

TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

EXECUTIVE DIRECTOR
Darrel D. Spinks



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Texas Behavioral Health Executive Council Meeting Agenda (joint session with the Texas State Board of Social Worker Examiners) October 12, 2020, 1pm

Due to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster affecting all counties in Texas due to the Coronavirus (COVID-19) and the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act, the October 12, 2020 joint meeting of the Texas Behavioral Health Executive Council and the Texas State Board of Social Worker Examiners will be held by videoconference call, as authorized under Texas Government Code section 551.127. There will be no physical meeting location open to the public so long as the disaster declaration is in effect.

Members of the public will have access and a means to participate in this meeting, by two-way communication, by entering the URL address <https://us02web.zoom.us/j/84353960926> into their web browser or by calling (346) 248-7799 and entering the webinar ID 843 5396 0926. Additional telephone numbers and videoconference call access information can be found in the attached addendum. An electronic copy of the agenda and meeting materials will be made available at www.bhec.texas.gov prior to the meeting. A recording of the meeting will be available after the meeting is adjourned. To obtain a recording, please contact the Council's public information officer at Open.Records@bhec.texas.gov.

For public participants, once the public comment item is reached on the agenda after the meeting convenes, the presiding member will ask those joining by computer to use the "raise hand" feature to indicate who would like to make a public comment. Those individuals who raise their hand will then be unmuted to give public comment. Once all of the individuals with raised hands have been given an opportunity to make public comment, the individuals appearing by telephone will be unmuted and asked whether they would like to make a public comment. When making a public comment, please identify yourself and whether you are speaking individually or on behalf of an organization. All public comments will be limited to 3 minutes, unless otherwise directed by the presiding officer. In lieu of providing public comment during the meeting, you may submit written public comments via email to general@bhec.texas.gov in advance of the meeting. The written public comments received will be submitted to the council members for their consideration during the meeting, but will not be read aloud.

In the event Governor Greg Abbott's March 13, 2020 disaster declaration is not renewed or expires prior to October 12th, then pursuant to Tex. Gov't Code Ann. §551.127, notice is hereby given that one or more Council and/or social work board members may appear at the scheduled meeting via videoconference call, but the presiding members will be physically present at 333 Guadalupe St., Ste. 3-900, Austin, Texas 78701. This location will be open to the public only in the event the March 13th disaster declaration is not renewed.

Please note that the Council and board may request input during the meeting from any interested parties or members of the public during its discussion of an agenda item.

If you are planning to attend this meeting and need auxiliary aids, services or materials in an alternate format, please contact the Council at least 5 working days before the meeting date. Phone: (512) 305-7700, E-MAIL: General@bhec.texas.gov, TTY/RELAY TEXAS: 711 or 1-800-RELAY TX.

The Council may go into Executive Session to deliberate any item listed on this agenda if authorized under Texas Open Meetings Act, Government Code, Ch. 551.

The Council may discuss and take action concerning any matter on the agenda and in a different order from what it appears herein.

NOTES:

- There may be a quorum of the members from each of the following boards present at the Texas Behavioral Health Executive Council meeting: the Texas State Board of Examiners of Psychologists; the Texas State Board of Social Worker Examiners; the Texas State Board of Examiners of Marriage and Family Therapists; and the Texas State Board of Examiners of Professional Counselors.

