

COMPLAINT-PROOFING YOUR PRACTICE: What They Did Not Teach You In Graduate School

By

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WARNING: These materials have been prepared for information and general use by attendees of this course. However, neither the text of this paper, nor any remarks made during the lecture are intended for use as legal advice. Please consult an attorney who specializes in these areas for legal advice on all real or potential problems. Further, the opinions expressed in this paper and during the lecture are my own, and are not necessarily the opinions of the Council or other reasonable people.

I. ETHICAL OBLIGATIONS FOR LICENSEES

A. Know and Exceed Continuing Education Requirements.

1. Every year, take a course on a subject you think you already know (such as Risk Management or Documentation).
2. Make sure you are practicing within your education, training and experience.
3. Keep certificates of completion for all CE courses in a separate file, by calendar year, for easy access.
4. Here are the CE hourly requirements for all counseling licenses:

LSOTP: Licensees must complete 24 hours of documented CE for every 24-month renewal period. 6 hours must be in ethics; 12 hours in sex offender assessment and treatment, and 6 hours in victim-related training. All accredited mental health continuing education hours are accepted. Rule §810.4(1).

LPC: Licensees must complete 24 clock hours of CE for every renewal period (including 4 hours of Ethics). A “clock hour” is 60 minutes. Each licensee must complete the LPC Jurisprudence Exam for each license renewal. The Exam counts for 1 hour of Ethics. LPS-Supervisors must complete at least 6 hours of CE in Supervision for every renewal period. Licensees must keep proof of CE completion for 2 years. Rules 681.141, 681.145 and 681.146.

LMFT: Licensees must complete 30 clock hours of CE for every renewal period (including 6 hours of Ethics). An LMFT Associate must complete 15 hours of CE for every renewal period. A “clock hour” is 60 minutes. LMFT-Supervisors must also complete at

least 3 hours of CE in Clinical Supervision for every renewal period. Rules 801.263 and 801.267.

Social Worker: Licensees must complete 30 clock hours of CE for every renewal period (including 6 hours in professional ethics and Social Work values). A “clock hour” is 60 minutes. Taking the SW Jurisprudence Exam will count as 3 hours in professional ethics and Social Work values). Licensees must keep proof of CE completion for 3 years. Rules 781.508 and 781.514.

B. Maintain Professional Liability Insurance and check coverage yearly.

1. Find your professional liability insurance policy and read it to make sure you understand what it does or does not cover.
2. If the policy does not mention coverage for complaints to your licensing board, call your insurance agent to see if you can purchase coverage. If no coverage is available through your standard policy, ask if you can purchase a rider to your policy that will provide insurance coverage to protect your license against a complaint to your licensing board. **Buy as much coverage as they will sell you!**

C. Respond to Requests for Records in a Timely Manner

1. An appalling number of complaints arise each year because a therapist does not provide copies of requested records within 15 days of receiving the request. **15 days. Not 15 business days.**
2. Develop a written policy regarding records requests for your office and make sure it is clear enough for your staff to read, understand and follow it.
3. Decide on a fee schedule for copies of records and put that fee in your written policy.

4. Understand the situations where you cannot charge a fee for records (i.e. records that are requested to support an application for public assistance programs or to support an appeal of a denial of an application for assistance). The statute that lists the circumstances where you may NOT charge for copies is found in Texas Health & Safety Code, §161.202.
5. Acknowledge all requests for records by letter, which is signed and dated by you. Develop a form letter that your staff can use to acknowledge the date on which the request was received and advise the requestor of any charge for the records.
6. When you receive payment for the requested records, ALWAYS send a dated, signed cover letter with the records to establish the date that the records were mailed.

D. Know your Board Rules.

1. Keep up with your Board's rules. They are subject to change, and the only notice of changes appears in the TEXAS REGISTER.
2. To review the Texas Register online, go to www.sos.state.tx.us, and click on the tile entitled "Texas Register." If you have e-mail, you can subscribe by Board for any changes or filings by a specific board. Whenever that board schedules a meeting or proposes any rule changes, you are notified by e-mail.

E. Define and Document the Professional Relationship

1. If you work with minor children, do not use the same intake and informed consent forms for child clients. Treating children requires that you obtain different information than does treating an adolescent or adult. Recognize the differences in your patient population and tailor intake and informed consent forms accordingly. Different Board Rules and standards of practice may require additional documents or persons signing the Informed Consent if you are treating a child.
2. Make sure that you have all Intake, Informed Consent and Therapy Agreement forms signed BEFORE providing services.

