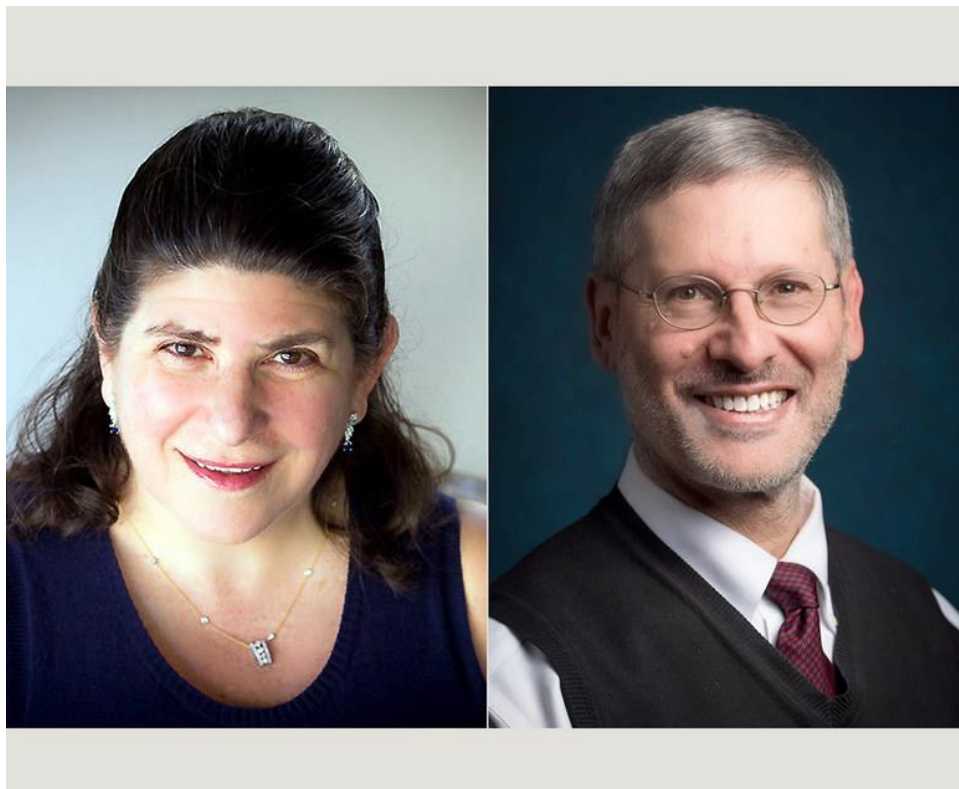


Will the Real Expert Please Take the Stand?

Experts come in all shapes and sizes, so try your case with what you have. To preserve error, object.

By **Elisa Reiter and Daniel Pollack** | June 09, 2021 at 02:35 PM



There are many types of mental health professionals. A non-exhaustive list includes: social worker, clinical psychologist, school psychologist, mental health counselor, certified alcohol and drug abuse counselor, nurse psychotherapist, pastoral counselor, marital and family therapist, peer specialist, art therapist, music

therapist, psychiatrist, child/adolescent psychiatrist, psychiatric or mental health nurse practitioner, rehabilitation counselor. licensed professional counselor. Depending on the discipline, the professional may have acquired specialty certifications.

A few weeks ago, a Texas Court of Appeals affirmed that the trial court did not abuse its discretion in overruling the defendant's objection to the State's expert witness, a licensed professional counselor intern (LPC intern), regarding a sexual abuse matter.

In the case of [Hernandez v. State](#), the Thirteenth District Court recently held that an LPC-Associate presented with sufficient *gravitas* and experience to be considered an expert witness. TRE 702 provides the following parameters for who constitutes an expert:

Testimony by Expert Witnesses A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

In [Texas](#), to earn the status of LPC-Associate, an individual must hold a graduate degree in counseling (or a related field) from a program that is accredited. In addition, the individual must have passed the National Counseling Exam or the National Clinical Mental Health Counseling Examination, duly administered by the National Board for Certified Counselors. Pursuant to the [Texas Administrative Code](#), an LPC Associate must meet certain criterion to become fully licensed:

(a) All applicants for [LPC](#) licensure must complete supervised experience acceptable to the Council of **3,000 clock-hours** under a Council-approved supervisor. (1) All internships physically occurring in Texas must be completed under the supervision of a Council-approved supervisor.

Of the 3,000 hours that an LPC Associate must accrue, 1,500 must include direct patient contact, while the balance can include research and case management. LPC-

Associates were previously known as LPC-Interns. In [Hernandez](#), defense counsel asked to take such an individual on *voir dire*, arguing that the witness lacked sufficient experience to be considered as an expert, and further, therefore lacked the ability to present testimony as an expert witness. As it turns out, the LPC-Intern, Juan Chapa, was but 300 hours shy of completing his supervisory hours. Moreover, Chapa testified that he held a bachelor's degree in criminal justice as well as a Master of Science degree in rehabilitation counseling. Chapa also testified that as part of his master's program, he received training in psychiatric diagnosis. The Hernandez case involved child sexual abuse; Chapa provided counseling services to the victim. As an LPC-Intern or LPC-Associate, [Chapa](#) compiled the following experience while providing counseling to children and families:

he worked on approximately sixty-five child sexual abuse cases, received ninety-four hours of trauma-informed therapy training, thirty-eight hours of trauma-focused cognitive behavioral therapy training, participated in eighty-four hours of peer review constellations in trauma cases, and performed eighty-eight supervised consultations. Chapa described cognitive behavioral therapy as an evidence-based treatment focusing on helping children and their families to understand trauma. With respect to those children who have been sexually abused, Chapa stated that his treatment involved talking about the symptoms presenting in the child and helping them cope with those symptoms.

The jury found Hernandez, the defendant, guilty of four counts of indecency with a child by contact. The appellate court reviews the criterion for specialized knowledge, i.e., an expert, noting:

[Testimony](#) requiring scientific, technical, or specialized knowledge is admissible if three conditions are met: (1) the witness qualifies as an expert by reason of his knowledge, skill, experience, training, or education; (2) the subject matter of the testimony is an appropriate one for expert testimony; and (3) admitting the expert testimony will assist the fact finder in deciding the case.

Licensure is not a prerequisite to being considered an expert. [What is?](#) Specialized knowledge. Practical experience. Study of technical works. Or a combination of the foregoing. The trial court found that LPC-Intern Chapa was qualified to present expert testimony in a narrow area: that of the signs and symptoms of child sexual abuse. As the [Court](#) noted:

Chapa's inability to diagnose patients has no bearing on whether he was qualified to opine on signs of child sexual abuse. . . The primary restriction imposed by Chapa's status as an LPC intern was his inability to diagnose patients. The trial court considered this factor and limited the permissible scope of testimony accordingly. At any rate, Chapa's inability to diagnose patients has no bearing on whether he was qualified to opine on signs of child sexual abuse. . .Chapa's background demonstrates that he was qualified to opine on matters of child sexual abuse by virtue of his education, practical experience, and vocational training.

One more issue: while defense counsel argues on appeal that Chapa's testimony exceeded the scope of the trial court's ruling, defense counsel committed the sin of failing to preserve that argument on appeal, as he did object at trial on that basis.

Experts come in all shapes and sizes. Size is not determined by the number of letters after a potential witness' name. Try your case with what you have. To preserve error, object. Think of Mona Lisa in *My Cousin Vinny*, who proved to be a formidable automotive expert. [Be kind](#) - you never know when you may have an expert in your midst.

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