Council Meeting Agenda for October 12, 2020 at 1pm

1. Call to Order
2. Roll Call and Certification of Quorum
3. Rulemaking - Texas State Board of Social Worker Examiners:
 - a. Consideration and possible adoption of rule changes to 22 TAC Chapter 781. The rule changes being considered for adoption were published in the July 17, 2020 edition of the Texas Register and no public comments were received following publication.
 - i. *These rules have been reviewed by the OOG's Budget and Policy Division. The Council will consider adoption of the rules following review and recommendation of the OOG's suggested changes by the TSBSWE at this joint meeting.*
 - ii. *The board is recommending withdrawal of proposed rule 22 TAC 781.420 due to the need for substantive changes.*
 - b. Review and proposal of new rule 22 TAC 781.420, Licensing of Persons with Criminal Convictions.
 - i. *Following withdrawal of the original version of this rule published in the July 17, 2020 edition of the Texas Register, the board recommends reproposal of the rule with substantive changes acceptable to the OOG's Budget and Policy Division.*
 - c. Review and proposal of rule changes to 22 TAC 781.102, 781.302, 781.401, 781.402, 781.403, 781.404, and 781.406 reflecting the intent to repeal the requirement that supervision plans be submitted and approved by the agency, together with any other rule amendments or proposals recommended by TSBSWE to resolve the licensing backlog.
4. Public Comments – Public Comment is limited to three (3) minutes per person, unless otherwise directed by the presiding officer.
5. Adjournment

Addendum: Additional Videoconference and Telephone Conference Call Information

When: Oct 12, 2020 01:00 PM Central Time (US and Canada)

Topic: October 12th, 2020 Joint Meeting of the Texas Behavioral Health Executive Council and Texas State Board of Social Worker Examiners

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/84353960926>

Or iPhone one-tap :

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Webinar ID: 843 5396 0926

International numbers available: <https://us02web.zoom.us/j/kc3ZYrgKrj>

Index to Changes Suggested by OOG

- 781.301(a)(7) – pg. 8 of the PDF document
- 781.304(i) – pg. 13 of the PDF document
- 781.305(b) – pg. 14 of the PDF document
- 781.305(f) – pg. 14 of the PDF document
- 781.312(a) – pg. 18 of the PDF document
- 781.401(a)(2)(A)* – pg. 29 of the PDF document
- 781.404(b)(4)* – pg. 35 of the PDF document
- 781.404(b)(10)(F)* – pg. 36 of the PDF document
- 781.404(b)(10)(Q)* – pg. 37 of the PDF document
- 781.404(b)(11)(C)* – pg. 38 of the PDF document
- 781.405 – pg. 40 of the PDF document
- 781.411(f) – pg. 42 of the PDF document
- 781.803(2)-(4) – pg. 48 of the PDF document
- 781.805 attached graphic – pgs. 50-52 of the PDF document

Rules marked with an asterisk “*” are rules identified as needing changes to repeal the requirement that supervision plans be submitted and approved by agency. If the OOG’s changes are approved by the Board and adopted by the Council, these same changes will be incorporated by staff into the proposed supervision plan rule changes.

Adopted Rules

§781.101. Purpose and Scope.

- (a) This chapter implements the provisions in the Social Work Practice Act (Act), Texas Occupations Code, Chapter 505, concerning the licensure and regulation of social workers.
- (b) The Act restricts the use of the titles "social worker," "licensed master social worker," "licensed social worker," "licensed baccalaureate social worker," "licensed clinical social worker" or any other title that implies licensure or certification in social work.

§781.102. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Accredited colleges or universities--An educational institution that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education. (2) Act--The Social Work Practice Act, Texas Occupations Code, Chapter 505, concerning the licensure and regulation of social workers.
- (3) Agency--A public or private employer, contractor or business entity providing social work services.
- (4) Assessment--An ongoing process of gathering information about and reaching an understanding of the client or client group's characteristics, perceived concerns and real problems, strengths and weaknesses, and opportunities and constraints; assessment may involve administering, scoring and interpreting instruments designed to measure factors about the client or client group.
- (5) Association of Social Work Boards (ASWB)--The international organization which represents regulatory boards of social work and administers the national examinations utilized in the assessment for licensure.
- (6) Board--Texas State Board of Social Worker Examiners.
- (7) Case record--Any information related to a client and the services provided to that client, however recorded and stored.
- (8) Client--An individual, family, couple, group or organization that receives social work services from a person identified as a social worker who is licensed by the Council.
- (9) Clinical social work--A specialty within the practice of master social work that requires applying social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples,