3. When working with a child whom you know, or should know, is the subject of a Suit Affecting the Parent-Child Relationship (SAPCR), that is a divorce, custody action, termination of parental rights, adoption, or guardianship, make sure that you obtain copies of the Divorce Decree or other Court Orders affecting the rights of parents to consent to treatment and/or access records, and have them in your file BEFORE providing services. Make sure that you have the signed Informed Consent from all parents or parties who are entitled to consent to treatment BEFORE providing services.
4. Before you begin treatment, inform all clients in writing of the fees and arrangements for payment; counseling purposes, goals and techniques; any restrictions placed on the license by the Board, the limits on confidentiality, and any intent to use another individual (such as Intern or Associate) to provide counseling treatment intervention to the client, and any information regarding supervision of the license by another licensed health care professional including the name and qualifications of the supervisor. Be sure to document, in writing and with the signature of the patient, that this information was provided.
5. **Keep complete records of treatment provided.** Client records must include, at a minimum, client demographic information; signed release of confidential form(s) which describe the limits of confidentiality; test results from evaluations conducted by the provider, including test protocols; monthly treatment reports which detail client attendance, treatment progress, problem behaviors which may increase risk for re-offense.
6. Document any unusual statements, occurrences, or problems as they arise in the client's chart. Consider implementing the "Memo to the File" of Incident Report System. Save all cards, letters, notes or other documents given to you by a client in a separate "Correspondence" section within the client's file.
7. DO NOT e-mail or text with sex offender clients. Many of them are not allowed unsupervised access to electronics (such as smart phones, computers, iPads, etc.) and giving them the impression that they can contact you electronically sends mixed signals.
8. Keep accurate and adequate billing records. Enforce an office policy of issuing a receipt for any payment received to the client, and maintain a copy for the file (especially for private pay clients).

If you do not have the time to do this, consider outsourcing it to a private company.

F. Set and Maintain Professional Boundaries

1. Implement a strict “no gift” and “no card” policy between you and your clients, or any relative of the client, and make sure that all clients and their family members are notified of this policy in writing at the time they come into your practice.
2. Do not barter for services, or lend money or items of value to clients, or relatives of clients, or accept payment in the form of services rendered by a client. No, the client cannot work off his balance by mowing your yard or painting your fence.
3. If a dual or “non-therapeutic” relationship cannot be avoided (i.e. a client moves into the house next door or a former client marries your brother), then terminate the therapeutic relationship and refer the patient to other professionals. Also, notify the appropriate personnel in the criminal justice department of juvenile justice department. At the very least, consider having an attorney review the potential dual relationship and give you an opinion letter on how to proceed.
4. Once a client, always a client. NO EXCEPTIONS.
5. Do not have sex with your clients or their family members. Do not be friends with your clients or their family members. Do not let your clients stay at your house. Ever. Even if he and his dog are homeless.
6. Avoid any social interaction with clients as politely as possible and explain that your licensing board has strict rules regarding how and when you may appropriately interact with clients. Consider adopting a policy that you will not share personal information with clients - use other methods for building rapport.

G. Know when Treatment has run its course.

1. Recognize the signs that a client’s treatment or the professional relationship is in trouble and be polite, but firm, in situations where you decide to terminate appropriately and refer the client to another provider. Make sure that you keep a list of other providers who are

willing to accept client referrals from you and update it annually.

2. Termination should be confirmed with a signed and dated letter from you, which includes the date on which therapy terminated, and the names and telephone numbers of the referrals you have provided.
3. Do not allow a client to become abusive or destructive to you or your practice. If this behavior occurs, you should document the behavior and document your warning to the patient regarding the maintenance of proper boundaries, and make appropriate reports to criminal justice personnel. Consider adopting a 1-strike rule. If more trouble arises, terminate with the client and refer them to another professional, with the appropriate reports.
4. For situations where you are threatened with physical harm, contact the police and file a report to document the encounter. ***This is not a substitute for making your own note or memo of the incident.*** Take photos of any damage to your office or vandalism to your home or car that you suspect was caused by a client.
5. Never allow a terminated or “problem” client back into your practice, regardless of their need, extenuating circumstances or any other reason. You will regret it. Be polite, but firm, and when you say “No,” you have to mean it.

