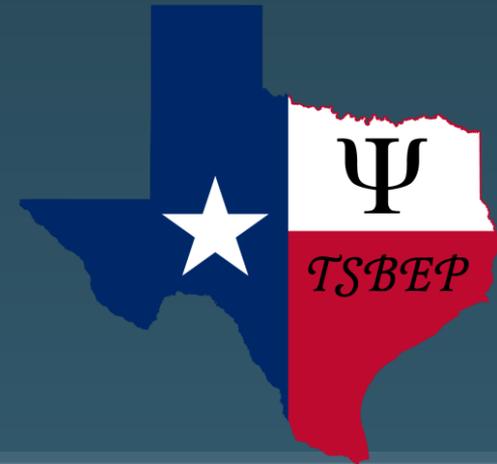


# Balancing Regulatory Oversight with Professional Standards: Update from the Texas Behavioral Health Executive Council and Texas State Board of Examiners of Psychologists



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November 4, 2021**



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# Topics Covered

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- What is BHEC and what does it do?
- How does BHEC affect LSSP licensing?
- How does rulemaking work under BHEC?
- Human Trafficking Prevention Training.
- Fingerprinting Requirement for Renewals.
- How are complaints handled under BHEC?
- Licensing Data.
- Enforcement Data.
- Update on significant rule changes and issues at BHEC.
- Update on significant rule changes and issues at TSBE.

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# What is BHEC and what does it do?

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- The Texas Behavioral Health Executive Council (“Council”) was created by the 86th Legislature in 2019 following consecutive Sunset reviews in 2017 and 2019.
- The Council consists of the:
  - Texas State Board of Examiners of Marriage and Family Therapists
  - Texas State Board of Examiners of Professional Counselors
  - Texas State Board of Examiners of Psychologists
  - Texas State Board of Social Worker Examiners.

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# What is BHEC and what does it do?

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- The mission of the Council is to protect and promote the welfare of the people of Texas by ensuring that behavioral health services and social work practice are provided by qualified and competent practitioners who adhere to established professional standards.
- This mission is derived from the duly enacted statutes governing each regulated profession, as well as the law creating the Council, and supersedes the interest of any individual or special interest group.

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# What is BHEC and what does it do?

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- How does the Council accomplish this mission?
  - Licensing
  - Enforcement
  - Providing information
- Why was the Council established?
  - Improve and enhance the administrative functions and efficiencies needed to carry out these functions
  - Provide active state supervision for rulemaking and enforcement functions

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# How does BHEC affect LSSP licensing?

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- The Council is precluded from making or changing rules in the following areas:
  - The qualifications necessary to obtain a license, including disqualifying criminal history
  - The scope of practice, standards of care, and ethical practice for the profession
  - Continuing education requirements
  - Schedule of sanction
- The Council has exclusive control over application and licensing processes

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# How does BHEC affect LSSP licensing?

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- Under BHEC, individuals must complete the jurisprudence exam prior to applying for licensure.
- No longer required to display a copy of your license if you provide a patient or client written notification of your license number and instructions on how to verify same.
- Renewal permits are no longer printed and mailed to licensee following renewal.

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# How does rulemaking work under BHEC?

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- If the rule addresses one of the areas mentioned in 507.153, then the rule must originate with the member board.
- If the rule does not address one of the areas mentioned in 507.153, the Council may initiate rulemaking on its own.
- Generally speaking:
  - If you want to change a rule related to process - talk to BHEC
  - If you want to change a rule related to licensing criteria, practice standards, CE requirements, or the schedule of sanctions - talk to the appropriate member board first

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# How does rulemaking work under BHEC?

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- If a member board wants to change a rule covered by 507.153, it must submit that rule to the Council, and the Council will then conduct a three-part analysis of the rule before deciding whether to publish the rule change in the Texas Register.
- The Council must consider the following factors when deciding whether to propose a rule change suggested by a member board:
  - Does the rule have an anticompetitive impact?
  - Is the rule administratively consistent with state and federal law?
  - Does the rule violate good governance concerns?

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# How does rulemaking work under BHEC?