families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. Clinical social work practice involves using specialized clinical knowledge and advanced clinical skills to assess, diagnose, and treat mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness and serious emotional disturbances in adults, adolescents and children. Treatment methods may include, but are not limited to, providing individual, marital, couple, family, and group psychotherapy. Clinical social workers are qualified and authorized to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), Current Procedural Terminology (CPT) codes, and other diagnostic classification systems in assessment, diagnosis, and other practice activities. The practice of clinical social work is restricted to either a Licensed Clinical Social Worker, or a Licensed Master Social Worker under clinical supervision in employment or under a clinical supervision plan.

(10) Confidential information--Individually identifiable information relating to a client, including the client's identity, demographic information, physical or mental health condition, the services the client received, and payment for past, present, or future services the client received or will receive. Confidentiality is limited in cases where the law requires mandated reporting, where third persons have legal rights to the information, and where clients grant permission to share confidential information.

(11) Conditions-of exchange--Setting reimbursement rates or fee structures, as well as business rules or policies involving issues such as setting and cancelling appointments, maintaining office hours, and managing insurance claims.

(12) Counseling, clinical--The use of clinical social work to assist individuals, couples, families or groups in learning to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.

(13) Counseling, supportive--The methods used to help individuals create and maintain adaptive patterns. Such methods may include, but are not limited to, building community resources and networks, linking clients with services and resources, educating clients and informing the public, helping clients identify and build strengths, leading community groups, and providing reassurance and support.

(14) Council—the Texas Behavioral Health Executive Council

(15) Consultation--Providing advice, opinions and conferring with other professionals regarding social work practice.

(16) Continuing education--Education or training aimed at maintaining, improving, or enhancing social work practice.

(17) Council on Social Work Education (CSWE)--The national organization that accredits social work education schools and programs.

(18) Direct practice--Providing social work services through personal contact and immediate influence to help clients achieve goals.

- (19) Dual or multiple relationship--A relationship that occurs when social workers interact with clients in more than one capacity, whether it be before, during, or after the professional, social, or business relationship. Dual or multiple relationships can occur simultaneously or consecutively.
- (20) Electronic practice--Interactive social work practice that is aided by or achieved through technological methods, such as the web, the Internet, social media, electronic chat groups, interactive TV, list serves, cell phones, telephones, faxes, and other emerging technology.
- (21) Examination--A standardized test or examination, approved by the Council, which measures an individual's social work knowledge, skills and abilities.
- (22) Equivalent or substantially equivalent – a licensing standard or requirement for an out-of-state license that is equal to or greater than a Texas licensure requirement shall be deemed equivalent or substantially equivalent.
- (23) Executive Director – the executive director for the Texas Behavioral Health Executive Council. The executive director may delegate responsibilities to other staff members.
- (24) Exploitation--Using a pattern, practice or scheme of conduct that can reasonably be construed as primarily meeting the licensee's needs or benefitting the licensee rather than being in the best interest of the client. Exploitation involves the professional taking advantage of the inherently unequal power differential between client and professional. Exploitation also includes behavior at the expense of another practitioner. Exploitation may involve financial, business, emotional, sexual, verbal, religious and/or relational forms.
- (25) Field placement--A formal, supervised, planned, and evaluated experience in a professional setting under the auspices of a CSWE-accredited social work program and meeting CSWE standards.
- (26) Fraud--A social worker's misrepresentation or omission about qualifications, services, finances, or related activities or information, or as defined by the Texas Penal Code or by other state or federal law.
- (27) Full-time experience--Providing social work services thirty or more hours per week.
- (28) Group supervision for licensure or for specialty recognition--Providing supervision to a minimum of two and a maximum of six supervisees in a designated supervision session.
- (29) Health care professional--A licensee or any other person licensed, certified, or registered by the State of Texas in a health related profession.
- (30) Impaired professional--A licensee whose ability to perform social work services is impaired by the licensee's physical health, mental health, or by medication, drugs or alcohol.
- (31) Independent clinical practice--The practice of clinical social work in which the social worker, after having completed all requirements for clinical licensure, assumes responsibility and accountability for the nature and quality of client services, pro bono or in exchange for direct

payment or third party reimbursement. Independent clinical social work occurs in independent settings.