H. Understand and Explain the Limits of Confidentiality

1. Maintain strict confidentiality policies at all times. The general rule is that you should not disclose that a client is a client, or anything about the client’s treatment unless you have the client’s written authorization to do so. There are many, many exceptions to this rule.
2. If you consult with a colleague regarding a client, refer to the client by his or her initials only, and include a notation of all such consultations in the client file.
3. Before you speak with a client’s attorney or family member about the client’s treatment, make sure you have an Authorization in your file allowing you to communicate with the attorney.

4. Do not over-promise on the confidentiality of communications or records.

I. Keep your Address Current with Licensing Boards

1. All mental health counseling boards require their licensees to notify the Board in writing of any change in mailing address, practice setting or name change within thirty (30) days.
2. When you move, form or leave a practice, get married, get divorced or get a new job, notify your board in writing and send the letter by:
 - Certified mail, return receipt requested;
 - Regular mail; AND
 - Electronic mail

J. Board Contacts

Texas Council on Sex Offender Treatment
Ms. Sarah Faszholz, Executive Director
E-mail: Sarah.Faszholz@hhsc.state.tx.us

Texas State Board of Professional Counselors:
Ms. Cristina DeLuna
E-mail: Cristina.DeLuna2@hhsc.state.tx.us

Texas State Board of Marriage and Family Therapists:
Ms. Sarah Faszholz, Interim Executive Director
E-mail: Sarah.Faszholz@hhsc.state.tx.us

Texas Board of Examiners of Psychologists:
Mr. Darrel Spinks, Executive Director
E-mail: Darrel.Spinks@tsbep.state.tx.us

Texas State Board of Social Worker Examiners:
Ms. Alice Bradford, Executive Director
E-mail: Alice.Bradford@hhsc.state.tx.us

II. KNOW THE LAW

A. All licensing statutes are in the Texas Occupations Code:

Sex Offender Treatment Act
Texas Occupations Code, Ch. 110
**Release of Sex Offender Treatment Information is Ch. 109

Texas Psychologists' Licensing Act,
Texas Occupations Code, Ch. 501

Marriage & Family Therapist Act
Texas Occupations Code, Ch. 502

Licensed Professional Counselor Act
Texas Occupations Code, Ch. 503

Social Worker Act
Texas Occupations Code, Ch. 505

B. All administrative rules are found in Chapter 22 of the Texas Administrative Code (TAC):

CSOT Rules	22 TAC Chapter 810
Psychologist Rules	22 TAC Chapters 461-473
LPC Rules	22 TAC Chapter 681
Marriage & Family Therapist Rules	22 TAC Chapter 801
Social Worker Rules	22 TAC Chapter 781

You can access the Texas Administrative Code through the Secretary of State web site: www.sos.state.tx.us, then click on the white and blue "Texas Register" tile at the top of the screen and select "Texas Administrative Code. When that screen comes up, click on the "TAC Viewer" link to the right of the screen.

C. Keep up with the Board Rules

Through the Secretary of State website, you can also subscribe to receive e-mail notifications any time the Board holds hearings, proposes rules or adopts rules. To subscribe, please follow these steps:

- Go online www.sos.state.tx.us and click on "State Rules and Open Meetings."
- Scroll down the drop-down menu and click on "Subscription Services."

- Scroll down to the paragraph entitled “Email Notification” and click on the link to register@sos.state.tx.us. This will allow you to send an e-mail to the Texas Register.
- In your e-mail, you should state that you want to subscribe to e-mail updates regarding the Council on Sex Offender Treatment, Texas State Board of Examiners of Professional Counselors, Texas State Board of Examiners of Marriage and Family Therapists, the Texas State Board of Social Worker Examiners, the Texas State Board of Examiners of Psychologists, or whatever board or agency for which you want to receive updates.
- You will receive an e-mail back from the Texas Register confirming your e-mail “subscription.”
- Once you are registered, you will get an e-mail every time the Board amends rules or holds an open meeting.

III. WHAT TO EXPECT AFTER A COMPLAINT ARISES

A. What a Notice Letter looks like.

1. It may be sent by certified mail, return receipt requested from your Board. Collect any certified letters in a timely manner and open them immediately.
2. If you are licensed by more than one board and you receive a complaint against one of your licenses, expect to receive a complaint against each of your licenses in time. The boards share complaints with each other when the licensee holds more than one mental health license.
3. If you go on vacation, have your mail held at the post office. A “hold” order with an expiration date can prove that you did not receive a letter until you actually picked up your mail.
4. If a complaint arises out of sex offender treatment, **ONLY** the Council has the exclusive jurisdiction to hear and decide the complaint.

