mr. Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
333 Guadalupe, Suite 3-900
Austin, Texas 78701

Opinion No. KP-0372

Re: Authority of the Behavioral Health Executive Council to adopt a rule prohibiting certain discriminatory conduct by licensed social workers (RQ-0391-KP)

Dear Mr. Spinks:

You ask about the authority of the Behavioral Health Executive Council (“the Council”) to adopt a rule prohibiting discriminatory actions relating to disability, sexual orientation, and gender identity and expression by licensed social workers regulated by the Council.¹

I. The Legislature directed the Council to take disciplinary action against license holders for only certain types of discriminatory conduct.

The Council oversees four separate entities related to the provision of psychology and counseling services: (1) the Texas State Board of Examiners of Marriage and Family Therapists; (2) the Texas State Board of Examiners of Professional Counselors; (3) the Texas State Board of Examiners of Psychologists; and (4) the Texas State Board of Social Worker Examiners. *See* TEX. OCC. CODE § 507.151(a) (requiring the Council to administer and enforce chapters related to each profession). The Legislature authorized the Council to “adopt and enforce rules” and to “establish standards of conduct and ethics for license holders” under its jurisdiction. *Id.* § 505.201(a)(1)–(2).

With regard to the practice of social work, the Legislature directed the Council to take disciplinary action against license holders who refuse “to perform an act or service within the scope of the license holder’s license solely because of the recipient’s age, sex, race, religion, national origin, color, or political affiliation.” *Id.* § 505.451(13). The Council adopted the following rule with respect to social workers:

¹Letter from Mr. Darrel D. Spinks, Exec. Dir., Tex. Behavioral Health Exec. Council, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Dec. 14, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0391KP.pdf> (“Request Letter”).

A social worker must observe and comply with the code of conduct and standards of practice set forth in this subchapter. Any violation of the code of conduct or standards of practice will constitute unethical conduct or conduct that discredits or tends to discredit the profession of social work and is grounds for disciplinary action.

- (1) A social worker shall not refuse to perform any act or service for which the person is licensed solely on the basis of a client's age; gender; race; color; religion; national origin; disability; sexual orientation; gender identity and expression; or political affiliation.

22 TEX. ADMIN. CODE § 781.301(1).

The Council's rule prohibiting social workers from discrimination changes the term "sex" to "gender" and adds three categories of discrimination not expressly included by the Legislature in subsection 505.451(13): discrimination based on disability, sexual orientation, and gender identity.² *Compare id.*, with TEX. OCC. CODE § 505.451(13). You ask whether the Council has statutory authority to adopt this rule in its regulation of social workers. Request Letter at 1.

II. The Council lacks authority to discipline licensees for discrimination beyond what the Legislature authorized it to address.

As a state administrative agency, the Council is a creature of the Legislature and has no inherent authority. *See Pub. Util. Comm'n of Tex. v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 316 (Tex. 2001). When the Legislature authorizes an agency to adopt rules, the agency "may adopt only such rules as are authorized by and consistent with its statutory authority." *Pruett v. Harris Cnty. Bail Bond Bd.*, 249 S.W.3d 447, 452 (Tex. 2008). Important to your question, an agency rule may not impose "additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions." *Tex. State Bd. of Exam'rs of Marriage & Fam. Therapists v. Tex. Med. Ass'n*, 511 S.W.3d 28, 33 (Tex. 2017). The Legislature "chooses a statute's language with care, including each word chosen for a purpose, while purposely omitting words not chosen." *Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm'n*, 518 S.W.3d 318, 325–26 (Tex. 2017) (quotation marks omitted). State agencies must take the statutes as they find them and refrain from rewriting the Legislature's text. *Id.* at 326.

Subsection 505.451(13) identifies the obligation the Legislature placed on the Council to take disciplinary action for discrimination by social workers. TEX. OCC. CODE § 505.451(13). No provisions in either chapter 505 ("Social Workers") or chapter 507 ("Texas Behavioral Health Executive Council") address gender, disability, sexual orientation, or gender identity

²The common understanding of the term "sex" is "one of the two divisions of organic esp. human beings respectively designated male or female." WEBSTER'S THIRD NEW INT'L DICT. 2081 (2002). In contrast, the term "gender" is commonly defined as "any of two or more subclasses within a grammatical class of a language (such as noun, pronoun, adjective, verb) that are partly arbitrary but also partly based on distinguishable characteristics such as . . . sex (as masculine, feminine, or neuter) and that determine agreement with and selection of other words or grammatical forms." *Id.* at 944.

discrimination by a social worker. By contrast, in other circumstances, the Legislature expressly authorized regulatory agencies to take disciplinary action for disability discrimination. *See, e.g., id.* § 1101.652(b)(32) (authorizing the Real Estate Commission to discipline a real estate broker who “discriminates against an owner, potential buyer, landlord, or potential tenant on the basis of . . . disability”). “When the Legislature uses a word or phrase in one part of a statute but excludes it from another, the term should not be implied where it has been excluded.” *Cadena Comercial USA Corp.*, 518 S.W.3d at 329.

Thus, the Council’s attempt to rewrite the Legislature’s chosen language by changing the term “sex” to “gender” and to prohibit discrimination on the basis of disability, sexual orientation, or gender identity and expression by adopting a rule and authorizing itself to take disciplinary action for such conduct exceeds the authority granted to it by the Legislature and imposes additional restrictions in excess of the relevant statutory provisions. Because the Council exceeded its statutory authority in adopting the rule, a court would likely conclude the rule is invalid to the extent of that excess.

III. State law does not prohibit discrimination based on sexual orientation or gender identity.

Protected classes are created by statute or a constitutional provision. *See, e.g.,* TEX. CONST. art. I, § 3a (“Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin.”); TEX. LABOR CODE § 21.051 (prohibiting employment discrimination on the basis of race, color, disability, religion, sex, national origin, or age); *Flores v. State*, 904 S.W.2d 129, 130 (Tex. Crim. App. 1995) (explaining that race or national origin discrimination is prohibited by provisions in the U.S. and Texas constitutions).

No Texas statute prohibits discrimination based on sexual orientation or gender identity and expression. If the Legislature intends otherwise, it may expressly amend statutes to so provide. While the U.S. Supreme Court, in *Bostock v. Clayton County*, construed federal law to prohibit discrimination based on sexual orientation or gender identity in the employment context, the Court expressly limited its decision to the statutory language of Title VII. 140 S. Ct. 1731, 1753 (2020) (“The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination But none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such question today.”).³ The factual scenarios at issue in that case involved employers firing employees on the basis of their sexual orientation, as distinguished from the scenarios at issue here, where the Council seeks to compel its licensees to affirmatively provide services to individuals without consideration of sexual orientation or gender identity. Furthermore, the Court in *Bostock* expressly distinguished statutes that, like subsection 505.451(13), prohibit discrimination “solely” because of an individual’s sex. *Id.* at 1739, 1753. Thus, the rule in *Bostock* cannot be applied to extend the Council’s authority to take disciplinary action against license

³“The role of an Attorney General opinion is to assess how a court would likely rule on a legal question in light of prior court decisions.” Tex. Att’y Gen. Op. No. KP-0158 (2017) at 2; *see* Tex. Att’y Gen. Op. No. GA-1087 (2014) at 3. Nothing in this opinion should be construed as opining on the holding of the *Bostock* decision or its underlying analysis or persuasiveness.

holders. *Cf. Pelcha v. MW Bancorp, Inc.*, 988 F.3d 318, 324 (6th Cir. 2021) (“[T]he rule in *Bostock* extends no further than Title VII and does not stretch to the ADEA.”).

IV. The sexual orientation and gender identity discrimination the Council seeks to prohibit through its rule may, in particular instances, be constitutionally protected under the Free Exercise Clause.

