

Navigating Legal and Ethical Pitfalls in Private Practice

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Objectives

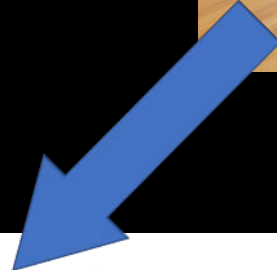
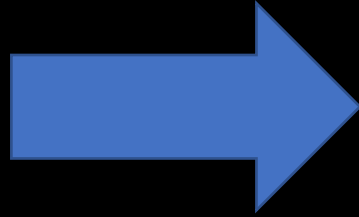
Participants will learn unique challenges to practitioners in private practice.

Participants will learn the most common reasons for licensure board complaints and civil lawsuits.

Participants will learn required documentation needed in private practice.

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Starting Private Practice

Not for LPC supervisees- LPC Supervisees must be employees (w2) of the facility where there is another licensed mental health professional.
86:10-11-3 (d) (1).

...or LMFT supervisees. 59-1871(16)

...or LCSW supervisees. 675:10-1-4

...or LADC supervisees. 38:10-7-3

Is private practice a good fit?

1. I am comfortable working independently and managing my own schedule.
2. I am confident in my ability to attract and retain clients without agency support.
3. I am self-motivated and able to stay productive without external supervision.
4. I can tolerate financial uncertainty during slower periods or while building a caseload.
5. I am comfortable discussing fees and collecting payment from clients.
6. I enjoy problem-solving and can figure out solutions when unexpected challenges arise.
7. I have—or am willing to learn—basic business skills like budgeting, marketing, and record-keeping.
8. I am organized and able to stay on top of paperwork, licensure, and ethical responsibilities.
9. I feel energized by the idea of creating a counseling space that reflects my personal values and style.
10. I am willing to dedicate extra time and effort to build a sustainable and ethical private practice.

Is private practice a good fit?

Scoring Guide:

40–50: You appear well-prepared for the challenges of private practice.

30–39: You may be ready with some preparation in areas like marketing or finance.

20–29: Consider gaining more experience or mentorship before launching solo.

10–19: You might prefer group practice or agency work at this stage.

Challenges in Private Practice

- Business Management: Handling credentialling, billing, marketing, ect.
- Isolation: Less peer interaction can lead to burnout.
- Financial Uncertainty: Income varies with client load.
- Ethical Risks: Full responsibility for compliance.
- Work-Life Balance: Boundaries can blur.
- Self-funded Supervision and Training.



Paid Claims by Location

Healthcare Providers Services Organization (HPSO) Counselor Professional Liability Exposure Claim
Report: 3rd Edition

2024 Statistics

Individual practice setting- 40.6%

Group practice setting- 28.9%

Outpatient clinic- 4.7%

Telehealth- 3.9%

Board Complaints

By Counselor Location

?

Board Complaints

OBBHL

Dual relationship (both sexual and non-sexual)
Fraud
Forensic testimony

Board Complaints

OBLADC

Confidentiality

Dual relationship (both sexual and non-sexual)

Substance Abuse

Fraud

Board Complaints

OSBLSW

Confidentiality Violations
Dual Relationships
Fraudulent Billing
Chemical Dependency

Board Rule Violations

Confidentiality Violations
Dual Relationships
Fraudulent Billing
Chemical Dependency

Board Rule Violations

Confidentiality Violations

Dual Relationships

Fraudulent Billing

Chemical Dependency

Board Rule Violations

Dual Relationships

How long before you can have ___?

Oklahoma

LPCs

LMFTs

LADCs

LCSWs

NEVER

Oklahoma LMFT Rules 86:15-3-1 (e)

Oklahoma Social Work Rules 675:20-1-4 (d)

Oklahoma LADC Rules 38:10-3-2 (e) 1-3

What do you do if you find out another counselor had sex with their client?

- The LPC must report to the board within 30 days.
 - Provide the name of the LPC, or Candidate, and any known facts.
 - Must maintain client confidentiality unless a release has been signed by the client.
- Any LMFT may submit a RFI (Request for Inquiry) to the board.
- Social Worker may submit a written complaint (may be anonymous)
- LADCs and CADCs may submit a complaint in writing, by phone, or visit. Will be anonymous.

Oklahoma LPC Rules **86:10-3-2 (h)**

Oklahoma LMFT Rules 86:15-15-3 (a)

Oklahoma Social Work Rules 675:3-1-3 (a)

Oklahoma LADC Rules 38:1-1-5

Dual Relationship, Extra Therapeutic Relationship

- means a familial, social, financial, business, professional, close personal, sexual or other non-therapeutic relationship with a client, or engaging in any activity with another person that interferes or conflicts with the LPC's or LPC Candidate's professional obligation to a client.
- Dual Relationships is the second most investigated ethical violation by state licensing boards (12.5%)

Prior Association

- LPCs shall not undertake to provide counseling to any person with whom the LPC has had any prior sexual contact.
- or familial, social,
- financial, business,
- professional,
- close personal,
- or other non-therapeutic relationship with a client...within the previous five (5) years.

The counselor did not know the client
before



The counselor did not know the client before



The counselor did not know the client before



The counselor did not know the client
before



Avoiding Dual Relationships

- When the LPC reasonably suspects that he or she has inadvertently entered into a dual relationship the LPC shall
- record that fact in the records of the affected client(s)
- take reasonable steps to eliminate the source or agent creating or causing the dual relationship.