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When determining whether a rule has an anticompetitive impact, the Council must consider the following factors:

1. Whether the proposed rule promotes a clearly articulated and affirmatively expressed policy as established by the legislature to displace competition with government action, or whether the proposed rule reflects the exercise of discretion or implied authority by a member board;
2. Whether absence of the proposed rule poses a significant risk of harm or danger to the public health, safety, or welfare of the residents of the state that is easily recognizable and not remote or dependent on tenuous argument;
3. Whether the proposed rule seeks to regulate activities or services requiring specialized skill or training and whether the public clearly needs and will benefit from the proposed rule;

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# How does rulemaking work under BHEC?

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4. Whether the proposed rule would have the effect of directly or indirectly increasing the cost of mental health services and, if so, whether the increase would be more harmful to the public than the harm that might result from the absence of the proposed rule;
5. Whether the proposed rule would significantly reduce market participation or competition in the state and, if so, whether the reduction would be more harmful to the public than the harm that might result from the absence of the proposed rule; and
6. Whether the residents of the state are or may be effectively protected by other means.

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# How does rulemaking work under BHEC?

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These six standards were borrowed from the following:

- Chapter 318 of the Government Code
- SB844, 85<sup>th</sup> Legislature (*Bill by Sen. Huffines that failed to pass*)
- SB1995, 86<sup>th</sup> Legislature (*Enrolled bill by Sen. Birdwell; Created the OOG's Regulatory Compliance Division*)

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# How does rulemaking work under BHEC?

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Two additional, but separate review processes that rules must go through with the Office of the Governor (OOG)

1. All proposed rules must be reviewed by the OOG Budget and Policy Division prior to publication in the Texas Register
2. All proposed rules affecting market competition (i.e., create a barrier to market participation or result in higher prices or reduced competition) within a licensed profession must be submitted to the OOG Regulatory Compliance Division for review prior to adoption.
  - a. The division publishes notice of its review and solicits public comment, and then issues a decision of whether or not an agency may adopt a rule as proposed.
  - b. There is no appeal from the division's decision to deny adoption of a rule.

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# Human Trafficking Prevention Training

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- HB2059 passed by the 86<sup>th</sup> Legislature added Chapter 116 to the Occupations Code.
- To help understand why this training was mandated, you are encouraged to visit the following website and watch the “Be the One” video:

<https://www.texasattorneygeneral.gov/initiatives/human-trafficking>

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# Human Trafficking Prevention Training

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- Section 116.002 requires a health care practitioner to complete a training course approved by HHSC on identifying and assisting victims of human trafficking.
- LSSPs fall under the definition of “health care practitioner” set out in Section 116.001.

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# Human Trafficking Prevention Training

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- According to Section 116.003, a licensee must complete a training course described by Section 116.002 as a condition for renewal of a license.
- This training requirement is ongoing, i.e. must be completed prior to each renewal.
- There are numerous courses that have been approved by HHSC.

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# Human Trafficking Prevention Training

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- If you or your school have developed your own training and would like HHSC to approve it, please follow the instructions on HHSC's Health Care Practitioner Human Trafficking Training webpage to learn how to submit the training for review.
- <https://www.hhs.texas.gov/services/safety/texas-human-trafficking-resource-center/health-care-practitioner-human-trafficking-training>

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# Fingerprinting Requirement for Renewals

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- Section 507.251 of the Occupations Code requires fingerprint background checks for all applicants.
- Section 507.257 of the Occupations Code requires fingerprint background checks for all licensees who have not undergone a fingerprint background check previously.
- TSBEP licensees are exempt from the fingerprinting requirement as a condition of renewal

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# How are complaints handled under BHEC?

## Summary of Complaint Process:

1. Complaint received by the Council
2. Investigator reviews to determine whether a violation has been stated on face of complaint
  - If not, complaint is dismissed
  - If so, complaint is sent to Investigations
3. Licensee is sent NOV and investigation ensues
  - If no P.C. found, complaint is dismissed
  - If P.C. found, licensee is either sent a proposed agreed order or an offer for informal conference
4. Informal Conference
  - If staff or disciplinary panel recommend a sanction, a proposed agreed order sent
  - If staff or disciplinary panel recommend dismissal, the complaint is dismissed
5. Informal vs. Formal Disposition of Complaints
  - Complaints resolved through an agreed order following an informal conference must be approved by the Executive Director, the Board, or the Council
  - Contested complaints are referred to SOAH for a contested hearing
6. The Board must review complaints heard at a contested hearing at SOAH and then make a recommendation to the Council regarding the appropriate sanction.
7. The Council must follow the Board's recommendation unless doing so would violate good governance concerns, be administratively inconsistent, or have an anticompetitive impact.
8. Appeal of Council decisions in contested cases must go through the state court system.