The First Amendment of the U.S. Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” U.S. CONST. amend. I. The Free Exercise Clause has been applied to the States through the Fourteenth Amendment. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). In addition, the Texas Constitution provides: “No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion. . . .” TEX. CONST. art. I, § 6. Some courts have opined that article I, section 6 of the Texas Constitution “provides greater protections for the free exercise of one’s religion than does the federal constitution.” *Ex parte Herrera*, No. 05-14-00598-CR, 2014 WL 4207153, at *4 (Tex. App.—Dallas Aug. 26, 2014, no pet.) (mem. op.) (citing *Howell v. State*, 723 S.W.2d 755, 758 (Tex. App.—Texarkana 1986, no writ)).

Both state and federal law protect religious organizations and persons as they seek to fulfill the principles central to their faiths. *See, e.g., Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 694–95 (2014). The U.S. Supreme Court has emphasized that “religious and philosophical objections to gay marriage are protected views and in some instances protected forms of expression.” *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1727 (2018).

Consistent with these constitutional protections, the U.S. Supreme Court concluded in *Masterpiece Cakeshop* that “the government, if it is to respect the Constitution’s guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices.” *Masterpiece Cakeshop, Ltd.*, 138 S. Ct. at 1731 (citing *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993)).⁴ The sexual orientation and gender identity discrimination the Council seeks to prohibit through its rule may, in particular instances, be a constitutionally protected exercise of religion. *See generally Ward v. Polite*, 667 F.3d 727, 730 (6th Cir. 2012) (reversing summary judgment against a student who declined to provide counseling to a gay client because affirming same-sex relationships contradicted her religious

⁴The defendant in *Masterpiece Cakeshop* also asserted a claim that the Colorado Civil Rights Commission infringed upon his freedom of speech when it ruled that he violated the Colorado Anti-Discrimination Act by refusing to bake a wedding cake for a gay couple. *See Masterpiece Cakeshop, Ltd.*, 138 S. Ct. at 1723. The Court decided the case on free exercise grounds and left for another day the free speech concerns surrounding the issue. *See id.* (“Whatever the confluence of speech and free exercise principles might be in some cases, the Colorado Civil Rights Commission’s consideration of this case was inconsistent with the State’s obligation of religious neutrality.”). However, a social worker disciplined for voicing controversial viewpoints regarding sexual orientation or gender identity may also have a claim under the First Amendment right to free speech as well. *See Meriwether v. Hartop*, 992 F.3d 492, 511–12 (6th Cir. 2021) (holding that a university violated a professor’s right to free speech when it disciplined the professor for refusing to identify a student using the student’s preferred pronouns).

beliefs). A rule prohibiting that exercise of religion conflicts with the longstanding constitutional protection for an individual's most deeply held religious beliefs.

V. While a social worker may not discriminate based on disability in contravention of state and federal law, the Council lacks statutory authority to discipline a licensee for discrimination based on disability.

The Legislature has promulgated laws to prohibit discrimination against the disabled. Texas law provides that “[p]ersons with disabilities have the same right as persons without disabilities to the full use and enjoyment of any public facility in the state.” TEX. HUM. RES. CODE § 121.003(a). “No person with a disability may be denied admittance to any public facility in the state because of the person’s disability.” *Id.* § 121.003(c). Persons who discriminate against an individual based on a disability in violation of section 121.003 may incur both criminal and civil penalties. *Id.* § 121.004.⁵

However, the Legislature did not give the Council authority to discipline social workers for disability discrimination. If the Legislature intends otherwise, it may expressly amend the statute to so provide. The Council’s power to adopt rules is limited to what is authorized by and consistent with its statutory authority. *Pruett*, 249 S.W.3d at 452. Thus, while a social worker may not discriminate based on disability in contravention of state and federal law, the Council lacks statutory authority to discipline a licensee for discrimination based on disability.

⁵The federal Americans with Disabilities Act (“ADA”) also prohibits discrimination on the basis of disability in certain circumstances:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. § 12182(a). The ADA establishes a civil action for injunctive relief for a person subject to discrimination on the basis of disability in violation of that Act. *Id.* §§ 12188(a), 2000a-3. Whether a legal claim exists for disability discrimination under either state or federal law will depend on the particular facts of each case. But the law generally prohibits disability discrimination and provides actions to enjoin the discriminatory conduct.

S U M M A R Y

The Legislature authorized the Behavioral Health Executive Council to take disciplinary action against social workers who refuse to perform an act or service within the scope of their licenses solely because of the recipient's age, sex, race, religion, national origin, color, or political affiliation. The Council adopted a rule changing the word "sex" to "gender" and authorizing disciplinary action for refusal of service based on disability, sexual orientation, and gender identity and expression. In doing so, the Council exceeded the authority granted to it by the Legislature by rewriting the language chosen by the Legislature and imposing additional restrictions in excess of the relevant statutory provisions. A court would likely conclude that the rule is invalid to the extent that it is inconsistent with and exceeds the Council's statutory authority.

No Texas statute prohibits discrimination based on sexual orientation or gender identity or expression, and the U.S. Supreme Court has emphasized that religious and philosophical objections to categories of sexual orientation are protected views and in some instances protected forms of expression under the First Amendment. If the Legislature intends otherwise, it may expressly amend the statute to so provide. A Council rule prohibiting that expression conflicts with the longstanding constitutional protection for an individual's free exercise of religion.

While a social worker may not discriminate based on disability in contravention of state and federal law, the Council lacks statutory authority to discipline a licensee for discrimination based on disability.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

KEN PAXTON
Attorney General of Texas

BRENT E. WEBSTER
First Assistant Attorney General

LESLEY FRENCH
Chief of Staff

MURTAZA F. SUTARWALLA
Deputy Attorney General for Legal Counsel

AARON F. REITZ
Deputy Attorney General for Legal Strategy

VIRGINIA K. HOELSCHER
Chair, Opinion Committee



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 17, 2020

Mr. Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
333 Guadalupe, Suite 3-900
Austin, Texas 78701

Via E-Mail

Re: Authority of the Behavioral Health Executive Council to adopt a rule prohibiting certain discriminatory conduct by licensed social workers (RQ-0391-KP)

Dear Mr. Spinks:

We received your request for an attorney general opinion and have designated it as Request No. 0391-KP. Section 402.042 of the Government Code provides that the Attorney General shall issue an opinion not later than the 180th day after the date that an opinion request is received, unless before that deadline the Attorney General notifies the requesting person in writing that the opinion will be delayed. TEX. GOV'T CODE § 402.042(c)(2). We received your request on December 14, 2020, setting a due date for your opinion of June 14, 2021.

