



Ethics 2019

OLLIE J. SEAY, PH.D.

TSBEP Now Part of Behavioral Health Executive Council

- ▶ Other boards include, Social Work, LPC& LMFT
 - ▶ BHEC is governed by one professional and one public board member from each member board (TSBEP has Susan Fletcher, Ph.D. & John Bielasowicz, Public Member)
 - ▶ The Chair of BHEC is a public member appointed by the Governor – Gloria Canseco, Executive Director of the San Antonio Christian Dental Clinic
 - ▶ Now posting for Executive Director

Summary of TSBEF Complaint Process

Summary of Complaint Process:

1. Complaint received by the Board
2. Investigator reviews to determine whether a violation has been stated on face of complaint
 - ▶ If not, complaint is referred to SDM (Settlement Division Manager) and ultimately Ex. Dir. for dismissal
 - ▶ If so, complaint is sent to Investigations
3. Licensee is sent NOV (Notice of Violation) and investigation ensues
 - ▶ If no P.C. (probable cause) found, complaint is referred to SDM and ultimately Ex. Dir. for dismissal
 - ▶ If P.C. found, licensee is either sent a proposed agreed order or invited to I.S.C. (Informal Settlement Conference)

Summary of TSBEPC Complaint Process

4. Informal Settlement Conference
 - ▶ If panel recommends sanction, proposed agreed order sent
 - ▶ If panel recommends dismissal, complaint is referred to full Board for dismissal
5. Informal vs. Formal Disposition of Complaints
 - ▶ Complaints resolved informally following ISC are referred to full Board for final disposition
 - ▶ Contested complaints are referred to SOAH for a contested hearing
6. Full Board disposes of complaints resolved informally or following a contested hearing at SOAH (State Office of Administrative Hearings)
7. Appeal of Board's decision in contested case through the state court system

TSBEP Enforcement by the Numbers

FY2018	FY2019
Opened 129 new complaints	Opened 133 new complaints
Disposed of 85 complaints	Disposed of 127 complaints
Complaints Disposed of (listed by category):	
Administrative Violations – 26	Administrative Violations – 64
CE Violations – 4	CE Violations – 0
Cease and Desist – 7	Cease and Desist – 4
Forensic – 12 <ul style="list-style-type: none">• Out of those 12, 5 (42%) were complaints arising out of custody/visitation cases	Forensic – 17 <ul style="list-style-type: none">• Out of those 17, 12 (71%) were complaints arising out of custody/visitation cases
• General Therapy – 21	• General Therapy – 18
• School Psychology – 2	• School Psychology – 5
• Sexual Misconduct – 9	• Sexual Misconduct – 17
• Misc. - 0	• Misc. - 0

Why the Increase in Certain Complaints?

- ▶ Social media makes it easier for complainants to locate and encourage other individuals with similar grievances to file complaints
 - ▶ A significant portion of the child custody complaints come from a group of similarly situated complainants
- ▶ It's easy to file a complaint and there are virtually no consequences for filing a frivolous or vexatious complaint
- ▶ Cultural shifts have resulted in victims being more willing to step forward and file complaints against sexual perpetrators

Significant Rule Changes and Issues

- ▶ 461.7 – Licenses may now be maintained on inactive status indefinitely
 - ▶ Inactive status must be renewed online on a biennial basis
- ▶ 461.10 – Adopted criteria to determine substantial equivalency between non-accredited or non-member programs and APA/APPIC
 - ▶ Developed checklist to assist with determination. Checklist is part of PLP application packet
- ▶ 461.11 – Number of professional development hours increased with change to biennial renewals

Significant Rule Changes and Issues

- ▶ 463.22 - Former licensees must apply for reinstatement of a prior license, rather than applying for a new license
- ▶ 463.28 – Adopted emergency temporary license rule
- ▶ 465.6 – Repealed the requirement that licensees takes steps to correct misstatements made about them by third-parties without their knowledge.
- ▶ 465.13 – Changed standard for determining whether a dual relationship exists from “potential” to “likely”

