Rule: 781.407. Prohibited Independent Practice.

Action: Proposed New Rule

Comment: The proposed new rule consolidates existing rule language related to prohibitions on independent social work practice, including that an LMSW working towards an LCSW may not own or operate a private practice to provide clinical social work services. The new language expands the guidelines the Council will rely on for determining whether independent practice is occurring. The new language also makes non-substantive edits to use more plain, direct language.

§781.407. Prohibited Independent Practice.

(a) An Licensed Master Social Worker who plans to apply for the Licensed Clinical Social Worker may not own or operate a private practice to provide clinical social work to clients.

(b) A licensee who is not recognized for independent practice and who is not under a non-clinical supervision plan must not engage in any independent practice that falls within the definition of social work practice in §781.102 of this title unless the person is licensed in another profession and acting solely within the scope of that license.

(c) The Council will use the following considerations, as well as guidelines developed by the Internal Revenue Service (IRS) and the Texas Workforce Commission, to demonstrate whether a professional is performing independent practice. These guidelines revolve around the control an employer has in an employer-employee relationship, in which the employer has the right to control the “means and details” by which services are performed.

(1) Behavioral control. The employer can control the employee’s behavior by giving instructions about how the work gets done rather than simply looking at the end products of work. The more detailed the instructions, the more control the employer exercises. An employer requiring that employees be trained for the job is also an example of behavioral control, though contractors may also go through training.

(2) Financial control. The employer determines the amount and regularity of payment to employees. A contractor is typically paid when he/she completes the work, and the contractor usually sets a timeframe for completing the work. The most important element of financial control is that a contractor has more freedom to make business decisions that affect the profitability of his/her work. A contractor, for instance, may invest in renting an office or buying equipment, while the employee does not. While employees are usually reimbursed for job-related expenses, the contractor may or may not be reimbursed, by lack of reimbursement usually signals that a worker is independent. An independent contractor office makes his or her services available to their potential clients, while an employee does not.

(3) Relationship of the parties. The intent of the relationship is significant. The relationship is usually outlined in the written contract and gives one party more control than the other. If a company gives a worker employee benefits, the worker is an employee. The ability to terminate the relationship is another evidence of control in the relationship. If the employer-employee relationship appears to be permanent, it denotes an employee, not contractor, relationship. If a worker performs activities that are a key aspect of the company’s regular business, that denotes an employee status.