By copy of this letter we are notifying those listed below of your request and asking them to submit briefing on your questions if they have a special interest or expertise in the subject matter. If you are aware of other interested parties, please forward this request for briefing to them or let us know, so that we may notify them as soon as possible. We ask that the briefs be submitted by January 15, 2021, to ensure that this office will have adequate time to review and consider arguments relevant to the request from all interested parties. Briefs may be submitted by e-mail to opinion.committee@oag.texas.gov. Please note that briefs and other correspondence are subject to the Public Information Act.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Virginia K. Hoelscher
Chair, Opinion Committee

VKH/som

Attachment: Request No. 0391-KP

cc: Ms. Karen Ray, Chief Counsel, Texas Department of Health and Human Services
Mr. Jonathan Miles, General Counsel, Texas Department of Health and Human Services
The Honorable José Menéndez, Texas State Senate
The Honorable Jessica González, Texas House of Representatives
The Honorable Mary González, Chair, Texas House of Representatives LGBTQ Caucus
Mr. Will Francis, LMSW, Executive Director, National Association of Social Workers
Texas
Ms. Alison Mohr Boleware, LMSW, Government Relations Director, National
Association of Social Workers Texas
Ms. Lacy Compton, M.A., Association Manager, Texas Association for Marriage and
Family Therapy
Texas Association of Psychological Associates
Ms. Stephanie Barbre, President, Texas Association of School Psychologists
Ms. Jan Friese, Executive Director, Texas Counseling Association
Ms. Jessica Magee, Executive Director, Texas Psychological Association
Mr. Jonathan M. Saenz, President, Texas Values
Ms. Johanna Meade, General Counsel Division, Office of the Governor

TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL



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Darrel D. Spinks
Executive Director

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By Opinion Committee at 5:00 pm, Dec 14, 2020

RQ-0391-KP

FILE# ML-48915-20

I.D.# 48915

December 14, 2020

VIA EMAIL TO OPINION.COMMITTEE@OAG.TEXAS.GOV

The Honorable Ken Paxton
Attorney General of Texas
Attn: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

Dear Mr. Paxton:

The Texas Behavioral Health Executive Council (hereinafter referred to as “the Council”) respectfully requests a Texas Attorney General Opinion regarding the statutory authority to adopt 22 Tex. Admin. Code Sec. 781.301(1), and any other similar rules prohibiting discriminatory misconduct by other licensees regulated by the Council. Put another way, why does the Council not have the statutory authority to adopt a code of conduct rule prohibiting discrimination by social workers, as well as other similar ethical rules prohibiting discriminatory practices by psychologists, professional counselors, or marriage and family therapists?

Although the discrimination prohibition for social workers found in 22 Tex. Admin. Code Sec. 781.301(1) has existed in a rule in some shape or form since January of 2011, it was previously in 22 Tex. Admin. Code Sec. 781.201(a)(1); it has been suggested that this rule exceeds the Council’s statutory authority. While the Council believes this rule is within its authority to adopt, the Council seeks the Office of the Attorney General’s assistance to clarify any potential misunderstanding regarding the matter.

The relevant portions of the rule and statutes involved are set out below.

Copy of the Rule in Question

22 Tex. Admin. Code Sec. 781.301. CODE OF CONDUCT. A social worker must observe and comply with the code of conduct and standards of practice set forth in this subchapter. Any violation of the code of conduct or standards of practice will constitute unethical conduct or conduct that discredits or tends to discredit the profession of social work and is grounds for disciplinary action.

333 Guadalupe, Suite 3-900, Austin, Texas 78701

(Phone) 512-305-7700, www.bhec.texas.gov

The Texas Behavioral Health Executive Council is an equal opportunity employer and does not discriminate on the basis of race, color, religion, national origin, age, sex, disability or sexual orientation.

(1) A social worker shall not refuse to perform any act or service for which the person is licensed solely on the basis of a client's age; gender; race; color; religion; national origin; disability; sexual orientation; gender identity and expression; or political affiliation.

Relevant Statutes Pertaining to Council Rulemaking Authority

Tex. Occ. Code Sec. 507.152. GENERAL RULEMAKING AUTHORITY. The executive council shall adopt rules as necessary to perform its duties and implement this chapter.

Tex. Occ. Code Sec. 507.153. LIMITATION REGARDING CERTAIN RULES. (a) Unless the rule has been proposed by the applicable board for the profession, the executive council may not adopt under this chapter or Chapter 501, 502, 503, or 505:

- (1) a rule regarding:
 - (B) the scope of practice of and standards of care and ethical practice for the profession[.]

Relevant Statutes Pertaining to the Practice of Social Work

Tex. Occ. Code Sec. 505.004. NONDISCRIMINATORY ACTIONS AND DECISIONS. An action taken or a decision made under this chapter, including an action or a decision relating to a license application, examination, regulation, or disciplinary proceeding, shall be taken or made without regard to sex, race, religion, national origin, color, or political affiliation.

Tex. Occ. Code Sec. 505.201. GENERAL RULEMAKING AND ENFORCEMENT AUTHORITY OF EXECUTIVE COUNCIL. (a) The executive council may:

- (1) adopt and enforce rules necessary to perform the executive council's duties under this chapter;
 - (2) establish standards of conduct and ethics for license holders; and
 - (3) ensure strict compliance with and enforcement of this chapter.
- (b) The executive council by rule may define a term not defined under Section 505.002 if a definition is necessary to administer or enforce this chapter.

Tex. Occ. Code Sec. 505.2015. BOARD DUTIES. The board shall propose to the executive council:

- (1) rules regarding:
 - (B) the scope of practice of and standards of care and ethical practice for social work[.]

Tex. Occ. Code Sec. 505.451. GROUNDS FOR DISCIPLINARY ACTION. The executive council shall take disciplinary action under Subchapter G, Chapter 507, against a person for:

- (13) refusing to perform an act or service within the scope of the license holder's license solely because of the recipient's age, sex, race, religion, national origin, color, or political affiliation[.]

Relevant Statutes Pertaining to the Practice of Psychology

Tex. Occ. Code Sec. 501.151. GENERAL POWERS AND DUTIES OF EXECUTIVE COUNCIL.

- (c) The executive council shall adopt and publish a code of ethics under this chapter.

Tex. Occ. Code Sec. 501.1515. BOARD DUTIES. The board shall propose to the executive council:

(1) rules regarding:

(B) the scope of practice of and standards of care and ethical practice for psychology[.]

Relevant Statutes Pertaining to the Practice of Marriage and Family Therapy

Tex. Occ. Code Sec. 502.151. GENERAL POWERS AND DUTIES OF EXECUTIVE COUNCIL. The executive council shall:

(2) adopt a code of professional ethics for license holders.

Tex. Occ. Code Sec. 502.1515. BOARD DUTIES. The board shall propose to the executive council:

(1) rules regarding:

(B) the scope of practice of and standards of care and ethical practice for marriage and family therapy[.]

Relevant Statutes Pertaining to the Practice of Professional Counseling

Tex. Occ. Code Sec. 503.201. GENERAL POWERS AND DUTIES OF EXECUTIVE COUNCIL. (a) The executive council shall:

(3) adopt and publish a code of ethics[.]

Tex. Occ. Code Sec. 503.2015. BOARD DUTIES. The board shall propose to the executive council:

(1) rules regarding:

(B) the scope of practice of and standards of care and ethical practice for professional counseling[.]

Background

H.B. 3155, 76th Leg., R.S. (1999) codified Sec. 505.451(13); and, except for the role of the Texas State Board of Social Worker Examiners (“Social Worker Board”) being substituted for the Council in 2019 by H.B. 1501, it substantively remains the same to this day. From the plain language of this statute it is clear the Legislature intended to prohibit discriminatory practices by social workers; the statute states that the Council shall take disciplinary action against a person for “refusing to perform an act or service within the scope of the license holder's license solely because of the recipient's age, sex, race, religion, national origin, color, or political affiliation[.]” Former Sec. 505.201 allowed the Social Worker Board to adopt rules as well as establish standards of conduct and ethics for license holders.

Effective January 27, 2011, the Social Worker Board amended 22 Tex. Admin. Code Sec. 781.201(a)(1) to prohibit a social worker from refusing to provide services based solely on the recipient's age, gender, race, color, religion, national origin, disability, sexual orientation, or political affiliation, see 36 Tex. Reg. 242 (January 21, 2011). Effective March 28, 2013, the Social Worker Board further amended 22 Tex. Admin. Code Sec. 781.201(a)(1) to also include gender identity and expression to the list of prohibited discrimination, see 38 Tex. Reg. 1980 (March 22, 2013).

H.B. 1501, 86th Leg., R.S. (2019) created the Texas Behavioral Health Executive Council and authorized the Council to regulate, administer, and adopt rules for the practice of marriage and family therapy, professional counseling, psychology, and social work. Certain rules, such as the scope of practice of and standards of care and ethical practice for a profession, must first be proposed to the Council by the underlying professional board.