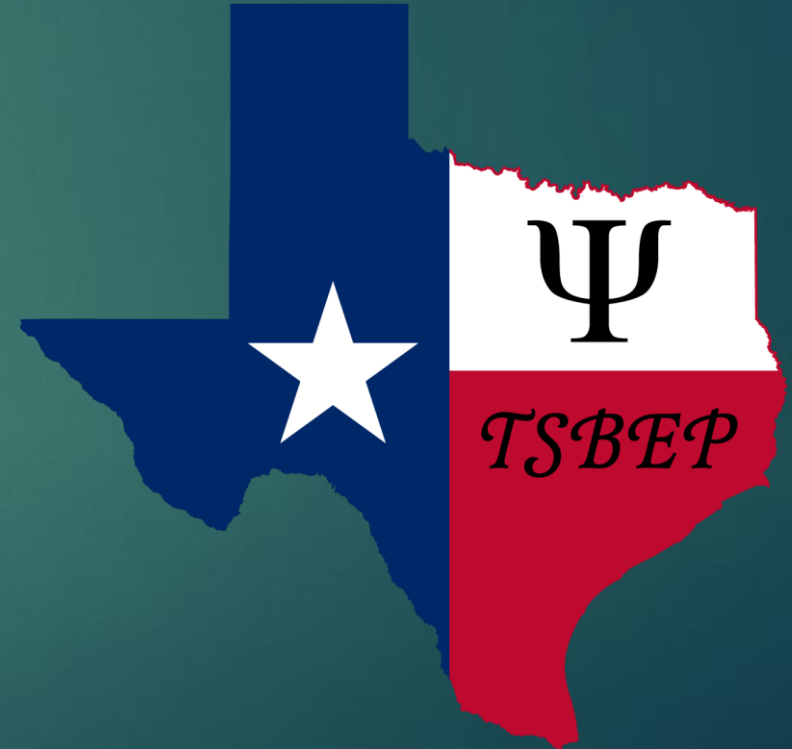
Significant Rule Changes and Issues

- ▶ 465.22 – made significant revisions to the rules governing retention and maintenance of psychological records
- ▶ 469.4 and 469.5 – authorized Executive Director to dismiss unsubstantiated complaints and approve resignations
- ▶ 471.1 – All licenses are renewable on a biennial basis and must now be renewed online
- ▶ 473.1 and 473.3 – Application and renewal fees adjusted to reflect new biennial renewal basis
- ▶ 473.4 – Increased late renewal fees
 - ▶ For a license expired ninety days or less, a licensee must pay a late fee in an amount equal to one and one-half times the required renewal fee.
 - ▶ For a license expired more than ninety days but less than one year, a licensee must pay a late fee in an amount equal to two times the required renewal fee.

Significant Rule Changes and Issues

- ▶ A psychologist would have to pay up to \$1,236 if he or she renews a license more than 90 days after the renewal date!
- ▶ Board has begun utilizing SurveyMonkey and iContact
 - ▶ Subscribe to agency's email list on TSBEF website
- ▶ Can now change your address of record and email address online, and order duplicate renewal permits
- ▶ Only business addresses supplied by licensees will be shown in response to a public licensee search via the website. All address information remains subject to the Public Information Act.

TSBEP and the Texas Behavioral Health Executive Council



Rule Review by Gov. Abbott

Gov. Abbott began reviewing all agency rules on June 22, 2018:

“In 1981, President Reagan issued Executive Order 12291, establishing White House review of new regulations proposed by federal agencies. Since then, presidents have reviewed new regulations in order to coordinate policy among agencies, eliminate redundancies and inefficiencies, and provide a dispassionate “second opinion” on the costs and benefits of proposed agency actions.

In light of the success of regulatory review at the federal level, Governor Abbott is clarifying the process for review of new rules proposed by state agencies. Prior to publication of a proposed rule in the Texas Register, the Office of the Governor will review the Notice of Proposed Rule as well as the agency’s internal analysis of the rule. The rulemaking memorandum template enclosed with this letter contains instructions for providing that information.

Thank you for your cooperation with this initiative. If you have any questions about this process, please contact the policy advisor assigned to your agency”

Reducing Occupational Licensing Barriers

- ▶ Gov. Abbott sent a letter to all state agency heads on October 8, 2019 requesting that agencies undertake serious rule reviews to reduce overbroad rules that stymie innovation, raise consumer prices, limit economic opportunity, and discourage or prevent people from pursuing professions



GOVERNOR GREG ABBOTT

October 8, 2019

Dear State Agency Heads:

Reforming Texas's occupational-licensing rules must be a priority for all state leaders. Sensible licensing rules, when necessary, can protect the public from legitimate harm, but overbroad rules stymie innovation, raise consumer prices, and limit economic opportunity. Overly burdensome licensing rules also discourage individuals from pursuing professions or prevent the unemployed — or former inmates who have paid their debt to society — from building a better life.

