

## The Right to Diagnose for Texas MFTs

For updated content related to this matter, please visit our blog titled "[Update: The Texas Association for Marriage & Family Therapist Case.](#)"

On November 21, 2014 the Texas Court of Appeals, Third District, At Austin in Cause No. 03-13-00077-CV issued its decision in a case brought by the Texas Medical Association (TMA) against the Texas State Board of Examiners of Marriage and Family Therapists (TSBEMFT) and the [Texas Association of Marriage and Family Therapists](#) (TAMFT). The court invalidated a TSBEMFT board rule (22 Tex. Admin. Code §801.42(13)), which stated that a marriage and family therapist may provide “diagnostic assessment which utilizes the knowledge organized in the Diagnostic and Statistical Manual of Mental Disorders(DSM) as well as the International Classification of Diseases (ICD).” The case had been assigned to a three judge panel and resulted in a 3-2 decision in favor of TMA on this issue.

The deciding two justices, Justice Scott K. Field and Justice Bob Pemberton reasoned that TSBEMFT exceeded its authority granted by its enabling statute, the [Licensed Marriage and Family Therapists Act](#) (Texas Occupations Code, Chapter 502) in implementing the rule cited above. Texas Occupations Code §502.002(6) allows marriage and family therapists to provide “professional therapy services “ including “evaluation of ...cognitive, effective, behavioral, or relational dysfunction.”

The majority found that “evaluation” did not mean “diagnosis” which they opined is reserved to medical doctors under the Texas Medical Practice Act (Texas Occupations Code, Chapter 152). Under the Texas Medical Practice Act “practicing medicine” is defined as “the diagnosis, treatment, or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions.”

The dissenting justice J. Woodfin Jones, the Chief Justice, wrote a dissenting opinion in which he accused the majority of playing a semantics game and for not adopting a more general definition of “diagnosis”. He wrote that “no therapist could hope to successfully remediate ‘cognitive, affective, behavioral or relational dysfunction’ without performing a ‘diagnostic assessment’ (in the general sense) of the individuals involved, and any therapist who attempted to evaluate an existing dysfunction in a marriage or family without considering clear mental and emotional issues of the individuals involved would likely be committing malpractice.”

TSBEMFT and TAMFT are appealing this decision to the Texas Supreme Court and the decision has been stayed pending the appeal. If the decision is allowed to stand Texas LMFTs will be unable to make a DSM diagnosis. This has serious implications for client care and billing and for other mental health professionals in Texas who do not have a license to practice medicine and who may be targeted next by TMA.

An interesting side note: The two justices in the majority deciding the case both listed TMA as supporters of their election campaigns in 2012.

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