22 Tex. Admin. Code Sec. 781.201(a)(1) has recently been readopted as 22 Tex. Admin. Code Sec. 781.301(1) by the Council, to conform with the new regulatory structure created by H.B. 1501. The issue that has been raised to the Council is that the rule should match the statute, otherwise the rule exceeds the agency's rulemaking authority. Those that question the Council's rulemaking authority believe that Sec. 505.451(13) provides an exhaustive list, and if the Legislature intended to include other categories of prohibited discrimination, then it would have included them in the statute.

Discussion

A state administrative agency has only those powers that the Legislature expressly confers upon it or that are implied to carry out the express functions or duties given or imposed by statute. *Texas Workers' Comp. Comm'n v. Patient Advocates of Tex.*, 136 S.W.3d 643, 652 (Tex. 2004); *Pub. Util. Comm'n v. City Pub. Serv. Bd.*, 53 S.W.3d 310, 315-16 (Tex. 2001). In construing a statute, a state administrative agency or court's objective is to determine and give effect to the Legislature's intent first by looking to the statute's plain and common meaning. *Albertson's, Inc. v. Sinclair*, 984 S.W.2d 958, 960 (Tex. 1999).

Texas courts recognize that the Legislature "intends an agency created to centralize expertise in a certain regulatory area be given a large degree of latitude in the methods it uses to accomplish its regulation function." *City of Garland v. Public Util. Comm'n of Tex.*, 165 S.W.3d 814, 819 (Tex. App.—Austin 2005, pet. denied). When conferring a power upon an agency, the Legislature also "impliedly intends that the agency have whatever powers are reasonably necessary to fulfill its express functions or duties, and the Legislature is not required to include every specific detail or anticipate all unforeseen circumstances when enacting an agency's authorizing statute." *Texas Orthopaedic Ass'n v. Texas State Bd. of Podiatric Med. Exam'rs*, 254 S.W.3d 714, 719 (Tex. App.—Austin 2008, pet. denied).

The plain language of the Occupations Code sections listed above states that the Council, in conjunction with each underlying board, shall adopt a code of ethics. Therefore, the Legislature delegated the authority to develop and adopt rules concerning the ethical practice of social workers, and other licensees regulated by the Council. The Legislature clearly intended to prohibit social workers from discriminating against a recipient of social work services on the basis of age, sex, race, religion, national origin, color, or political affiliation. The Council asserts that including disability, sexual orientation, and gender identity and expression to this list comports with the Legislature's intent.

National associations often develop and publish model rules or codes of ethics. While such model rules do not create a legal basis for a Texas state agency to promulgate and adopt rules, they are often instructive for regulatory agency rulemaking. To that end, the National Association of Social Workers has issued a code of ethics as a guide to the everyday professional conduct of social workers. Section 4.02 of those model rules, regarding discrimination, states: "[s]ocial workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, or mental or physical ability." The Social Worker Board is not the only agency to use model rules as a guide for rulemaking. The Texas State Bar has based rules on American Bar Association Model Rules of

Professional Conduct; see Ethics Opinion No. 653, January 2016, which discusses Rule 4.02(a) being based on Model Rule 4.2. It is worth noting that other national associations for psychologists, counselors, and marriage and family therapists have also promulgated similar model codes of ethics that prohibits discrimination.¹

Social workers are utilized in various settings throughout the State of Texas. One such setting is in hospitals; social workers are often employed by hospitals as case managers to ensure patients continue to receive the necessary care, services, equipment, or the like during a hospital stay and when discharged. It is not uncommon for disabled persons to be admitted and discharged from hospitals. The legislative intent of Sec. 505.451(13) is clearly focused on prohibiting and preventing discriminatory conduct. It would be counterproductive and counterintuitive to not prohibit social workers from discriminating against disabled persons since disabled Texans may not receive necessary care or services provided by social workers. Therefore including "disability" in 22 Tex. Admin. Code Sec. 781.301(1) would not only appear logical, but also comport with the legislative intent of Sec. 505.451(13).

The contrary viewpoint would assert that Sec. 505.451(13) lists age, sex, race, religion, national origin, color, or political affiliation; but does not list disability. Those that question the underlying authority of the rule assert that when the Legislature provides a list it is intended to be exclusive, not inclusive, so additional categories should not be added in rulemaking. While it can be true that the Legislature can and does sometimes provide an exclusive list in statutes, the Council does not believe that is the case here. For example, Sec. 505.004 prohibits an action or decision made under Chapter 505, such as one relating to a license application, examination, regulation, or disciplinary proceeding, from being taken or made on the basis of sex, race, religion, national origin, color, or political affiliation. While this statute appears very similar to Sec. 505.451(13) noticeably absent from this list, which is in the later statute, is "age." The Council does not interpret the omission of the term "age" from Sec. 505.004 to then authorize the agency to use age as a basis for making a decision or taking an action in a licensing application, disciplinary proceeding, or the like. Instead, the Council interprets the legislative intent of Sec. 505.004 to require actions or decisions in licensing applications or disciplinary proceedings to be based on facts and law rather than on the basis of irrelevant or potentially discriminatory factors such as sex, religion, race, or any other such category - which could include age. The overarching principle in Sec. 505.004, that the agency should not conduct discriminatory practices, is the same found in Sec. 505.451(13), that licensees should not discriminate against clients.

Additionally, the plain language of Sec. 505.451(13) does not appear to restrict or limit the categories of prohibited discrimination since the language does not include any limiting statements, such as "limited to." Conversely, the statute does not include language that broadens these enumerated categories, such as

¹ American Psychological Association code of ethics, section 3.01, states: "[i]n their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis proscribed by law." American Counseling Association code of ethics, section C.5., states: "Counselors do not condone or engage in discrimination against prospective or current clients, students, employees, supervisees, or research participants based on age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital/ partnership status, language preference, socioeconomic status, immigration status, or any basis proscribed by law." American Association for Marriage and Family Therapy code of ethics, section 1.1, states: "[m]arriage and family therapists provide professional assistance to persons without discrimination on the basis of race, age, ethnicity, socioeconomic status, disability, gender, health status, religion, national origin, sexual orientation, gender identity or relationship status."

“including, but not limited to.” The statute plainly states the prohibited discrimination categories and is ambiguous as to whether the Legislature intended this to be an exclusive list or a starting point. The Council believes the resolution to any such ambiguity in the statutory language requires the Council to look to the statute’s intent and that any categories logically related to the statute’s intent were intended for inclusion by the Legislature.

Turning to the inclusion of the terms “sexual orientation” and “gender identity and expression” in the rule, the term “sex” that is included in Sec. 505.451(13) can be and has been interpreted to mean more than just a synonym for gender. In an employment law context, the U.S. Supreme Court has interpreted the term “sex” to include not only male and female gender, but to also include gay or transgender. See *Bostock v. Clayton County, Georgia*, No. 17-1618 (S. Ct. June 15, 2020). The court held an employer who fires an individual merely for being gay or transgender violates Title VII. Title VII makes it “unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. §2000e–2(a)(1). Because discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat individual employees differently because of their sex, an employer who intentionally penalizes an employee for being homosexual or transgender also violates Title VII. Because of caselaw precedent, the Council reasonably believes the term “sex” in Sec. 505.451(13) is intended to include the categories listed in 22 Tex. Admin. Code Sec. 781.301(1) of gender, sexual orientation, and gender identity and expression.

