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) A Licensed Master Social Worker who plans to apply for a Licensed Clinical Social Worker license 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) A social worker provides services under the direction of an employing agency, and is not practicing independently, when the employer has the right to control the means and details by which services are performed, regardless of whether the social worker is a full-time or part-time employee or an independent contractor. The Council will use guidelines developed by the Internal Revenue Service (IRS) and the Texas Workforce Commission, to demonstrate whether a professional is performing independent practice. Such guidelines include:

(1) Behavioral control. An employer can control the social worker’s behavior by giving instructions about how work gets done rather than simply receiving the end products of the work. The more detailed the instructions, the more control an employer exercises.

(2) Financial control. The employer determines the amount and regularity of payment to employees. An independent practitioner typically negotiates a timeframe for completing work and receiving payment. Independent practitioners have more freedom to make business decisions that affect the profitability of their work, such as investing in equipment or renting an office. Employees typically do not invest their own finances into an employing agency. Employees are usually reimbursed for job-related expenses, whereas independent practitioners often must negotiate reimbursement as part of the total agreed compensation.

(3) Relationship of the parties. The nature of the relationship between the employer and the social worker is usually outlined in a written contract with clear intent whether the employing agency has control over the social worker and whether the employer is assuming responsibility for the social worker as an employee. Signs that a social worker is an employee include: if the employment relationship is permanent or ongoing, if an employer gives the social worker employee benefits, and if the social worker is retained to perform key aspects of the employer’s day-to-day business.