Ms. Gloria Canesco  
Presiding Officer  
Texas Behavioral Health Executive Council  
333 Guadalupe Street, Tower 3, Room 900  
Austin, TX 78701  

RE: Removal of Gender, Disability, and Sexual Orientation Protections from Social Work Code of Conduct

Dear Ms. Canesco:

I write with extreme concern regarding the Texas Behavioral Health Executive Council’s (BHEC) and Texas State Board of Social Worker Examiners’ modifications to the social worker code of conduct that removed protections for gender, disability, sexual orientation, and gender identity and expression. These changes will jeopardize access to care and increase stigma for these vulnerable groups. Further, the process by which BHEC stripped these protections from its rule draft likely violated state law. I strongly suggest that BHEC reinstate these protections in a revised rule draft and that the agency publish the revised draft in accordance with normal procedures required by statute.

From a policy perspective, removing these protections will allow continued discrimination against women, individuals with disability, and LGBTQ individuals and deter them from seeking mental health care. These groups already face higher risks of mental and behavioral health conditions. The COVID-19 pandemic has only increased the risk of mental health conditions. In addition, Texas faces a massive mental health professional shortage across the state. Allowing discrimination against these individuals will increase stigma and erode their already limited access to providers.

This ill-informed policy change is also troubling from a legal perspective, because the change likely violated the Texas Open Meetings Act. On October 12, 2020, BHEC held a public meeting pursuant to a previously posted agenda, which included an item to “review changes suggested by the OOG’s Budget and Policy Division to the proposed rules published in the July 17, 2020 edition of the Texas Register and recommend to the Council for adoption at the September 11 regular meeting.” The agenda and previously posted materials included adopted rules with comments from Governor’s Office staff, including a Code of Conduct for social workers. In relevant part, the Section 781.301 of the adopted rule stated:
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.\(^6\)

Notably, the posted agenda and materials included no notice of revision to this section of the rules,\(^7\) and no comments from Office of the Governor staff on the adopted rules indicated that this section would be modified.\(^8\) Further, comments by agency staff indicate these comments were provided to BHEC staff by email on October 9, three days in advance of the meeting.\(^9\)

Nonetheless, at BHEC’s meeting, agency staff recommended and the board approved a modification to Section 781.301 to strike protections for “gender” and substitute “sex”, and strike “disability; sexual orientation; and gender identity and expression.”\(^10\) Agency staff recommended and the board approved identical conforming changes to Section 505.451 of the adopted rule, governing grounds for disciplinary action for licensees.\(^11\)

As you may be aware, Section 551.041 of the Open Meetings Act requires governmental bodies to publicly post a written notice of the date, hour, place, and subject of a meeting held by that body. “Notices must sufficient to apprise the general public of the subjects to be considered during the meeting.”\(^12\) On March 16, 2020, Governor Abbott granted\(^13\) a request by the Attorney General to suspend certain requirements of the Open Meetings Act in response to the COVID-19.\(^14\) However, Section 551.041 requirements governing public posting of notices, including sufficient notice of the subject of meetings by governmental bodies, were not suspended.\(^15\) Please note that governmental actions that violate the sufficient notice requirement are voidable.\(^16\)

As previously mentioned, BHEC posted a notice and materials which made no mention of the Board’s intention to modify protections for gender, disability, sexual orientation, and gender expression or identity in the adopted rule.\(^17\) BHEC took action on these modifications, which were not mentioned in the original posting.\(^18\) As such, I believe this action may violate the Open Meetings Act.

In sum, removing these protections from the code of conduct will increase stigma for vulnerable groups, which will only serve to discourage them from seeking care. Moreover, the process for adopting these changes lacked transparency and may violate state law. Accordingly, I urge BHEC to reinstate these protections in a revised rule draft and to post the draft rules for public comment.

Thank you for your attention in this urgent matter. Should you have any questions or require additional clarification, please do not hesitate to contact my office at 512-463-0389.

Sincerely,

[Signature]

Representative Sarah Davis
House District 134

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5 Id.

6 See Id. at 11.

7 See Id.

8 See Id.

9 National Association of Social Workers Texas Chapter, TSBSWE and BHEC 10 12 2020, YouTube, (Oct. 13, 2020) (recording discussion of proposed modifications to rules at 26:25) [hereinafter “Meeting Recording”].

10 See Id.

11 See Id.


15 See Id.

16 TEX. GOV’T CODE §551.141; Open Meetings Act Handbook, supra, Note 12 at 73.

17 See Agenda, supra, Note 4 at Page 11.

18 See Meeting Recording, supra, Note 9.