Even if one believes the term “sex” is not intended to include gender, sexual orientation, and gender identity and expression, why would including sexual orientation and gender identity and expression not accord with the intent of the Legislature or be permissible within the scope of the Legislature’s delegation of powers for the Council to adopt a code of ethics? As discussed above regarding the inclusion of disability, the general objective of the statute is to prohibit discrimination so that Texans may have access to the necessary services social workers provided, and the inclusion of sexual orientation and gender identity and expression works towards this objective. If the Office of the Attorney General states that the reason a category cannot be added to the rule is because the statute does not explicitly state or include it, then would the other Boards for counseling, psychology, and marriage and family therapy be within their statutory authority to adopt a similar rule with these same categories since Chapters 501, 502, and 503 of the Occupations Code do not contain such a list?

The Council does not believe the prohibited discrimination enumerated by Sec. 505.451(13) is without limitation. S.B. 138, 76th Leg., R.S. (1999), codified Chapter 110 of the Civil Practices and Remedies Code which pertains to government restrictions on the free exercise of religion. This legislation was enacted during the same legislative session that Sec. 505.451(13) was first codified. The Code Construction Act would presume that the Legislature intended the entirety of both statutes to be effective. Specifically, Sec. 110.002(c) states, “[t]his chapter applies to each law of this state unless the law is expressly made exempt from the application of this chapter by reference to this chapter.” Chapter 505 was not made exempt, so Chapter 110 applies. Sec. 110.003(a) states, “[s]ubject to Subsection (b), a government agency may not substantially burden a person’s free exercise of religion.” Sec. 505.451(13), and the rule, does not conflict with Chapter 110 because subsection (b) of Sec. 110.003 may apply but, more importantly, because both the statute and rule contain the following limiting language “solely because of” and “solely on the basis of” respectively. A licensee may not discriminate based solely on one of the enumerated categories, but a person may freely exercise religion; so if a licensee denies services based upon a sincerely held religious belief then the licensee would not be denying services based solely on one of the enumerated categories but

based upon a licensee's free exercise of religion. Therefore Sec. 505.451(13), and the rule, does not conflict with Chapter 110 of the Civil Practices and Remedies Code.

The Council recognizes that the Office of the Attorney General has filed an amicus brief in a case currently pending before the U.S. Supreme Court that may be related to this matter, *Fulton v. City of Philadelphia*, No. 19-123, and a decision in that case may impact this request for an opinion. In summary, the brief discusses the delicate balance that must be struck in the law between the protection of religious freedoms and protections against discrimination. The Council believes a related question is posed here, and believes it has achieved a thoughtful and informed delicate balance between Sec. 505.451(13) and Chapter 110.

It is the Council's understanding that to establish a rule's facial invalidity, one must show that the rule: (1) contravenes specific statutory language; (2) runs counter to the general objectives of the underlying Act; or (3) imposes additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions. See *Texas Bd. of Chiropractic Exam'rs v. Texas Med. Ass'n*, 375 S.W.3d 464, 474 (Tex. App.—Austin 2012, pet. denied); *City of Garland v. Public Util. Comm'n of Tex.*, 165 S.W.3d 814, 819 (Tex. App.—Austin 2005, pet. denied).

As discussed, the rule does not conflict with any specific statutory language and the rule is the agency's effort to comply with the general objects of Chapter 505; thus, the Council does not believe it is facially invalid under either of these first two factors. While the rule does impose additional burdens, conditions, or restrictions on licensees than those stated in the statute, they are consistent with legislative objectives and intent of Chapter 505, as well as Sec. 505.451(13). Therefore the rule cannot be facially invalid, and the Council respectfully requests on opinion confirming or clarifying its statutory authority to adopt the current rule.

Affected or Interested Groups or Parties

Lastly, the Council has identified the following persons or groups likely to be interested in the opinion.

National Association of Social Workers Texas
810 W. 11th Street
Austin, Texas 78701

Texas Counseling Association
1210 San Antonio St., Ste. 200
Austin, Texas 78701

Texas Psychological Association
1464 E. Whitestone Blvd., Ste. 401
Cedar Park, Texas 78613

Texas Association of Psychological Associates
P.O. Box 601374
Dallas, Texas 75360

Texas Association of School Psychologists
P.O. Box 141023
Austin, Texas 78714

Sen. José Menéndez
P.O. Box 12068
Austin, Texas 78711

Texas House LGBTQ Caucus
Rep. Mary González, Chair
P.O. Box 2910
Austin, Texas 76768

Texas Association for Marriage and Family
Therapy
3305 Steck Ave., Ste. 200
Austin, Texas 78757

Rep. Jessica Gonzáles
P.O. Box 2910
Austin, Texas 76768

Texas Values
900 Congress, Ste. L115
Austin, Texas 78701

The Council appreciates your review of this matter and looks forward to your opinion. If additional information is required, please contact Patrick Hyde, the Council's General Counsel, at (512) 305-7700.

Respectfully,



Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council

January 15, 2021

Via Email to opinion.committee@oag.texas.gov

Mr. Ken Paxton
Attorney General of Texas
Office of the Attorney General
300 W. 15th Street
Austin, TX 78701

Ms. Virginia K. Hoelscher
Chair, Opinion Committee
Office of the Attorney General
300 W. 15th Street
Austin, TX 78701

**Re: Request No. 0391-KP
File # ML-48915-20
I.D. # 48915
Authority of the Behavioral Health Executive Council to adopt a rule
prohibiting certain discriminatory conduct by licensed social workers.**

Dear Attorney General Paxton and Chair Hoelscher:

The undersigned write on behalf of Lambda Legal Defense and Education Fund, Inc. and its South-Central Office located in Dallas, Texas (“Lambda Legal”) in response to your request for briefing on the questions submitted by Mr. Darrel D. Spinks, Executive Director of the Texas Behavioral Health Executive Council (“BHEC”), from organizations with a “special interest or expertise in the subject matter” at issue in Request No. 0391-KP.

Introduction

Lambda Legal is the oldest and largest national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and everyone living with HIV (collectively as used herein “LGBT” people) through impact litigation, education and public policy work.

Lambda Legal is writing on behalf of this State's nearly 1 million lesbian, gay, bisexual, and transgender ("LGBT") Texans and the over 94,000 Texans who are living with HIV.¹

Social workers provide services in nearly every institution that meet the basic needs of Texans, including but not limited to in child welfare, schools, hospitals and other health care settings, community agencies, government, colleges and universities, businesses, nursing homes, not to mention in private practice and other social service settings. Making the unrestricted provision of social work services to Texans more acute is the fact that Texas is facing a mental health provider shortage.² This shortage is exacerbated in rural areas.³ Therefore, removing the explicit prohibitions against discrimination based on sexual orientation, gender identity and expression, and disability that have been in place for so long now---is simply untenable as a public health matter, as well as mistaken as a legal matter.

1. Construing the Texas Social Work Practice Act ("Act") to require the removal of the terms sexual orientation, gender identity and expression, and disability from the rules in Chapter 781 of the Texas Administrative Code (sometimes "TAC")⁴ appears to give social workers in Texas a new license to discriminate against certain Texans, which is the very antithesis of the definition of "social work practice" found in the TAC.

Acting consistently with governing law and professional standards, the Social Worker Board ("Board") amended 22 TEX. ADMIN. CODE § 781.201(a)(1), (the predecessor to TEX. ADMIN. CODE § 781.301), as of January 27, 2011, to prohibit a social workers from refusing to provide services based solely on the recipient's age, gender, race, color, religion, national origin, disability, sexual orientation, or political affiliation. See 36 Tex. Reg. 242 (January 21, 2011). Two years later, the Board further amended 22 TEX. ADMIN. CODE § 781.201 (a)(1) to add gender identity and expression to the list of statuses that were protected from discrimination. See 38 Tex. Reg. 1980 (March 22, 2013).