(32) Independent non-clinical practice--The unsupervised practice of non-clinical social work outside of an organizational setting, in which the social worker, after having completed all requirements for independent non-clinical practice recognition, assumes responsibility and accountability for the nature and quality of client services, pro bono or in exchange for direct payment or third party reimbursement.

(33) Independent Practice Recognition--A specialty recognition related to unsupervised non-clinical social work at the LBSW or LMSW category of licensure, which denotes that the licensee has earned the specialty recognition, commonly called IPR, by successfully completing additional supervision which enhances skills in providing independent non-clinical social work.

(34) Individual supervision for licensure or specialty recognition--Supervision for professional development provided to one supervisee during the designated supervision session.

(35) LBSW--Licensed Baccalaureate Social Worker.

(36) LCSW--Licensed Clinical Social Worker.

(37) License--A regular or temporary Council-issued license, including LBSW, LMSW, and LCSW. Some licenses may carry an additional specialty recognition, such as LMSW-AP, LBSW-IPR, or LMSW-IPR.

(38) Licensee--A person licensed by the Council ~~board~~ to practice social work.

(39) LMSW--Licensed Master Social Worker.

(40) LMSW-AP--Licensed Master Social Worker with the Advanced Practitioner specialty recognition for non-clinical practice. This specialty recognition will no longer be conferred after September 1, 2017. Licensees under a Council-approved supervision plan for this specialty recognition before September 1, 2017 will be permitted to complete supervision and examination for this specialty recognition.

(41) Non-clinical social work--Professional social work which incorporates non-clinical work with individuals, families, groups, communities, and social systems which may involve locating resources, negotiating and advocating on behalf of clients or client groups, administering programs and agencies, community organizing, teaching, researching, providing employment or professional development non-clinical supervision, developing and analyzing policy, fund-raising, and other non-clinical activities.

(42) Person--An individual, corporation, partnership, or other legal entity.

(43) Psychotherapy--Treatment in which a qualified social worker uses a specialized, formal interaction with an individual, couple, family, or group by establishing and maintaining a therapeutic relationship to understand and intervene in intrapersonal, interpersonal and psychosocial dynamics; and to diagnose and treat mental, emotional, and behavioral disorders and addictions.

- (44) Recognition--Authorization from the Council to engage in the independent or specialty practice of social work services.
- (45) Rules--Provisions of this chapter specifying how the Council implements the Act-as well as Title 22, Chapters 881-885 of the Texas Administrative Code.
- (46) Social work case management--Using a bio-psychosocial perspective to assess, evaluate, implement, monitor and advocate for services on behalf of and in collaboration with the identified client or client group.
- (47) Social worker--A person licensed under the Act.
- (48) Social work practice--Services which an employee, independent practitioner, consultant, or volunteer provides for compensation or pro bono to effect changes in human behavior, a person's emotional responses, interpersonal relationships, and the social conditions of individuals, families, groups, organizations, and communities. Social work practice is guided by specialized knowledge, acquired through formal social work education. Social workers specialize in understanding how humans develop and behave within social environments, and in using methods to enhance the functioning of individuals, families, groups, communities, and organizations. Social work practice involves the disciplined application of social work values, principles, and methods including, but not limited to, psychotherapy; marriage, family, and couples intervention; group therapy and group work; mediation; case management; supervision and administration of social work services and programs; counseling; assessment, diagnosis, treatment; policy analysis and development; research; advocacy for vulnerable groups; social work education; and evaluation.
- (49) Supervisor, Council-approved --A person meeting the requirements set out in §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition), to supervise a licensee towards the LCSW, Independent Practice Recognition, or as a result of a Council order. A Council-approved supervisor will denote having this specialty recognition by placing a "-S" after their credential initials, e.g., LBSW-S, LMSW-S or LCSW-S.
- (50) Supervision--Supervision includes:
- (A) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;
- (B) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;
- (C) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a Council-approved supervision plan to fulfill supervision requirements for

achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;

(D) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor;

(E) Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(51) Supervision hour--A supervision hour is a minimum of 60 minutes in length.