Changes Coming in the Future

- ▶ Increased procedural and evidentiary requirements for complaints involving child custody evaluations
- ▶ Changes to post-doc year requirement
- ▶ Greater recognition of out-of-state licensure for expediting applications

Ethics Issues

HOW DO YOU CONSIDER THESE?

What Kind of Issue is it?

- ▶ Legal - questions that relate to federal or state laws and regulations
- ▶ Clinical - questions that relate to the best treatment or assessment
- ▶ Ethical - questions that relate to the APA Ethics Code and the right thing to do
- ▶ Risk Management - questions that relate to how a particular course of action increases or decreases the psychologist's exposure to liability



Resources For Ethical Decisions

- ▶ Ethical Standards of Your Profession (APA, Specialty Associations)
- ▶ Statutes
- ▶ Rules
 - ▶ of the Texas State Board of Examiners of Psychologists
- ▶ Rules
 - ▶ of the Agency for Which You Work (if applicable)
- ▶ Opinions of the TSBEP



Resources For Ethical Decisions

- ▶ Attorney General Opinions
- ▶ Your Personal Upbringing
- ▶ Your Values
- ▶ What You Were Taught in School or CE
- ▶ Consultation with Valued Colleagues





Case Vignettes

Vignette 1

Dr. Smith is a psychologist who has worked with a young woman for about 9 months. The patient presents with a history of rejection and abandonment as well as persons of power misusing her. She recently received an offer to become a sales representative for a pharmaceutical company. The psychologist and patient discussed the type of job she was entering because she may experience rejection from doctors, nurses, and other office personnel.

After her 6 weeks of training, the company assigns her to a regional director that the psychologist knows personally. Along with the initial anxiety of the new job, her territory, and her boss, she reports a fear of failure and other anxiety related symptoms. The psychologist knows her new boss, Mr. Biggy. The psychologist seeks to reassure the patient that he, the psychologist, knows Mr. Biggy on a personal basis and that “he is a really a good guy” that seems bright, friendly, and fair. He indicates that Mr. Biggy is a good “family man”. The patient is reassured and reported less anxiety. In actuality, Mr. Biggy’s wife is a very close friend of Dr. Smith’s wife. They have dinner as couples several times per year.

Vignette 1 (cont.)

Several weeks into going on sales calls, your patient reports that Mr. Biggy is complimenting her on the way she looks and her ability to make the sale. They start spending more time together. However, she begins to feel uncomfortable as she feels like they are spending too much time together. Mr. Biggy starts asking questions that are more personal, forwards her “funny” emails, and texts some inappropriate remarks to her, mainly about her alluring power that helps make sales.

Mr. Biggy and Dr. Smith meet in an unplanned social venue. Mr. Biggy pulls Dr. Smith aside and explains how he has become very attracted to a new sales representative. He thinks that she is young and impressionable. He confides that he would like to have an affair with her.

Vignette 1 (cont.)



Dr. Smith politely explains that he feels uncomfortable with them discussing his more personal marital issues. Mr. Biggy indicates that he wants to talk more about his feelings. Dr. Smith suggests a referral to a psychologist, but Mr. Biggy states that he feels more comfortable talking with Dr. Smith. After some other small talk, Dr. Smith leaves to mingle with other friends.

Dr. Smith is now worried about the entire situation.

Vignette 1 (cont.)

- ▶ In hindsight, what triggered some possible difficulties in this situation?
- ▶ What are the ethical issues involved in this scenario?
- ▶ How are the client's emotional and interpersonal issues related to the psychologist's dilemma?
- ▶ What are the options for the psychologist for both his relationship with his patient and his relationship with Mr. Biggy?

Vignette 2

A female psychologist works with a male patient for about one year in a suburban area. They agreed to meet weekly for the first four months of psychotherapy, and then they agreed to meet twice per month. They developed a good therapeutic alliance. During the course of their work, he discussed significant facts about his troubled past, numerous details about failed past relationships, and sexual fantasies. The main therapeutic issues are depression and loneliness.