¹ As of the end of 2018, over 94,000 Texans were living with a diagnosed HIV infection. The number of people living with HIV (PLWH) increased by 16% over the past 5 years, but this is not due to increases in the annual number of Texans getting diagnosed. See Texas Department of Health and Human Services, <https://www.dshs.texas.gov/hivstd/reports/epiprofile/sec02.shtm#:~:text=As%20of%20the%20end%20of,number%20of%20Texans%20getting%20diagnosed>.

²See generally *The Mental Health Workforce Shortage in Texas*, Texas Department of State Health Services, September 2014, available at <https://liberalarts.utexas.edu/iupra/files/pdf/Mental%20Health%20Workforce%20Shortage%20Texas.pdf>.

³ See *The Mental Health Workforce Shortage in Texas*, Texas Department of State Health Services, September 2014, p. 11, <https://liberalarts.utexas.edu/iupra/files/pdf/Mental%20Health%20Workforce%20Shortage%20Texas.pdf>.

⁴ 22 TEX. ADMIN. CODE §781.101 implements the provisions in the Social Work Practice Act (Act), Texas Occupations Code, Chapter 505, concerning the licensure and regulation of social workers.

To now require the removal of sexual orientation, gender identity and expression, and disability so that 22 TEX. ADMIN. CODE § 781.301 only includes the terms sex, race, religion, national origin, color, or political affiliation as set forth §505.004⁵ of the Act would give social workers the very mistaken impression that they can now, for the first time in ten years, refuse to provide services to certain Texans. This will not only hurt LGBT Texans and Texans living with HIV, but it will also hurt all Texans who often need the services of a social worker when they are at their most vulnerable.

Examples include:

- a Black Lesbian in the hospital after suffering a stroke who is in need of the services the hospital social workers provide as she prepares to go home;
- the family of an LGBT senior who is unable to care for the needs of their family member without the assistance of social worker;
- a battered spouse living with HIV who is living in a shelter after leaving her abuser;
- a gay teenager considering suicide who is being physically assaulted and bullied by other students in the high school he attends; or
- a transgender Latina who is in need of job training and housing after she has been wrongfully fired from her job.

Allowing such discrimination is not only wrong under current law, but it also violates the definition of “social work practice” which requires Texas social workers to “enhance the functioning of individuals, families, groups, communities, and organizations” and to apply the “disciplined application of social work values, principles, and methods” to engage in “advocacy for vulnerable groups.” See 22 TEX. ADMIN. CODE § 781.102 (48).

2. LGBT Texans and LGBT Texans with Disabilities will be disproportionately harmed if the Code of Conduct is required to mirror the language in the Act.

Texas has no explicit state law protections against discrimination based on sexual orientation or gender identity in employment, housing, or healthcare and Texas is one of only five states that provides no protections in public accommodations for nondisabled individuals.⁶

⁵ See TEX. OCC. CODE § 505.004 addresses nondiscriminatory actions and decisions in the Act.

⁶ See National Conference of State Legislators, available at <http://www.ncsl.org/research/labor-and-employment/-gender-and-sex-discrimination.aspx> and <https://www.lambdalegal.org/blog/20190924/history-of-lgbtq-workers-rights>. See also National Conference of State Legislators, Public Accommodation Laws, available at <https://www.ncsl.org/research/civil-and-criminal-justice/state-public-accommodation-laws.aspx>.

LGBT Texans

As of March of 2019, 4.1% of our State's population identified as LGBT, or approximately 893,350 Texans.⁷ Of those Texans, 768,000 identify as LGB, and .66% of our population, or approximately 125,350 identify as transgender.⁸ Prior to COVID-19, fully 26% of LGBT Texans had no health insurance, 27% were food insecure and 26% made less than \$24,000 a year.⁹ To put these statistics in further context, as of October 2019, over 28% of LGBT Texans lived in poverty.¹⁰ By December 2019, *less than three months later*--that number had increased:

“35% of LGBT Texans aged 18–44 were living in poverty, and 29% of those aged 45 or older were living in poverty. Moreover, for LGBT Texans of Color, fully 39% live in poverty.”¹¹

Transgender Texans

For Transgender Texans and Transgender Texans of Color, who are often by far the most discriminated against and marginalized of all Texans, the situation is far worse, fully 17% of Transgender Texans are unemployed, 34% are living in poverty, and 77% do not have identity documents that match their gender.¹² In the last five years, more transgender people have been

⁷ See *LGBT Data & Demographics*, UCLA School of Law, The Williams Institute, available at <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=48#density>. See also *Adult LGBT Population in the United States*, UCLA School of Law, The Williams Institute, available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Adult-US-Pop-Mar-2019.pdf>.

⁸ See *Adult LGBT Population*, available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Adult-US-Pop-Mar-2019.pdf>. Forty percent of LGBT Texans are White, 39% are Latino/a, 11% are Black, and 6% identify as “other.” See *LGBT Data*, available at <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=48#density>.

⁹See *LGBT Data*, available at: <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=48#density>

¹⁰ See *LGBT Poverty in the United States*, M. V. Lee Badgett, Soon Kyu Choi & Bianca D.M., Wilson, UCLA School of Law, The Williams Institute, Oct. 2019, available at <https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-in-the-united-states/>, p. 10-11.

¹¹ See *State Profiles of LGBT Poverty in the United States*, M. V. Lee Badgett, Soon Kyu Choi & Bianca D.M., Wilson, UCLA School of Law, The Williams Institute, Dec. 2019, available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/State-LGBT-Poverty-Dec-2019.pdf>.

¹² See *Texas leads the nation in transgender murders. After the latest attack, the Dallas trans community asks why. Nearly half the deaths have occurred in Dallas, with many pointing to politics as an underlying problem*, The Dallas Morning News, available at <https://www.dallasnews.com/news/2019/09/30/texas-leads-nation-transgender-murders-according-national-lgbtq-organization/>. See also *Impact*, Mallory, Brown, Russell & Sears, available at <https://williamsinstitute.law.ucla.edu/publications/impact-lgbt-discrimination-tx/>.

killed in our state than in any other state. In 2019, Texas led the nation in the number of transgender people murdered with more than one-half of such deaths occurring in Dallas, where Lambda Legal's South Central Office is located.¹³

LGBT Seniors and LGBT Seniors living with a Disability

According to SAGE (Services & Advocacy for LGBT Elders), which is the country's largest and oldest organization dedicated to improving the lives of LGBT older people, 41% percent of LGBT older adults report having a disability.¹⁴ According to the latest CDC Surveillance Report from 2017, nearly 50 percent of people living with HIV in the United States are 50 or older. People 50 and older also accounted for 17 percent of new HIV diagnoses in 2017.¹⁵ LGBT older adults are less likely than their heterosexual peers to reach out to providers, senior centers, meal programs, and other social service programs because they fear sexual orientation or gender-based discrimination and harassment. Finally, LGBT older adults experience mental and physical illness more frequently than their heterosexual counterparts.¹⁶

Given these existing barriers, it is clear that removing the explicit protections that are in place prohibiting discrimination against LGBT Texans, LGBT Texans living with HIV, and those LGBT Texans and Seniors living with a disability, will further dissuade these individuals from seeking the social work services they need.

3. BHEC was within its authority to adopt 22 TEX. ADMIN. CODE § 781.301 and to again include sexual orientation, gender identity and expression, and disability within the list of prohibited discrimination.

A state agency "may only adopt such rules as are authorized by and consistent with its statutory authority."¹⁷ The determinative factor as to whether a state agency exceeds its statutory authority is "whether the regulation is in harmony with the general objectives of the statute."¹⁸ To determine if a rule is in harmony with the "general objectives" of the statute, courts utilize the

¹³ See *Texas leads the nation*, available at <https://www.dallasnews.com/news/2019/09/30/texas-leads-nation-transgender-murders-according-national-lgbtq-organization/>

¹⁴ See *The Facts on LGBT Aging*, SAGE, available at <https://www.sageusa.org/wp-content/uploads/2018/05/sageusa-the-facts-on-lgbt-aging.pdf>.