“A sex offender treatment provider listed under this chapter is subject to the rules of the council, in relation to the person’s provision of sex offender treatment, rather than the rules of the licensing entity by which the provider is licensed or otherwise regulated. TEX. OCC. CODE,

§110.158(b).

THE OTHER BOARDS DO NOT NECESSARILY KNOW THIS FACT. You will have to remind them.

5. **NEVER ALLOW AN ORIGINAL CHART TO LEAVE YOUR OFFICE.**

B. Even if You Don't Think About It, It WON'T Go Away.

1. Pick up any certified letters promptly. Read any notice letter and complaint promptly and make a list of the individual allegations. Sometimes when you list them out, you can start to figure out how you can respond to the individual allegations. As you go, think of any person who may have witnessed any of the alleged encounters.
2. Print off and read each of the referenced Rules in any notice letter. Reading through the Rule can give you ideas for demonstrating your compliance with the Rules.
3. Report all complaints to your professional liability insurance company. With many carriers, these reports are a condition of coverage, and must be made within 30 days or you risk losing your insurance.

C. During Complaint Investigations, Keep Detailed Records.

1. Make a file in which you keep all correspondence, receipts for expenses (such as copying documents for the Board, postage, parking fees, etc.), and documents submitted to the Board. Un-reimbursed expenses may qualify as an income tax deduction, and you should consult a CPA with regard to the level of documentation necessary.
2. Take notes, and follow up each telephone conversation with a letter or an e-mail to memorialize your understanding of the discussion. Politely insist that Board staff or investigator put any information or instructions to you in writing. If the person refuses to put their instructions in writing, do not rely on the information or instructions given.

3. Keep a clear copy of every letter and document you submit to the Board. Do NOT send any documentation without a cover letter referencing the items enclosed.
4. Your case will be assigned a “complaint number.” Be sure to reference that case number on all correspondence and documents sent to your Board.
5. Put a date on all written correspondence and documents to the Board, and send by Certified Mail, Return Receipt Requested. Staple the white receipt to the copy of the cover letter, and when you get the green card back in the mail, staple the green card to the copy as well. You can also use Fed Ex or some type of courier service where the packages are tracked.
6. Mark all deadlines on your calendar. If you cannot meet a deadline, say so and ask for an extension in writing (letter or e-mail is acceptable). If you are granted an extension, ask the Board to confirm the extension of the deadline in writing. If the Board does not confirm the extension in writing, send a letter or an e-mail to your contact at the Board which confirms that an extension was granted by someone until such a date. Do not ask for more than one extension of a deadline unless it is an absolute emergency.
7. **Do not send anything hand-written to the Council or any Board.** It looks tacky and unprofessional. Moreover, an illegible defense is no defense at all.

D. When To Hire an Attorney.

1. If you need documents *other than* your notes and office records to “prove” your side of the story, you need an attorney.
2. If your side of the story requires “background information” or an explanation of all the persons involved, you need an attorney.
3. If you actually violated your licensing Act or your Board’s rules in any way, you need an attorney.

5. If the allegations have *anything* to do with improper sexual behavior between you and a client, you need an attorney.
6. If you have a difficult situation where you do not know what to do and you cannot figure out the correct response from reading the applicable Act and Rules, you should consider hiring an attorney to write you an “opinion letter” regarding the correct, legal course of action.

E. Play by their Rules

1. If your case is scheduled for an appearance before the Ethics or Complaints Committee of your Board, **GO TO THE MEETING**. Bad things happen to licensees who don't show up. If you are not there, no one is watching out for you.
2. If your case is scheduled for a meeting with the Board's Ethics or Complaints Committee, or an Informal Conference before your Board, you need an attorney. If you are an LSOTP and you are confident that you did nothing wrong, you can probably attend the Ethics Committee meeting by yourself. ***FOR ALL OTHER LICENSES, NEVER ATTEND AN ETHICS/COMPLAINT COMMITTEE MEETING OR AN INFORMAL CONFERENCE ALONE!***

F. The Hard Cold Truth

1. Licensing Boards are NOT set up to help you or to give you advice. The Boards exists to take your money and to protect the public FROM you.
2. You are in a high-risk profession that brings you into close contact with deeply troubled and unhappy people.
3. No client is worth your license. EVER.

Thank You for Attending This Presentation.