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TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL



Darrel D. Spinks
 Executive Director

RECEIVED

By Opinion Committee at 8:16 am, Jun 26, 2024

June 25, 2024

VIA EMAIL TO OPINION.COMMITTEE@OAG.TEXAS.GOV

The Honorable Ken Paxton
 Attorney General of Texas
 Attn: Opinions Committee
 P.O. Box 12548
 Austin, Texas 78711-2548

Re: Is a complainant considered a party to a disciplinary action against the license holder under Tex. Occ. Code § 507.205(b)(2)?

Dear Mr. Paxton:

The Texas Behavioral Health Executive Council (“Council”) respectfully requests a Texas Attorney General Opinion regarding the interpretation of statutory language found in Tex. Occ. Code § 507.205(b)(2), which states:

- (b) A complaint or investigation subject to Subsection (a) and all information and materials compiled by the executive council in connection with the complaint may be disclosed to:
 [...]
 - (2) a party to a disciplinary action against the license holder or that party's designated representative;

Tex. R. Civ. P. 500.2(u) defines the term “party” as “a person or entity involved in the case that is either suing or being sued, including all plaintiffs, defendants, and third parties that have been joined in the case.” The Council utilizes this definition when it interprets Tex. Occ. Code § 507.205(b)(2).

The Council interprets the term “party” or the phrase “a party to a disciplinary action against the license holder” used in Tex. Occ. Code § 507.205(b)(2) to exclusively mean the Council, as the plaintiff or petitioner, and the license holder, as the defendant or respondent, in the legal action taken against a license holder. The Council does not interpret the term “party” to include an individual complainant in a particular matter, because the Council is statutorily charged with protecting the public and not the rights of an individual complainant. Consequently, the Council prosecutes a particular case on the behalf of the State

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of Texas and not on the behalf of one specific complainant. A complainant may be a complaining witness in a particular case, but being a witness does not necessarily make that individual a party to a matter. Therefore, the Council does not interpret the term “party” or the phrase “a party to a disciplinary action against the license holder” used in Tex. Occ. Code § 507.205(b)(2) to include a complainant in a particular matter.

Furthermore, Tex. Occ. Code § 507.303 entitles a license holder to a hearing before the State Office of Administrative Hearings (SOAH) before a sanction is imposed, and such proceedings are governed by Gov’t Code Ch. 2001. The term “party” is defined by Gov’t Code § 2001.003(4) to mean “a person or state agency named or admitted as a party.” When a licensing agency docket a case at SOAH it names the agency as the petitioner and the license holder as the respondent, the complainant is never named or admitted as a party to a SOAH proceeding. Complainants have no discovery rights during a SOAH proceeding, nor do they have any right to examine or cross-examine witnesses, and if “the rule” is invoked the complainant is excluded from the hearing until called as a witness. Therefore, a complainant cannot be a party to a disciplinary action against the license holder.

Worth noting and distinguishing, Tex. Occ. Code §§ 507.203 and 507.204 uses the phrase “parties to a complaint” while Tex. Occ. Code § 507.205(b)(2) uses the phrase “party to a disciplinary action against a license holder”. The phrase “parties to a complaint” has a broader connotation because it seemingly references persons with some connection to the complaint, rather than parties possessing traditional standing whose rights or privileges may be directly affected by the outcome of a proceeding. Stated another way, the Council believes that the phrase “parties to a complaint” was intended to include persons that filed the complaint as well as those who the complaint is filed against because the purpose of these statutes is to provide the complainant and respondent certain information about the complaint process, such as an acknowledgement of receipt of the complaint, a projected timeline for resolution, updates regarding the status of the complaint, and notice of the final resolution. Conversely, the Legislature used the specific phrase “party to a disciplinary action against a license holder” in Tex. Occ. Code § 507.205(b)(2) and this phrase is believed to be more narrowly focused and apply only to those parties in the administrative proceeding whose rights or privileges may be directly affected by the outcome of the proceeding.

The question of who is considered a “party” or the meaning of the phrase “a party to a disciplinary action against the license holder” in Tex. Occ. Code § 507.205(b)(2) is especially important in the context of public information requests. Tex. Occ. Code § 507.205(a)(1) makes all information and materials compiled by the Council in connection with a complaint and investigation not subject to disclosure under Tex. Gov’t Code Ch. 552, the Public Information Act. On February 15, 2022, previous determination OR2022-04456 (ID# 930628) was issued by the Open Records Division of the Office of the Attorney General requiring the Council to withhold complaint and investigation information and materials covered by Tex. Occ. Code Sec. 507.205(a) when the requestor is not listed in Tex. Occ. Code § 507.205(b).

Prior to and after this previous determination, the Council has received several open records requests for complaint and investigation information and materials where the requestor was also the complainant in a particular matter, and every time the Open Records Division of the Office of the Attorney General has issued an open records letter ruling that determined such requested information is confidential under Tex. Occ. Code § 507.205 and excepted from disclosure under Tex. Gov’t Code § 552.101. For example, see open records letter rulings OR2021-02202, OR2021-06313, OR2021-10673, OR2021-15568, OR2021-34799, OR2023-15917, OR2023-25849, OR2023-35479, and OR2023-35553. But the Open Records Division of the Office of the Attorney General has never opined as to whether these requestors, as complainants, do or do not fall under the ambit of Tex. Occ. Code § 507.205(b)(2).

While the Council asserts that the generally recognized legal meaning of "party" should only include the petitioner and respondent, i.e. the Council and the license holder, the Council respectfully requests the Office of the Attorney General's assistance in resolving this statutory interpretation question, whether a complainant in a specific complaint is included as a party to a disciplinary action against the license holder as that phrase is used in Tex. Occ. Code § 507.205(b)(2).

Affected or Interested Groups or Parties

The Council has identified the following persons or groups likely to be interested in the opinion.

National Association of Social Workers Texas
810 W. 11th Street
Austin, Texas 78701

Texas Counseling Association
1210 San Antonio St., Ste. 200
Austin, Texas 78701

Texas Psychological Association
P.O. Box 163236
Austin, Texas 78716

Texas Association of Psychological Associates
P.O. Box 601374
Dallas, Texas 75360

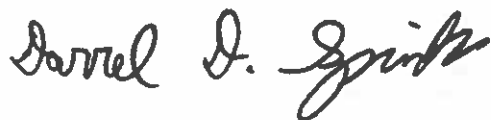
Texas Association of School Psychologists
P.O. Box 141023
Austin, Texas 78714

Texas Association for Marriage and Family
Therapy
3305 Steck Ave., Ste. 200
Austin, Texas 78757

Office of the Governor
Attn: Regulatory Compliance Division
P.O. Box 12428
Austin, Texas 78711-2428

The Council appreciates your review of this matter and looks forward to your opinion. If additional information is required, please contact me at (512) 305-7700.

Respectfully,



Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council