¹⁵ See *Older People Living with HIV*, SAGE, available at <https://www.sageusa.org/wp-content/uploads/2019/03/older-people-living-with-hiv.pdf>.

¹⁶ See *The Facts on LGBT Aging*, SAGE, available at <https://www.sageusa.org/wp-content/uploads/2018/05/sageusa-the-facts-on-lgbt-aging.pdf>.

¹⁷ ATT'Y GEN. OF TEXAS, OP. NO. GA-0815 (NOV. 4, 2010) (citing *Pruett v. Harris Cnty. Bail Bond Bd.*, 249 S.W.3d 447, 452 (Tex. 2008)).

¹⁸ *Id.*

canons of statutory construction.¹⁹ The Code Construction Act, found in the Texas Government Code, § 311.001 *et seq.*, § 311.021, entitled “Intention in Enactment of Statutes,” states that “[i]n enacting a statute, it is presumed that: (1) compliance with the constitutions of this state and the United States is intended; (2) the entire statute is intended to be effective; (3) a just and reasonable result is intended; (4) a result feasible of execution is intended; and (5) public interest is favored over any private interest.” *Id.*

Here, it is clear that TEX. OCC. CODE § 505.004 prohibits discrimination. Under the Code Construction Act, because a just and reasonable result is intended, a prohibition on discrimination based on sexual orientation, gender identity and gender expression, and disability is in harmony with the general objectives of the statute. Further, because of the wide-ranging impact that social workers have on the services provided to the general public, it is in keeping with the Act that social workers be prohibited from discriminating against discrete and insular individuals and groups, including LGBT Texans and LGBT Texans with a disability. Finally, allowing discrimination against some Texans and those living at the intersections of LGBT identities, such as Black gay men, LGBT seniors living with a disability, or Black transgender women is not a result that is feasible of execution. For example, sanctioning a social worker for refusing to provide services to a Black gay man because the Black gay man is gay and not because he is Black will be hard to discern and impracticable to implement. Moreover, it will invite disingenuous pretexts, harmful discrimination, and potential resulting liability.

Here, the Board has the authority to implement the provisions of the Social Work Practice Act.²⁰ Under TEX. OCC. CODE § 507.103(a), BHEC cannot propose and adopt any rules by itself that (i) establish qualifications necessary for licensure; (ii) establish the scope of practice, standards of care, or ethical practice for social workers; (iii) establish continuing education requirements, or (iv) establish sanctions for violating the laws and rules applicable to social workers.²¹ Thus, requiring the Board to make a change to its Code of Conduct for social workers does not align with the general objectives of the Act. *Id.*

In *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020), the United States Supreme Court, interpreted the plain meaning of the term “sex” under Title VII of the Civil Rights Act of 1964, which prohibits discrimination in the workplace, to include discrimination because of sexual orientation or gender identity. The Court said that “[a]n employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.” *Id.* The *Bostock* decision clearly prohibits

¹⁹ *Id.* (citing *Lambright v. Tex. Parks & Wildlife Dep’t*, 157 S.W.3d 499, 510 (Tex. Appl. – Austin 2005, no pet.)).

²⁰ See 22 TEX. ADMIN. CODE § 781.101.

²¹ See TEX. OCC. CODE § 507.153.

discrimination against LGBT individuals and those at the intersections of LGBT identities, whether those intersectional identities are based on race, religion, national origin, color or sex.²²

The Act similarly prohibits discrimination based on sex. Given the U.S Supreme Court's reasoning in *Bostock*, which previously had been applied by numerous lower federal courts and is equally obvious and compelling in the context of a state law, the Board was within its authority to identify additional examples of discrimination because of sex and readopt a rule in its Code of Conduct that more explicitly defined the personal characteristics subject to such discrimination.

For the reasons set forth above, BHEC and the Board adopted a rule in the Code of Conduct that was authorized and consistent with the statutory authority granted the Board and BHEC under the Act.

Conclusion

Given state and federal law, the language and purpose of the Act, and the language of the Code of Conduct as well as the provision of services to “enhance the functioning of individuals, families, groups, communities, and organizations” in Texas and to advocate for those who are vulnerable, Lambda Legal joins the National Association of Social Workers, Texas Chapter and Disability Rights Texas in urging the Attorney General to ensure that social workers have the independence to practice, license and regulate their profession within the bounds of ethics and the standards of practice they determine. Here, there can be no question that the Board and BHEC had the authority to readopt 22 TEX. ADMIN. CODE §781.301 in compliance with the Act.

If you have any questions, please do not hesitate to contact Senior Attorney, Shelly L. Skeen, at (214) 219-8585, ext. 5228, or sskeen@lambdalegal.org.

Sincerely,

Lambda Legal Defense and Education Fund,
Inc., South Central Office, Dallas, Texas

By: /s/ Avery Belyeu
Avery Belyeu (She/her)
South Central Regional Director

By: /s/ Shelly L. Skeen
Shelly L. Skeen (She/her)
Senior Attorney

²² See 42 U.S.C. § 2000e–2(a)(1).

cc: Mr. Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
333 Guadalupe, Suite 3-900
Austin, Texas 78701

January 13, 2021

Via Email to opinion.committee@OAG.Texas.Gov

The Honorable Ken Paxton
Attorney General of Texas
Attn: Opinions Committee
P.O. Box 12548
Austin, TX 78711-2548

Regarding: Opinion Request No. 0391-KP

Dear Attorney General Paxton:

The National Association of Social Workers - Texas Chapter (NASW-TX) received an invitation from your office's Opinions Committee to submit briefing on the issues raised by the above referenced opinion request and appreciates the opportunity to do so. NASW-TX is the largest professional association representing social workers in the state, with over 5,000 members, and is committed to advancing professional social work practice and the profession. NASW-TX sets national ethical standards for social workers, promotes human rights, social and economic justice, and unimpeded access to services for all people. Our members work in a broad range of settings, including but not limited to hospitals and other health care settings, community agencies, government, academia, business, nursing homes, schools, and private practice.

In the opinion request, which was submitted by the Texas Behavioral Health Executive Council (the Council), the Council asks for confirmation that it had authority to promulgate a rule, 22 Tex. Admin. Code Section 781.301(1) (the Rule), prohibiting specified discriminatory conduct by licensed social workers. The rule, part of the Code of Conduct for social workers, provides: "A social worker shall not refuse to perform any act or service for which the person is licensed solely on the basis of the client's age; gender; race; color; religion; national origin; disability; sexual orientation; gender identity and expression; or political affiliation."

The Council notes that a concern has been raised as to whether the Rule exceeds the authority contained in the authorizing statute – which establishes a nondiscrimination provision at Tex. Occ. Code Sec. 505.451(13).¹ This nondiscrimination provision authorizes disciplinary action against a licensee for refusing to perform an act or service within the scope of the license holder's license solely because of the recipient's age, sex, race, religion, national origin, color, or political affiliation. The concern relates to the fact that disability, sexual orientation and gender identity and expression are not included within the nondiscrimination provision's list of prohibited bases for service denial. Accordingly, it is arguable that the statute created an exhaustive list of prohibited bases for service denial, thereby precluding the Rule from referencing other prohibited bases.

¹ The Council's opinion request provides a detailed analysis of relevant regulatory and statutory issues. We agree with that analysis and highlight below portions that we believe are particularly relevant.

