



**MICHAEL H. FLYNN, J.D., PH.D.**  
**PSYCHOLOGIST + ATTORNEY**

2501 PARKVIEW DR. SUITE 317-A  
FORT WORTH, TEXAS 76102  
817-509-8820 docmflynn@michaelflynnjdphd.com

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### Legal Issues of Marriage in Texas And other law for MFTs

A PROGRAM FOR THE

#### FORT WORTH AREA ASSOCIATION OF MARRIAGE AND FAMILY THERAPISTS

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MICHAEL FLYNN, J.D., PH.D.  
2501 PARKVIEW SUITE 317-A; FORT WORTH, TEXAS 76102  
PHONE (8170-509-8820) FAX (817) 509-8834  
docmflynn@michaelflynnjdphd.com

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### Informed Consent

This presentation does not offer legal advice

- >The presenter offers NO legal advice regarding any specific legal question.
- >Be careful to verify anything you learn today with your own lawyer before relying on it.

*This presentation offers general information, only, and is not intended as advice to any participant concerning any specific legal question. Fact situations differ and the answer to any legal question depends on a careful analysis of the specific facts. If you need legal advice consult a lawyer independently.*

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Part One

INTRODUCTION TO  
TEXAS MATRIMONIAL  
LAW

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Texas Family Code; Title 1  
The Marriage Relationship  
Chapter 2

§ 2.001

(a) A man and a woman desiring to enter into a ceremonial marriage must obtain a marriage license from the county clerk of any county of this state.

§ 2.002.

(b) A license may not be issued for the marriage of persons of the same sex.

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Question Two:  
Who can marry whom?

Case Law

Christie Lee LITTLETON, Individually  
and as Next Heir of Mark Littleton, Appellant,  
v.  
Dr. Mark PRANGE, Appellee.

9 S.W.3d 223 (Tex. App. —San Antonio 1999, Pet Denied)

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From the Court in Littleton  
Citing the Federal Defense of Marriage Act

DOMA defines marriage for federal purposes as a "legal union between one man and one woman," and provides that no state "shall be required to give effect to any public act, record, or judicial proceeding of any other state respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State ... or a right or claim arising from such relationship." Defense of Marriage Act. (Littleton at 320.)

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Decision of the Court in Littleton

"We recognize that there are many fine metaphysical arguments lurking about here involving desire and being, the essence of life and the power of mind over physics. But courts are wise not to wander too far into the misty fields of sociological philosophy. Matters of the heart do not always fit neatly within the narrowly defined perimeters of statutes, or even existing social mores. Such matters though are beyond this court's consideration. Our mandate is, as the court recognized in Ladrach, to interpret the statutes of the state and prior judicial decisions. This mandate is deceptively simplistic in this case: Texas statutes do not allow same-sex marriages, and prior judicial decisions are few."

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Decision of the Court in Littleton

"We hold, as a matter of law, that Christie Littleton is a male. As a male, Christie cannot be married to another male. Her marriage to Jonathon was invalid, and she cannot bring a cause of action as his surviving spouse."

9 S.W.3d at 231

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**Informal Marriage**  
(AKA Common Law Marriage)

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**Texas Family Code**

**SUBCHAPTER E. MARRIAGE WITHOUT FORMALITIES**

**§ 2.401. Proof of Informal Marriage**

(a) In a judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:

(1) a declaration of their marriage has been signed as provided by this subchapter; or

(2) the man and woman agreed to be married and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.

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**Informal Marriage**  
(AKA Common Law Marriage)

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**Tex Fam Code § 2.402. Declaration and Registration of Informal Marriage**

(a) A declaration of informal marriage must be signed on a form prescribed by the bureau of vital statistics and provided by the county clerk. Each party to the declaration shall provide the information required in the form.

(Or apply the three prong test after the fact.)

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**Informal Marriage**  
(AKA Common Law Marriage)

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**(Or apply the three prong test after the fact.)**

1. Cohabitation – In Texas
2. “Holding Out” as married
3. Intent to be husband and wife.

Why would someone do this?

In order to claim rights after the death of a spouse or in a divorce proceeding to claim property (similar to Palimony)

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*Why does being married matter?*

**SUBCHAPTER F. RIGHTS AND DUTIES OF SPOUSES**

**§ 2.501. Duty to Support**

(a) Each spouse has the duty to support the other spouse.

(b) A spouse who fails to discharge the duty of support is liable to any person who provides necessaries to the spouse to whom support is owed.

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Why does it matter?