During the current session, the patient related having made a new female friend. As social isolation, loneliness and depression are regular themes in treatment; the psychologist frames this as positive progress.

Vignette 2 (cont.)

As the conversation continues, the psychologist is surprised to learn that the patient's new friend is the ex-wife of the psychologist's husband. The patient reveals that he became aware of that information after several dates and recently felt comfortable revealing this to the psychologist. He also indicated that the relationship is taking on a more serious tone.

The ex-wife moved back to the area about six months ago. The psychologist knows that the ex-wife had been struggling with isolation and loneliness as well. The psychologist, her husband, and his ex-wife are on good terms. They see her regularly for informal family events and do holidays together with their adult children and grandchildren.

After the session is over, the psychologist has time to reflect on her concerns. The psychologist feels stuck and overwhelmed by her present situation. She calls you for an ethics consult.

Vignette 2 (Cont.)

- ▶ What are the ethical issues involved?
- ▶ What would you suggest that she does?
- ▶ With whom does the psychologist discuss the multiple roles?
- ▶ With only the patient?
- ▶ With the patient and the ex-wife?
- ▶ With her husband, the patient and the ex-wife?
- ▶ Can the psychologist continue the treatment relationship with the patient?
- ▶ Even if they terminate therapy, how does the psychologist cope with family gatherings since she knows significant details about her patient's life?

Vignette 3

You are a psychologist in a busy acute care hospital where you receive frequent consultation requests by the trauma service. A physician requests a psychological evaluation of a 46-year-old man who attempted suicide via overdose of prescription medications along with alcohol. You arrive in the intensive care unit where the patient's respiratory status is rapidly deteriorating. He is marginally coherent and unable to give any consistent responses. However, upon his arrival in the emergency department, the medical record quotes the patient as saying, "This wasn't supposed to have happened."

Vignette 3 (Cont.)

The ICU nurse asks you to offer an opinion regarding the patient's capacity to accept or refuse intubation.

While you are there, a family member arrives with a copy of a notarized advance directive, created within the last year, which specifically outlines the patient's wishes not to be placed on a ventilator or any artificial life support. The ICU staff asks for your input.

Vignette 3 (Cont.)

- ▶ What are the ethical issues involved?
- ▶ What would you do in this situation?
- ▶ Would your answer differ if the advanced directive was created 7 years ago or greater?
- ▶ Would your answer differ if there were no advanced directives?

Vignette 4

A psychologist who completes evaluations for the Bureau of Disability Determination (BDD) calls you for a consultation.

Earlier in the day, the psychologist evaluated a 48-year-old male with a history of chronic pain. The only documentation received from BDD was a list of medications, which included an antidepressant and a prescription sleep aid.

The disability applicant arrived late for the evaluation, reporting that his pain prevented him from being on time. He shuffled his feet, walked in a hunched manner, used a cane, shifted in his seat frequently, and groaned throughout the evaluation. He described rather significant cognitive and vegetative symptoms of depression. He began to cry softly at one point when discussing the negative consequences of chronic pain. When asked about outpatient psychological treatment, the disability applicant explained he did not know that psychotherapy could help, and he would be anxious to try therapy.

Vignette 4 (cont.)

At the end of the evaluation, the patient left, shuffling and making muffled groans as he left the office and the waiting room. When the psychologist returned to his office, he remembered a lunch date for which he was late. As he was leaving the office building, the psychologist saw the disability applicant in the parking lot laughing with another person. He twirled his cane with one hand. He stood upright and seemed genuinely happy. When the disability applicant met the psychologist's gaze, the applicant immediately hunched over, grabbed his back, groaned loudly, and used the cane to steady himself. The psychologist hopped in his car for lunch without any discussion with the applicant.

Knowing that BDD evaluations are used within a legal context (in that lawyers, other psychologists, and administrative law judges will see this report), the psychologist asks the following questions:

Vignette 4 (Cont.)

