NASW/TX Advocacy: Social Work Code of Conduct External Talking Points

Updated June 25, 2021

NASW/TX Statement on the Attorney General’s Nonbinding Opinion
Attorney General Opinion KP-0372

Primary Talking Points (Background information is provided at the end of the document)

- The Social Work Code of Conduct remains unchanged, all non-discrimination protections are still included for disability, sexual orientation, gender identity and gender expression. We are asking the Texas State Board of Social Work Examiners (TSBSWE) to retain the non-discrimination protections in the Code of Conduct as currently written.

- The Code of Conduct rules prohibiting discrimination based on disability, sexual orientation, gender identity and gender expression still apply to all licensed social workers and the Board maintains the authority to investigate complaints of discrimination.

- The Code of Conduct found in the social work rules is directly based on language from the social work Code of Ethics, which serves as the basis for every Code of Conduct and Code of Ethics in every state and territory in the country.

- The Code of Conduct already allows a social worker the opportunity to decline to provide services to a client based on the professional experience of the provider: “A social worker shall only offer those services that are within his or her professional competency,
and shall provide services within accepted professional standards of practice, appropriate to the client's needs.” RULE §781.301(3)]

- The Attorney General’s opinion is not legally binding, no court has said that the nondiscrimination provisions based on disability, sexual orientation or gender identity must be removed from the Code of Conduct.

- The Attorney General’s Opinion sidesteps the question of what the statutory authority for setting ethical standards by the licensing board looks like in the rules, and never addresses how the Code of Conduct simply builds on the non-discrimination clause rather than contradicts it.

- The TSBSWE still retains the sole authority to draft ethical rules and standards of social work practice to BHEC for final adoption based on 505.2015 of the Texas Occupations Code “The board shall propose to the executive council… the scope of practice of and standards of care and ethical practice for social work.”

- The statutes cited in the Opinion reference BHEC, and do not acknowledge that any rule adopted by BHEC must originate with the TSBSWE. This raises concerns about the balance of power between BHEC and the licensing board, and could set a dangerous precedent that highlights the overreach of BHEC in the rule making process.

- TSBSWE has adopted rules based on powers not explicitly spelled out in statute regarding continuing education, establishing relationships with clients, defining the supervision process and billing procedures. The Texas Occupations Code (the statute) is intentionally broad, while the Texas Administrative Code (the rules) is narrow.

- Removing non-discrimination protections for persons with a disability or who identify as LGBTQ+ in any way from the Code of Conduct sends the message to potential clients that they may be denied vital services. This is incredibly dangerous. Current studies (Mental Health of America, Kaiser family Foundation, Texas Tribune) indicate that the stress related to COVID and social unrest in this country has greatly increased the need for services. In a time when Texans need a wide variety of mental health and other social work services, any deterrent to someone seeking care from a social worker could result in drastic consequences.

- The AG Opinion indicates that statutory language in other areas prohibits discrimination against a person with a disability, but then states that the TSBSWE cannot take disciplinary action against a person for this discrimination. This means that, should discrimination occur, an individual with a disability would need to utilize the court system to seek redress before the board could act. This could be a year’s long process during which the social worker would remain in practice.

- The AG Opinion cites the Bostock Case (Bostock v. Clayton County, Georgia) but limits that case to the workplace only. However, the United States Supreme Court interpreted the term “sex” under Title VII of the Civil Rights Act of 1964 to include discrimination because of sexual orientation or gender identity. These protections against discrimination towards LGBT individuals can naturally be carried into a Code of Conduct that cements anti-discrimination found elsewhere in the law.
The call to action is for you to defend our current Social Work Code of Conduct, to uphold our social work principles and ideals by protesting against any attempts to change our Code of Conduct to allow for discrimination.

Make your voices heard in support of social workers’ ability to practice our profession free from unwarranted governmental intrusion!

**Background**

On October 12, 2020, at a meeting of the Texas State Board of Social Work Examiners (TSBSWE), the members of the licensing board reviewed a series of changes to the social work rules. NASW/TX was aware of these changes, and submitted comments supporting them. However, a late change was added based on a recommendation from the Governor’s office that no members of the public saw before the meeting: the removal of protections in the social work Code of Conduct (RULE §781.301) pertaining to disability, sexual orientation, gender identity and gender expression. The Governor’s office argued that this would align the non-discrimination language in the Code of Conduct with the exact language in a specific non-discrimination clause (Sec. 505.004) in the Texas Occupations Code Chapter 505. The Governor’s office rationalized the attempted change by claiming that agency rules cannot be more expansive than what is in state law, ignoring Sec. 505.2015 of the Occupations Code, which gives the board the statutory authority to establish the ethical guidelines for the profession: “the board shall propose to the executive council… the scope of practice of and standards of care and ethical practice for social work.”

After two weeks of intense scrutiny and public dissident with the decision, on October 27th, 2020, the Behavioral Health Executive Council (BHEC), the Board’s umbrella state agency that formally adopts rules proposed by the licensing board, voted to keep the original social work Code of Conduct in place, retaining the anti-discrimination protections. On the same date the BHEC voted to send a request to the Attorney General’s office on the “authority of the Behavioral Health Executive Council to adopt a rule prohibiting certain discriminatory conduct by licensed social workers” (RQ-0391-KP), the rule was sent on January 15, 2021. The Request for Opinion clearly states that:

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 licenses 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. (page 4)
On June 14, 2021, the Texas Attorney General’s office issued a nonbinding opinion regarding the Behavioral Health Executive Council (BHEC) and the Texas State Board of Social Work Examiners (TSBSWE) stating the following, while never addressing or answering the question above:

- “The Legislature directed the Council to take disciplinary action against license holders for only certain types of discriminatory conduct.”
- “The Council lacks authority to discipline licensees for discrimination beyond what the Legislature authorized it to address.”
- “State law does not prohibit discrimination based on sexual orientation or gender identity.”
- “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.”
- “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.”