(52) Termination--Ending social work services with a client.

(53) Waiver--The suspension of educational, professional, and/or examination requirements for applicants who meet the criteria for licensure under special conditions based on appeal to the Council.

§781.202. Board Meetings.

(a) The board shall hold at least one meeting each year and additional meetings as necessary.

(b) The chairperson may call a meeting after consultation with board members or by a majority of members so voting at a meeting.

(c) Meetings shall be announced and conducted under the provisions of the Texas Open Meetings Act, Government Code, Chapter 551.

§781.203. Board Training.

A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that meets the requirements established in the Act.

§781.205. Board Agendas.

The executive director or designee is responsible for preparing and submitting an agenda to board members prior to each meeting; the agenda is subject to the chair's approval. The agenda shall include items requested by board members, items required by law, items previously tabled, and other matters of board business.

§781.206. Board Minutes.

- (a) The minutes of a board meeting are official only when affixed with the original signature of the chairperson.
- (b) Drafts of the meeting minutes shall be forwarded to each board member for review and comments or corrections prior to the board's approval.
- (c) The official board meeting minutes shall be posted on the publicly-accessible board website.

§781.207. Elections.

- (a) At the first meeting following the last day of January of each year, the board shall elect a vice-chair.
- (b) A vacancy which occurs in the office of vice-chair may be filled at any meeting.

§781.208. Officers of the Board.

- (a) The chair, who is appointed by the governor, shall preside at all meetings which he or she attends. The chair performs all duties prescribed by law or this chapter and is authorized to make day-to-day decisions regarding board activities to make the board more effective and responsive.
- (b) The vice-chair shall perform the duties of the chair in case the chair is absent or disabled. If the office of chair becomes vacant, the vice-chair shall serve until a successor is appointed.

§781.209. Committees of the Board.

- (a) The board and/or the board chair may establish board committees, advisory committees and task forces.
- (b) The board chair shall appoint members of the board to serve on board committees and shall appoint the board committee chairs. The board chair may invite others to serve on advisory committees and task forces.
- (c) Only members of the board may be appointed to board committees.
- (d) Committee chairs shall make regular reports to the board at regular meetings.
- (e) Committees shall meet when called by the committee chair or when so directed by the board or the board chair.
- (f) Each committee shall consist of least one public member and one professional member, unless the board authorizes otherwise.

Adopted Rules

§781.301. Code of Conduct.

(a) A social worker must observe and comply with the code of conduct and standards of practice set forth in this subchapter. Any violation of the code of conduct or standards of practice will constitute unethical conduct or conduct that discredits or tends to discredit the profession of social work and is grounds for disciplinary action.

- (1) A social worker shall not refuse to perform any act or service for which the person is licensed solely on the basis of a client's age; gender; race; color; religion; national origin; disability; sexual orientation; gender identity and expression; or political affiliation.
- (2) A social worker shall truthfully report her or his services, professional credentials and qualifications to clients or potential clients.
- (3) A social worker shall only offer those services that are within his or her professional competency, and shall provide services within accepted professional standards of practice, appropriate to the client's needs.
- (4) A social worker shall strive to maintain and improve her or his professional knowledge, skills and abilities.
- (5) A social worker shall base all services on an assessment, evaluation or diagnosis of the client.
- (6) A social worker shall provide the client with a clear description of services, schedules, fees and billing at the initiation of services.
- (7) A social worker shall maintain confidentiality as required by law, safeguard the client's rights to confidentiality within the limits of the law.
- (8) A social worker shall be responsible for setting and maintaining professional boundaries.
- (9) A social worker shall not have sexual contact with a client or a person who has been a client.
- (10) A social worker shall refrain from providing services while impaired by physical health, mental health, medical condition, or by medication, drugs or alcohol.
- (11) A social worker shall not exploit his or her position of trust with a client or former client.
- (12) A social worker shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.