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# Licensing Data

License Type	Nos.
Psychologists	5,956
LPAs	925
LSSPs	4,104
LPCs	26,197
LPC Assocs.	4,648
MFTs	3,657
MFT Assocs.	574
LBSWs	4,438
LBSW Temp.	3
LMSWs	13,019
LMSW Temp.	20
LMSW-AP	201
LCSWs	11,312

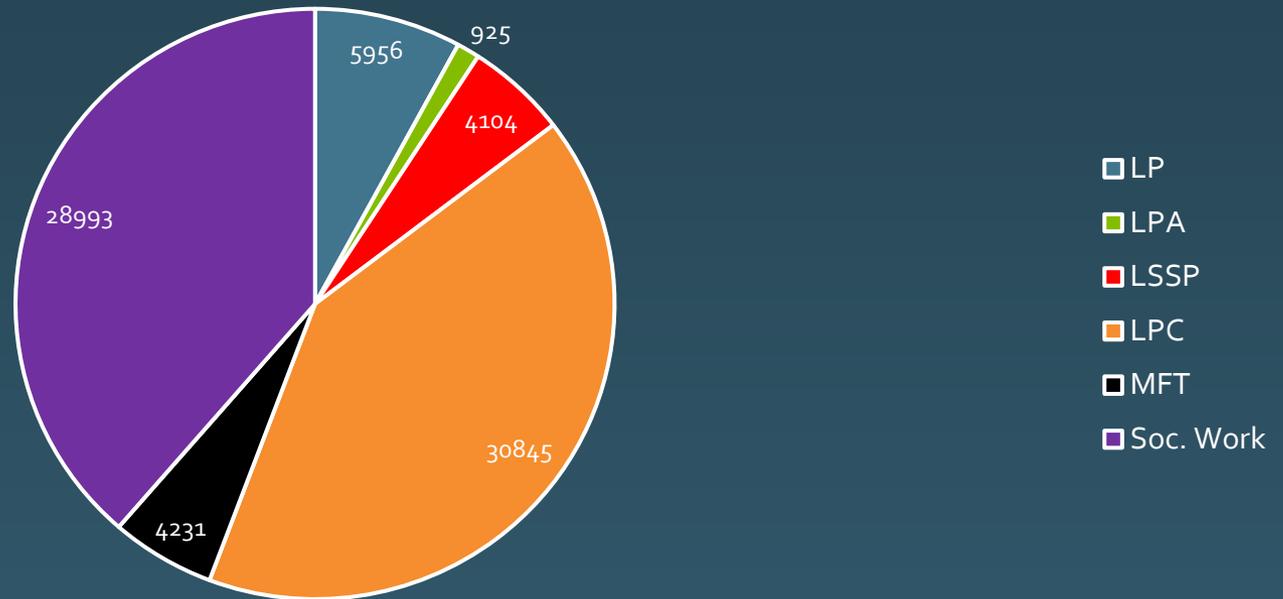
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# Licensing Data

Licensee Nos.



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# Enforcement Data

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No. of Complaints Received in FY2021: 423

- 5 complaints received involving LSSPs
- 1% of complaints received involved LSSPs
- 0.1% of LSSPs received a complaint during this time period.

Nature of Complaints Received Involving LSSPs:

- 1 administrative violation
- 1 General therapy
- 1 miscellaneous
- 1 school psychology
- 1 eligibility proceeding

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# Enforcement Data

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## No. of Complaints Resolved in FY2021: 1,159

- 2 complaints resolved involving LSSPs
  - 1 disciplinary action
  - 1 eligibility order

LSSPs represented .17% of the resolved complaints in FY2021, and 1.2% of total orders entered by BHEC.

