

Texas State Board of Examiners of Psychologists

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Court Opinions Affecting the Practice of Psychology

Since January 1st, 2016, two appellate cases have resulted in final decisions which negatively impact or threaten the future of the practice of psychology in Texas. The first case comes out of the U.S. 5th Circuit Court of Appeals in New Orleans, Louisiana, while the other comes from the 3rd Court of Appeals in Austin, Texas.

Serafine v. Branaman, 810 F.3d 354 (5th Cir. Tex. 2016)

This case involved a challenge to the Psychologists' Licensing Act ("the Act") by an unlicensed individual holding herself out as a psychologist during a political campaign. Although the Board prevailed in the trial court, the agency was ultimately unsuccessful on appeal. In summary, the court held that Section 501.003(b)(1) of the Act was unconstitutional to the extent that it restricted an unlicensed individual from using the title "psychologist" in the context of campaign speech. The court also went on to hold that Section 501.003(c) of the Act, the portion of the law that defines what the practice of psychology in Texas includes, was overlybroad and as a result unconstitutional.

Tex. State Bd. of Exam'rs of Marriage & Family Therapists v. Tex. Med. Assoc., 458 S.W.3d 552 (Tex. App. Austin 2014)

The second opinion, which was handed down on November 21, 2014, was the

product of a lawsuit brought by the Texas Medical Association ("TMA") which sought to invalidate several rules promulgated by the Texas State Board of Examiners of Marriage and Family Therapists ("LMFT Board"), claiming the rules impermissibly expanded the scope of practice of marriage and family therapists. More specifically, the TMA claimed that the rules permitted marriage and family therapists to make diagnoses, when no such authority was found within the LMFT Board's enabling legislation. The TMA prevailed at trial and in the 3rd Court of Appeals. The LMFT Board sought review of the underlying appellate court's decision by the Texas Supreme Court, but its petition for discretionary review was denied on May 27, 2016. Then, on September 2, 2016, the court granted the LMFT Board's petition for review and set oral arguments in the case for 9am on October 11, 2016. Oral arguments in the case can be viewed by clicking [here](#). This case is of particular importance to the Board and its licensees because, like the marriage and family therapists, psychologists regularly make diagnoses, yet the Psychologists' Licensing Act contains no express mention of the term "diagnose" or any of its derivatives.

The Board encourages all licensees and members of the public to study these cases carefully, and consider how they may impact the availability of mental health care in Texas, as well as the impact on the

individual providers themselves. The Board would also point out that the Sunset review process provides licensees and members of the public alike with the unique opportunity to express any comments or concerns they may have about the effects of these two cases on the delivery of mental health services in our state. It should be noted that while the Board is currently undergoing Sunset review, the regulatory agencies with jurisdiction over Licensed Professional Counselors (LPCs), Licensed Marriage and Family Therapists (LMFTs), and Licensed Clinical Social Workers (LCSWs), are under review as well. Comments or concerns relating to any or all of these agencies, including comments or concerns about the foregoing cases, may be submitted by emailing the Sunset Advisory Commission at sunset@sunset.texas.gov.

This article is not meant to constitute legal advice or serve as a comprehensive analysis of either case referenced above. Should you have any questions concerning the applicability, scope, or effect of these opinions, you are encouraged to consult with an attorney of your choosing. The Board and its staff cannot give you legal advice.

**TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS DISCIPLINARY SANCTIONS RATIFIED AT THE
AUGUST 18, 2016 BOARD MEETING**

NAME	CITY	NATURE/INFRACTION	DISCIPLINARY ACTION	DATE
Bridgewater, Michael, Ph.D.	Fort Worth	Failed to facilitate transfer of patient to a qualified services provider.	Administrative penalty and professional development.	08/18/16
Jones, Jacqueline K., Ph.D.	Missouri City	Failure to obtain timely the required professional development.	Administrative penalty and professional development.	08/18/16
Machemehl, Molly Ruth, M.A.P.	Kingwood	Failure to comply with a Board directive.	Probated suspension and practice monitor,	08/18/16
Snider, Joanna Lyn, Psy.D.	Houston	Improper supervision.	Administrative penalty and additional professional development.	08/18/16