

**TEXAS STATE  
BOARD OF  
EXAMINERS OF  
PSYCHOLOGISTS**

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Sherry L. Lee

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**OPINION COMMITTEE**

December 11, 2011

Via U.S. Certified Mail No. 7010 2780 0002 0834 5421

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

**RQ-1030-GA**

FILE # ML-46906-11  
I.D. # 46906

Dear Mr. Abbott:

The Texas State Board of Examiners of Psychologists (hereinafter referred to as "the Board") is seeking an Attorney General Opinion regarding the following issue(s):

Whether a mental health professional who is treating an adult patient must report any abuse or neglect, as those terms are defined in Chapter 261 of the Texas Family Code, that the mental health professional has cause to believe occurred during the adult patient's childhood.

Additionally, if such a report is required:

1. Does a mental health professional who meets the definition of a "covered entity," violate HIPAA, 45 C.F.R. §§164.502(a) and 164.512, by reporting any such childhood abuse and neglect of an adult under state law?
2. Does the duty to report apply if the perpetrator is deceased, or if the perpetrator's whereabouts are unknown?
3. To what authority should the report of childhood abuse or neglect of an adult be directed?
4. Does the mental health professional have to report the abuse or neglect, if the abuse or neglect has previously been reported?

Although the Board has framed the issue in this request to encompass the entire scope of conduct to be reported by mental health professionals under Chapter 261 of the Texas Family Code, the most common question posed to the Board in this area is whether a mental health professional who is treating an adult patient must report the sexual abuse of that patient that occurred during childhood. However, because the Board has received inquiries concerning the duty to report nonsexual childhood abuse and neglect of adult

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patients, the Board respectfully requests that you not limit your opinion to the issue of reporting sexual abuse only.

### **Background and Discussion**

In 1997, the Council on Sex Offender Treatment requested an Attorney General Opinion regarding whether Sex Offender Treatment Providers had any discretionary leeway in reporting information obtained from a client, i.e., a charged or convicted sex offender, which might be “dated or incomplete information suggesting the client has abused a child.” The Office of the Attorney General, in Opinion No. DM-458, concluded that the “plain language” of Section 261.101(a) of the Texas Family Code “compels us to conclude that a treatment provider must report the information immediately if the information causes the treatment provider to believe that a child has been abused.”

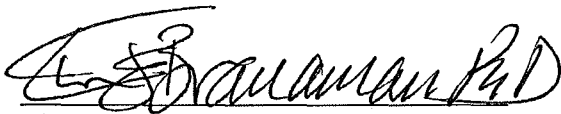
The Board is aware that the opinion has created some confusion for psychologists in general practice who do not treat sex offenders, but who encounter reports from their adult patients of childhood abuse and neglect. In this light, the Board received a request for an opinion regarding whether Opinion No. DM-458 applies to the disclosure of childhood sexual abuse to a mental health, or other professional, by victims who are now adults. The letter of request expressed concerns of supervisors at a public university psychology and counseling training clinic. The letter described the dilemma of mental health professionals violating the personal privacy and autonomy of adult patients who have experienced childhood abuse, sexual or otherwise, in order to comply with Section 261.101(a) of the Texas Family Code. The authors noted that mandatory reporting in this context conflicts with ethical principles set forth by the American Psychological Association that require adherence “to principles of beneficence and non-maleficence, fidelity and responsibility, and respect for people’s rights and dignity (autonomy)” with respect to treatment of patients, who in this circumstance would also have been the victim of childhood sexual abuse. Their expressed concerns noted that such a disclosure by an adult patient may occur as early as the first session of therapy. Consequently, the statutory requirement for a report to be made within 48 hours allows little opportunity for therapeutic discussion with the client about the consequences or benefits of reporting.

While the standard practice of mental health professionals is to notify patients of the limits of confidentiality as part of informed consent for treatment, and while Section 261.106 of the Texas Family Code provides immunity to the reporter of such information, notifying patients of the duty to report childhood abuse or neglect understandably discourages some patients from discussing important aspects of their developmental histories that may be relevant to their current symptoms and functioning. The clinic supervisors were concerned regarding the relative benefit of such a report for the adult patients or for public safety, due to the historical nature of the abuse, when compared to the potential harm to the adult patients who may find themselves in the untenable position of having to deny and/or lie in order to enter treatment because they do not want their past childhood abuse to be disclosed to anyone outside the therapeutic relationship.

The Board is aware that in 1997 its general counsel submitted a brief to the Attorney General's Opinion Committee in support of the broad, general application of Section 261.101 of the Texas Family Code, e.g. reporting all disclosed incidents of sexual abuse of a child, even if the disclosure is by an adult victim and the abuse occurred years earlier, or the perpetrator is deceased. Furthermore, it has been the general policy of the Board to instruct its licensees to report all abuse and neglect of a child, irrespective of whether the victim is now an adult. However, in light of ongoing concerns, the ethical considerations that have been raised, and taking into consideration the potential negative effects for adult victims, we are seeking your review and clarification of this matter.

We will appreciate your assistance in this matter and look forward to your opinion. If additional information is required, please contact Darrel Spinks, the Board's general counsel, at (512) 305-7705.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim F. Branaman Ph.D.", written in a cursive style.

Tim F. Branaman, Ph.D.  
Chair, Texas State Board of Examiners  
of Psychologists

Encl.: July 15, , 1997 Brief submitted by the Board's general counsel to the Attorney General's Opinion Committee