### Nature of Complaints Resolved Involving LSSPs:

- Disciplinary action was a probated suspension and involved unprofessional text messages and boundary issues with interns
- Eligibility proceeding arose out of the applicant practicing without a license

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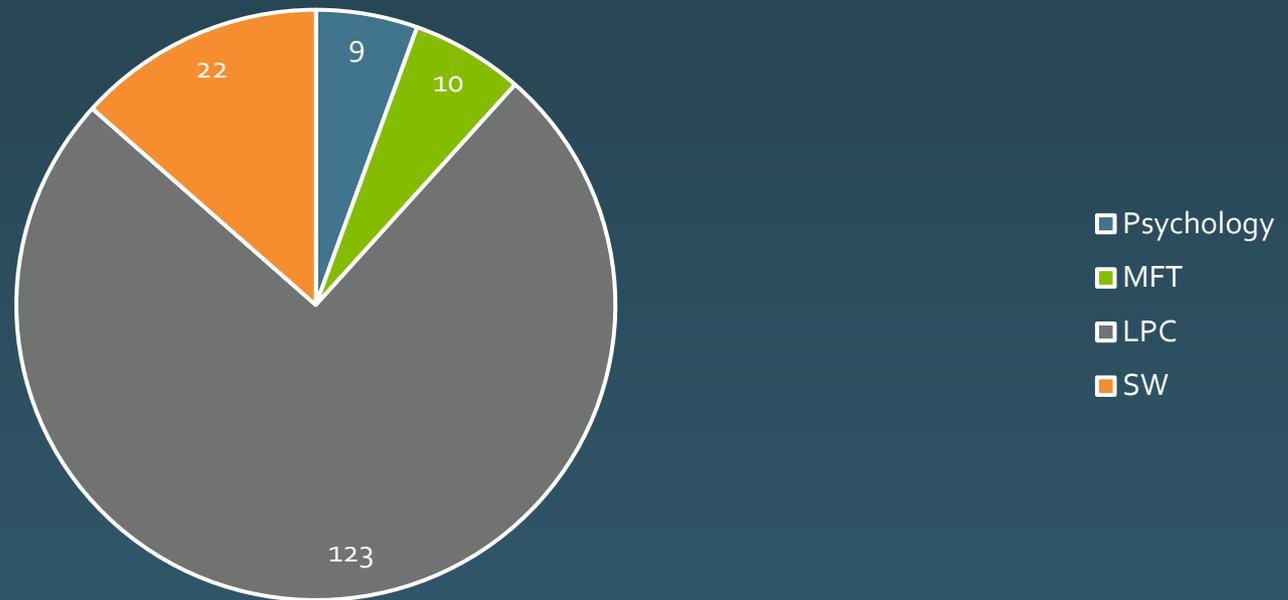
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# Enforcement Data