- Property Rights
- Rights to access to children
- Heirship rights
- Social security
- Insurance benefits
- Maternity leave

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Advanced Questions

- a. Mother has 8 children from 7 fathers.
- b. Two Lesbian lovers have 3 children each from affairs to have children. Although they deny living together, yet both their children say they live together in separate interview
- c. Private-client father died. Mother and father were legally married and together 15 years, then separated 4 years. Are they are still married and should mother legally get his possessions?!
- d. How long do you live together to legally qualify for a common-law marriage?
- e. Do you believe that children need both a father and mother?

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Part Two

ADDITIONAL LEGAL MATTERS OF  
CONCERN TO MARRIAGE AND  
FAMILY THERAPISTS

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(SOME THINGS I WOULD TELL YOU IF I WERE YOUR LAWYER)

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*Fiduciary Standard*

A mental health professional owes her client a duty to observe the utmost care to place the interests of the client ahead of her own, even when doing so places the mental health professional at a disadvantage.

Fiduciary responsibility charges you to avoid doing some honest and legitimate things if there is any way that a lawyer acting in the role of an *adversary* could make your act look bad.

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The Professional Standard of Care

Not established by a single, external authority; develops in a complicated way involving the interaction of leaders in the profession, journal publications and meetings, and collegial networks.

Formal bodies – professional groups, state licensing boards, government bodies – help shape the standard of care, but they do not dictate it.

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Professional Standard of Care

The professional standard of care is what has given you the demand for confidentiality, informed consent, and treatment plans, case notes, and a variety of other expectations.

Essentially, the standard is established by observing professionals with similar background, training, and experience and what they are doing under similar circumstances.

State licensing regulations (ideally) are derived on the same basis, but with some political twists.

So if everyone is doing it, think carefully about whether you should do it, too.

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*The Good News*

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Don't forget common sense. This is not rocket science.

Counseling is still about providing sound guidance to people in need.

As long as you are providing good service and helping people, you will be doing everything you can reasonably do to protect yourself.

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*The Good News, continued*

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Lawsuits and licensing board complaints are rarely about a counselor's competence. Clients are not good judges of counselor competence and ordinarily they do not care about your competence.

Most often, disputes are the result of a client being offended that you do not care about them or their problems.

When you display genuine and professional concern toward your clients and their concerns, you will be doing the best you can to prevent lawsuits and complaints.

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### Breach by Commission

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Commission is doing something that you should not have done.

- Don't buy from your clients
- Don't sell to your clients
- Don't have intimate relations with your clients
- Don't make promises to your clients that you can't/don't keep
- Don't talk about your clients to others

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### Breach by Omission

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Omission is a failure to do something you are obligated to do

- Address informed consent obligations.
- Return phone calls.
- Keep appointments and stay awake.
- Call Children's Protective Services on time.
- Texas has no (Tarasoff) obligation to warn, but the discretionary option to protect.

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### Breach by Carelessness

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- Monitor your employees and colleagues.
- Avoid engaging in a supervision contract with someone you have known less than 5 years.
- What does your telephone message say? What does it leave off?
- Don't forget your duty of continuing care and the danger (to you) of abandonment of a client.
- Avoid disputes over money. Just let it be.

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The Truth about Board Complaints

Take any Board Complaint with proper gravity:

Not too seriously – you are not going to lose your license (with narrow, obvious exceptions) – but

Never ignore a complaint. Ignoring a complaint will, itself, add to the problem.

This is a case of strep throat; not a heart attack.

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Minnesota Comment  
Regulatory Agencies versus Associations

**From the Minnesota Social Work Board website:**

The Board is an agency of the State [ ]. Its purpose is to regulate [professionals]. A board has a different purpose than an association. The purpose of an association of [professionals] is to provide services and assistance to [professionals]. The Board, by contrast, ensures that [professionals] meet appropriate standards of professional behavior. As such, the Board exists to serve the public, not [professionals]. The primary goal of the Board is public protection.

*(Emphasis Added)*

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Don't get caught making an economic decision with  
your license and your reputation.

- Your Liability Insurance will pay for your legal defense cost (your lawyer) in a Board complaint.
- You should have at least \$25,000 coverage, but don't hesitate to get \$50,000.
- Your insurance carrier must also pay for your own lawyer if you are ever sued in tort.
- Many liability carriers provide coverage for lawyer to go with you if you are called to a deposition.

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Comments about your insurance

- Liability coverage versus Licensing Board complaint and deposition coverage.
- Claims-made coverage and tails
- Umbrella policies / Gap policies

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