We agree with the Council’s view that the Texas State Board of Social Work Examiners (the Board) was well within its authority to adopt the current Rule, which was later readopted by the Council. As the Council notes, Texas courts have clarified that regulatory agencies enjoy broad discretion in accomplishing regulatory functions and carrying out their duties. The Board’s and the Council’s rules do not need to mirror the authorizing statutes. Rather, the agencies must only ensure that the “regulation is in harmony with the general objectives of the statute.” ATT’Y GEN. OF TEXAS, OP. NO. GA-0815 (Nov. 4, 2010) (citing *Pruett v. Harris Cnty. Bail Bond Bd.*, 249 S.W.3d 447, 452 (Tex. 2008)).

It seems clear that the Legislature’s overriding intent, in delegating authority to develop and adopt rules concerning the ethical practice of social work, was to prohibit practitioners from denying service based on arbitrary and/or discriminatory factors. Accordingly, it was reasonable and necessary to include in the Rule disability, sexual orientation, and gender identity and expression as prohibited bases for service denials. That is, the Rule is in harmony with the general objectives of the statute.

Further, it was appropriate to reference sexual orientation and gender identity and expression in the Rule, given the recent Supreme Court’s decision in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020). In that case, the Court ruled that Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination on the basis of sex (among other factors), should be interpreted as also prohibiting discrimination on the basis of sexual orientation and gender identity. The Court stated that, “An individual’s homosexuality or transgender status is not relevant to employment decisions [and should be prohibited]. That’s because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” 140 S. Ct. at 1741.²

The same reasoning should apply in the context of the Rule. That is, a denial of client services based on sexual orientation, or gender identity or expression is in essence a denial based on sex. Accordingly, the Board and the Council were authorized to promulgate a nondiscrimination provision that simply makes this interpretation clear – and did so by including sexual orientation and gender identity and expression as prohibited bases for service denials.

² In support of its conclusion, the Court provided the following examples:

Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer’s mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee’s sex, and the affected employee’s sex is a but-for cause of his discharge. Or take an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee’s sex plays an unmistakable and impermissible role in the discharge decision.

140 S. Ct. at 1741-42.

Moreover, the Rule is consistent with the corresponding provision in the Code of Ethics of the National Association of Social Workers (NASW), section 4.02.³ That section provides as follows:

Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, or mental or physical ability.

The NASW Code of Ethics is used as a model for social work practice across the United States and worldwide. It has been incorporated in whole or part into a large number of state social work licensing laws,⁴ and the above language clearly served as a model for the Rule. Together, the Texas Code of Conduct and its predecessor, the NASW Code of Ethics, serve as the foundation for competent, equitable practice. The two codes provide all Texas social workers with clear guidance on professional and personal expectations. Their intent is to ensure that all persons seeking services have access to a trained practitioner without limitation based on irrelevant or discriminatory factors such as sexual orientation, gender identity or expression, and disability.

The Occupations Code, Section 505.2015, empowers the Board to propose to the Council rules regarding the scope of practice of and standards of care and ethical practice for social work. This is a vital function of the Board. It is up to the Board, comprised of public and professional members, to determine the bounds of ethical practice and how social work is best defined. In addition, the stated standards of care and ethical practice allow the public to hold social workers accountable, ensuring that remedial actions can be taken against a license holder if necessary. Including disability, sexual orientation, and gender identity and expression in the Rule does not amount to overreach by the Board or the Council, but rather simply clarifies the scope of ethical practice.

Moreover, there are serious implications should a social worker be allowed to deny or terminate services based on personal views. In clinical social work, the therapeutic relationship is a deeply intimate and personal space, and it may take many sessions before a client divulges personal information about their sexual orientation, gender identity or disability. Should a social worker be permitted to end services upon learning such personal details of a client, they could do serious emotional harm to that person. The imperative to place the client's needs before the social worker's beliefs ensures that care of the client is always the primary factor in service delivery.⁵

At a time when Texas is already facing a mental health provider shortage,⁶ the emphasis should be placed on increasing access to services, and not permitting practitioners to deny services based on discriminatory considerations related to disability, sexual orientation and gender identity or

³ The Code is available at <https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English>.

⁴ See *History of the NASW Code of Ethics*, available at <https://www.socialworkers.org/About/Ethics/Code-of-Ethics/History>.

⁵ Further, should language protecting persons with a disability be stripped from the Rule, a social worker may erroneously believe that they may deny services to a person with a disability, which would violate the Americans with Disabilities Act and analogous state law.

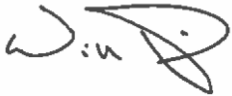
⁶ See Texas Department of State Health Services, *The Mental Health Workforce Shortage in Texas*, available at <https://liberalarts.utexas.edu/iupra/files/pdf/Mental%20Health%20Workforce%20Shortage%20Texas.pdf>

expression. Social workers in every setting, including: child welfare, hospitals, schools, government, community centers, long term care facilities, private practice, must be ready to serve all potential clients or be held accountable for withholding help unjustly.

Thank you for your consideration of our views. This letter includes the review and approval of national NASW staff, the national NASW Committee on Lesbian, Gay, Bisexual, and Transgender Issues, the NASW-TX Committee on Lesbian, Gay, Bisexual and Transgender Issues and the NASW-TX Board of Directors.

Please do not hesitate to contact me with any questions, at 512-474-1454 (office), 512-589-9117 (cell) or wfrancis.naswtx@socialworkers.org.

Respectfully,

A handwritten signature in black ink, appearing to read 'Will Francis', with a stylized flourish at the end.

Will Francis, LMSW
He/Him/His
Executive Director
National Association of Social Workers –
Texas Chapter



January 14, 2021

Ms. Virginia K. Hoelscher
Chair, Opinion Committee
Office of Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Via email:
opinion.committee@oag.texas.gov

Re: Brief in Response to RQ-0391-KP: Authority of the Behavioral Health Executive Council to adopt a rule prohibiting certain discriminatory conduct by licensed social workers

Dear Ms. Hoelscher:

We, representatives of the above listed behavioral health associations, respectfully ask to be excluded from the Texas Attorney General Opinion prompted by a recent request by the Texas Behavioral Health Executive Council (BHEC).

BHEC requested an opinion on its authority to adopt codes of conduct for the professions it oversees. However, the rule in question involves interpretation of Tex. Occ. Code Sec. 505.451(13), which is a statute applicable only to social workers licensed in Texas. This particular statute does not apply to licensed professional counselors, licensed marriage and family therapists, or psychologists. Further, Rule 22 TAC 781.301(1) pertains exclusively to the social worker code of conduct. The rules related to standards of care and ethical practice for licensed professional counselors, licensed marriage and family therapists, and psychologists have already been adopted by BHEC.

Given the exclusive application of the above listed social worker statute and rule, it seems inappropriate for BHEC to request an Attorney General Opinion on codes of conduct it has already adopted—without opposition from interested parties. An analysis of the rules of the other licensed behavioral health profession boards whose codes of conduct are not in question, regardless of how broadly BHEC's request for an opinion was worded, would not be germane and would be outside the scope of the social worker issue in question.

We also bring to your attention the distinct differences between the social worker practice act and the other mental health profession boards' license acts. Specifically, adopting standards of conduct and ethics for social workers is permissive under Tex. Occ. Code Sec. 505.201. In all other professions regulated by BHEC and respective Boards, the adoption is mandatory. See Tex. Occ. Code Secs. 501.151, 502.151, and 503.201.

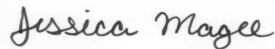
Brief in Response to RQ-0391-KP
TAMFT, TPA & TCA
January 14, 2021

As an aside, we believe that the public interest would be served if the same courtesy extended by the Chair of the Opinion Committee in granting status as an interested party to a hyper-conservative group set on eroding protections for LGBTQ+ individuals, was also extended to at least one LGBTQ+ organization and one organization serving individuals with disabilities, as those are the groups who would have lost protections under the proposed rule.

Respectfully submitted,



Paul Stanford, PhD LMFT-S LCMFT, Legislative Liaison
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