## Disciplinary Actions Taken



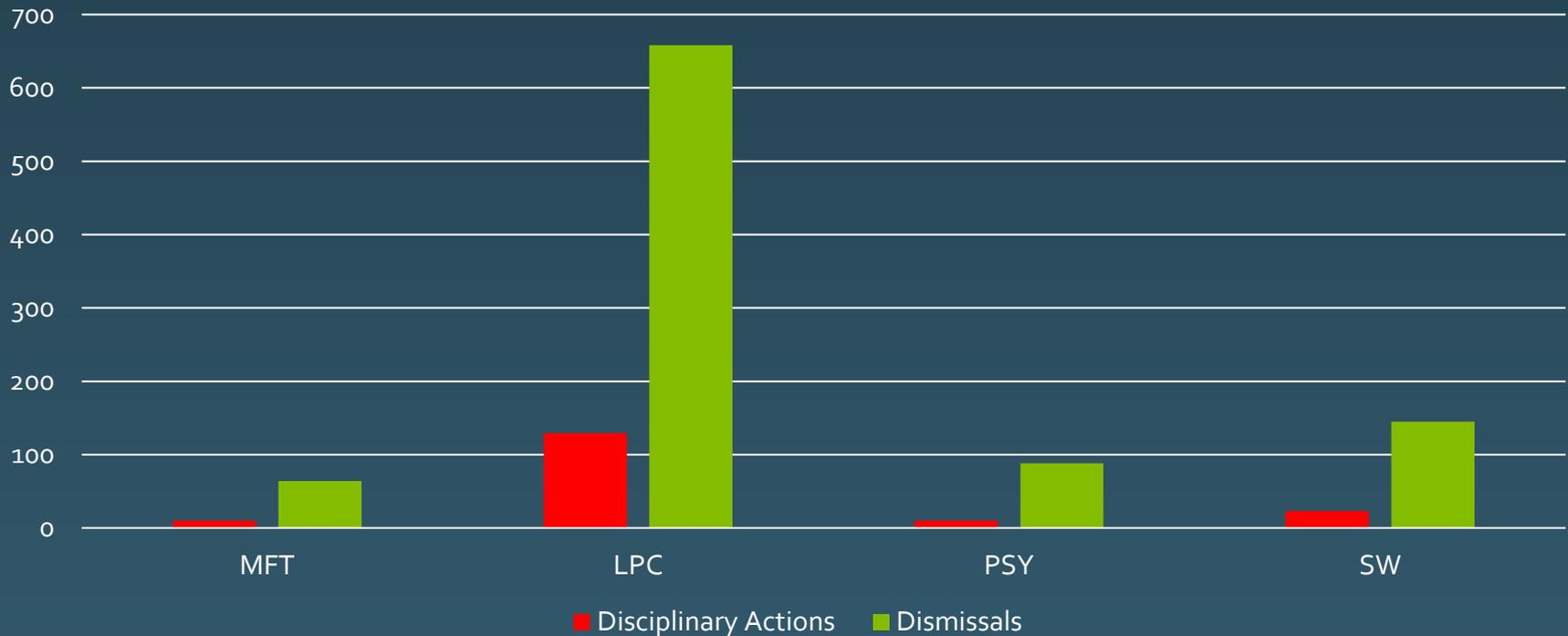
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# Enforcement Data

## Disciplinary Actions vs. Dismissals



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# Update on Significant Rule Changes and Issues at BHEC

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- Additional staffing authorized under SB1
- Mandatory online applications for all license programs
- Licensing Stats for LSSPs:
  - Q4 of FY2021 Avg. Processing Time for LSSP Apps. - 44 days (vs. 74 days for all lic. types)
  - 2 staff members assigned to LSSP/LPA apps. vs. 5 each for LPC and SW programs
    - Added an additional staff member to process LSSP/LPA apps
- Exploring transitioning exam approval process for all programs to mirror LPC, SW, and LSSP exam approval process

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# Update on Significant Rule Changes and Issues at BHEC

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- Fee Review Advisory Committee
- Standardization Advisory Committee
  - Rules governing CE hours
  - Weekly vs. Monthly hours metric
  - Rules governing patient/client record possession, access, and retention
  - Requirements/limitations on telehealth services
  - Rules governing conflicts and dual relationships
  - Rules governing liability of a supervisor for the activities or services of a supervisee
  - Standardized rules/guidelines for closing a practice

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# Update on Significant Rule Changes and Issues at BHEC

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- The formula used to calculate late fees has changed
- Percentage of licensees subject to audit each month reduced to 5%
- Eliminated numerous letters being sent out, e.g., notice of delinquent or expired status
- Expanded use of online self-service features of database
  - online name changes
  - ordering duplicate wall certificates, i.e., calligraphy licenses
  - ordering renewal permits
  - return to active status from inactive status

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# Update on Significant Rule Changes and Issues at BHEC

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- Other changes that may be coming:
  - Workforce study
  - Licensure compact
  - Switch to third-party provider for managing CE compliance
    - This could allow for banking of CE hours

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# Update on Significant Rule Changes and Issues at TSBEH

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- Repeal of trainee status language in 463.9.
- Cap removed for remote or electronic supervision if provided through synchronous audiovisual means.
  - Telephone, email, text messaging, etc. methods of supervision are still capped at 50%
- Adopted substantial changes to 465.13, the rule governing conflicts and dual relationships between providers and patients
- Adoption of Social Media Guidelines.

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# How to contact BHEC?

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- Single point of contact – Contact Us webpage
- <https://www.bhec.texas.gov/contact-us/index.html>
- Contact form must be used to send emails to staff

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# Sign up for email updates!

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- Sign up for email updates regarding the Council and its member boards by completing the form at:
- <https://www.bhec.texas.gov/email-updates/index.html>

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