1. What are the psychologist's ethical duties to the BDD?
2. What are the psychologist's ethical duties to the applicant?
3. Is the psychologist permitted to use any of his observations outside of the office as part of his report? If so, why? If not, why not?
4. If so, should it be included as an addendum or as part of the body of the report?
5. In either case, how do these observations influence the psychologist's rating of truthfulness or veracity during the evaluation?
6. Does the psychologist have any obligation to clarify what happened in the parking lot with the disability applicant by phone?
7. If not, how should the psychologist respond if the disability applicant calls him to discuss the evaluation or the interaction in the parking lot?
8. Is it appropriate to use the term "malingering" in the report, given that there is such a small sample of behavior?

Vignette 5

Dr. Miller is a psychologist who consults with local nursing homes and hospitals when a patient's capacity to make medical decisions is in question. Dr. Miller receives an urgent call from an attorney to evaluate Willie Loman at a local trauma unit. The attorney explains that Mr. Loman is looking for an objective opinion about his ability to make medical decisions.

Mr. Loman is a 52-year-old male with a wife and two kids (both in college). He works as a financially successful salesman. Over the previous weekend, Mr. Loman was involved in a serious boating accident. He did not experience any head trauma; however, his physical situation is dire. The trauma team needs his consent to perform a lifesaving surgery. If successful, Mr. Loman can live many years. However, there is a high probability that he will require full-time nursing care.

Vignette 5 (cont.)

Mr. Loman has been active man who enjoyed many physical activities. Furthermore, he believes if he has the surgery and ends up confined to lifetime nursing care, he will exhaust all the funds he has saved for the benefit of his family. Mr. Loman believes he will be an emotional burden to his family and lose his dignity. Knowing that he will be physically compromised and a burden on his family, Mr. Loman is asking to die in peace. He does not want to live in an incapacitated state of existence.

Without the surgery, Mr. Loman can be kept alive for about two weeks. The family filed an emergency petition to obtain guardianship. The trauma team believes that the patient is not thinking clearly about his demise. They have already called in their psychiatrist-consultant.

Vignette 5 (cont.)

Upon examination, Dr. Miller finds Mr. Loman's mental status is within normal limits. He demonstrates appropriate memory capabilities and reasoning skills. He articulates his dilemma well and understands that he will die without surgery. There is no evidence of hallucinations, delusions, or psychotic processes.

In order to clarify his thinking, Dr. Miller calls you to review this case.

Vignette 5 (Cont.)

- ▶ What are competing ethical principles?
- ▶ How would you feel if you were Dr. Miller?
- ▶ What are the possible consequences of concluding Mr. Loman is competent and capable of making this decision?
- ▶ What are the possible consequences of concluding Mr. Loman is not competent and incapable of making this decision?
- ▶ How do your own professional, personal, and moral values influence how you would participate as a consultant to Dr. Miller?
- ▶ Does Mr. Loman's age factor into this decision? In other words, would you make a different decision if Mr. Loman were 72 as compared to 52?

Vignette 6

A psychologist receives a call from an attorney wishing to seek services for depression, anxiety and substance abuse. The psychologist screens the potential patient and she believes that she can help him. When she asks about insurance, he indicates that he will use cash payments. The psychologist explains the fee structure for the initial appointment as well as ongoing psychotherapy sessions. The lawyer-patient comments that this seems low. The psychologist ignores the comment and finishes by setting their initial appointment.

The psychologist and the attorney-patient meet for the initial session. At the end of the session, the psychologist asks for the requisite fee as stated on the phone. The attorney-patient indicates that he earns about 2.5 times what the psychologist asked. He indicates that, in order for him to benefit from the treatment, he feels a need to pay what he makes an hour. He also states that if she does not accept what he is offering, he will lose respect for her as a professional and probably not return for treatment.

Vignette 6 (cont.)

Not knowing what to do, the psychologist takes the cash and sets up another appointment. At the end of the day, the psychologist reflects on the interaction between she and her new lawyer-patient. She does not feel right taking a fee larger than her usual and customary rate. She is struggling that the situation is not right and feels very uneasy about the arrangement that the lawyer-patient foisted upon her.

Uncertain, she calls you for an ethics consultation.

Vignette 6 (cont.)

- ▶ What are the ethical issues, if any, involved in this case?
- ▶ What would be your emotional response to this situation?
- ▶ What factors make this situation potentially difficult for you as a psychologist?
- ▶ What factors make this situation potentially easy for you as a psychologist?
- ▶ What do you believe is the best course of action?

Questions?



Contact

► OllieSeayPhD@austin.rr.com