Avoiding Dual Relationships

If the dual relationship cannot be prevented or eliminated and the LPC cannot readily refer the client to another counselor then the counselor will:

- (1) Fully disclose the circumstances of the dual relationship to the client and secure the client's written consent to continue providing counseling;
- (2) Consult with the other professional(s) to understand the potential impairment to the LPC's professional judgment and the risk of harm to the client of continuing the dual relationship.

Dual Relationships with Supervisees

LPCs shall avoid dual relationships that impair their professional judgment or increase the risk of exploitation.

Examples of such dual relationships include, but are not limited to, provision of counseling to supervisees, and business or close personal relationships with supervisees.

Sexual intimacy with current supervisees is prohibited.

Board Rule Violations

Confidentiality Violations

Confidentiality

“LPCs shall maintain the confidentiality of any information received from any person or source about a client, unless authorized in writing by the client or otherwise authorized or required by law or court order.”

OAC 86:10-3-3(b)(2)

Confidentiality

Release of Information 43A OK Stat § 1-109 (c) (2024)

Limits of Confidentiality

- **Mandated reporting of child abuse/ neglect** 43A OK Stat § 1-109 (e) (2024)
- **Harm to self** 59 OK Stat § 1910 (2024)
- **Duty to warn** 43A OK Stat § 1-109 (e) (2024), ACA Ethics Code B.2.a. (2014)
- **Disclose information to aid in a child abuse investigation**
10A OK Stat § 1-2-101 (b) (2024)

Limits of Confidentiality

Disclose information to aid in a child abuse investigation 10A OK Stat § 1-2-101 (b) (2024)

“Every physician, surgeon, other health care professional or midwife making a report of abuse or neglect as required by this subsection or examining a child to determine the likelihood of abuse or neglect and every hospital or related institution in which the child was examined or treated shall provide, upon request, copies of the results of the examination or copies of the examination on which the report was based and any other clinical notes, x-rays, photographs, and other previous or current records relevant to the case to law enforcement officers conducting a criminal investigation into the case and to employees of the Department of Human Services conducting an investigation of alleged abuse or neglect in the case.”

Limits of Confidentiality

- Parent (for minor children) unless restricted by the court 43 OK Stat § 109.6 (2024) or is the subject of a crime and law enforcement asks that the information not be released 25 OK Stat § 2002 (2024)
- Court order by a judge (to provide records or to testify) 43A OK Stat § 1-109 (d) (2024)
- Communication to law enforcement officers regarding information directly related to the commission of a crime on the premises of a facility or against facility personnel, or a threat to commit such a crime. 43A OK Stat § 1-109 (e) (2024)

Limits of Confidentiality

- Immediate medical intervention 43A OK Stat §§ 1-109 (e) (6) (2024)
- Insurance audit of client's records. Consent is given by the client to the insurance provider during enrollment.
43A OK Stat § 1-109(e) (2024)
- To collect payment 43A OK Stat § 1-109(e) (2024)
- the counselor to defend him or herself in court 43A OK Stat §§ 1-109 (e), 59-1910 (2024).

HIPAA

Health Insurance Portability and Accountability Act

U.S. Department of Health and Human Services Office for Civil Rights - [hhs.gov/Hipaa](https://www.hhs.gov/Hipaa)

Combined Regulation Text of All Rules- <https://www.hhs.gov/sites/default/files/hipaa-simplification-201303.pdf>

HIPAA Guidance Materials- <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/index.html>

HIPAA Journal- hipaajournal.com

Person Centered Tech- personcenteredtech.com

HIPAA

List of Protected Health Information

- 1.Names
- 2.All geographical identifiers smaller than a state
- 3.Dates (other than year) directly related to an individual
- 4.Phone Numbers
- 5.Fax numbers
- 6.Email addresses

HIPAA

List of Protected Health Information

7. Social Security numbers
8. Medical record numbers
9. Health insurance beneficiary numbers
10. Account numbers
11. Certificate/license numbers
12. Vehicle identifiers (including serial numbers and license plate numbers)

HIPAA

List of Protected Health Information

- 13. Device identifiers and serial numbers;
- 14. Web Uniform Resource Locators (URLs)
- 15. Internet Protocol (IP) address numbers
- 16. Biometric identifiers, including finger, retinal and voice prints
- 17. Full face photographic images and any comparable images
- 18. Any other unique identifying number, characteristic, or code except the unique code assigned by the investigator to code the data

HIPAA

“Wall of Shame”

https://ocrportal.hhs.gov/ocr/breach/breach_report.jsf

“A 2018 study published in [JAMA Internal Medicine](#), analyzed 1,138 breaches posted to The Wall of Shame. Interestingly, **over half of the breaches were caused by employee mistakes or neglect (53%)**. Examples of a company’s internal HIPAA breaches were mistakes handling emails containing PHI and employees accessing PHI without authorization. Interestingly, only 32.5% of the breaches were caused by theft from outside the organization.”

HIPAA

Health Insurance Portability and Accountability Act

If a breach occurs....

U.S. Department of Health and Human Services Office for Civil Rights - [hhs.gov/Hipaa](https://www.hhs.gov/hipaa)

<https://www.hhs.gov/hipaa/for-professionals/breach-notification/breach-reporting/index.html>

Civil Lawsuits

- Malpractice/ Negligence
- Breach of Contract

Civil Lawsuits

- Malpractice/ Negligence
- Breach of Contract

Competence

How does a counselor prove his or her competence?

Education

Training

Supervised experience

State and national professional credentials

Appropriate professional experience

American Counseling Association Code of Ethics C.2.a. (2014)

Competence



Civil Lawsuits

- Malpractice/ Negligence
- Breach of Contract

What is in your contract?

- Attendance/cancelations?
- Confidentiality?
- Fees and Payment?
- Dangers of counseling

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