Commented [DS1]: OOG recommends changing this rule to require keeping things as confidential as the law permits. This is suggested language from staff.

(13) A social worker shall refer a client for those services that the social worker is unable to meet, and shall terminate services to a client when continuing to provide services is no longer in the client's best interest.

§781.302. The Practice of Social Work.

(a) Practice of Baccalaureate Social Work--Applying social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. Baccalaureate Social Work is generalist practice and may include interviewing, assessment, planning, intervention, evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, problem solving, supervision, consultation, education, advocacy, community organization, and policy and program development, implementation, and administration.

(b) Practice of Independent Non-Clinical Baccalaureate Social Work--An LBSW recognized for independent practice, known as LBSW-IPR, may provide any non-clinical baccalaureate social work services in either an employment or an independent practice setting. An LBSW-IPR may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LBSW-IPR must restrict his or her independent practice to providing non-clinical social work services.

(c) Practice of Master's Social Work--Applying social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. An LMSW may practice clinical social work in an agency employment setting under clinical supervision, under a Council-approved supervision plan, or under contract with an agency when under a Council-approved clinical supervision plan. Master's Social Work practice may include applying specialized knowledge and advanced practice skills in assessment, treatment, planning, implementation and evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, supervision, consultation, education, research, advocacy, community organization and developing, implementing and administering policies, programs and activities. An LMSW may engage in Baccalaureate Social Work practice.

(d) Advanced Non-Clinical Practice of LMSWs--An LMSW recognized as an Advanced Practitioner (LMSW-AP) may provide any non-clinical social work services in either an employment or an independent practice setting. An LMSW-AP may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LMSW-AP must restrict his or her practice to providing non-clinical social work services.

(e) Independent Practice for LMSWs--An LMSW recognized for independent practice may provide any non-clinical social work services in either an employment or an independent practice setting. This licensee is designated as LMSW-IPR. An LMSW-IPR may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LMSW-IPR must restrict his or her independent practice to providing non-clinical social work services.

(f) Practice of Clinical Social Work--The practice of social work that requires applying social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or bio- psychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of clinical social work requires applying specialized clinical knowledge and advanced clinical skills in assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness and serious emotional disturbances in adults, adolescents, and children. The clinical social worker may engage in Baccalaureate Social Work practice and Master's Social Work practice. Clinical treatment methods may include but are not limited to providing individual, marital, couple, family, and group therapy, mediation, counseling, supportive counseling, direct practice, and psychotherapy. Clinical social workers are qualified and authorized to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), Current Procedural Terminology (CPT) Codes, and other diagnostic classification systems in assessment, diagnosis, treatment and other practice activities. An LCSW may provide any clinical or non-clinical social work service or supervision in either an employment or independent practice setting. An LCSW may work under contract, bill directly for services, and bill third parties for service reimbursements.

(g) A licensee who is not recognized for independent practice or who is not under a Council-approved non-clinical supervision plan must not engage in any independent practice that falls within the definition of social work practice in §781.102 of this title (relating to Definitions) without being licensed and recognized by the Council, unless the person is licensed in another profession and acting solely within the scope of that license. If the person is practicing professionally under another license, the person may not use the titles "licensed clinical social worker," "licensed master social worker," "licensed social worker," or "licensed baccalaureate social worker," or any other title or initials that imply social work licensure unless one holds the appropriate license or independent practice recognition.

(h) An LBSW or LMSW who is not recognized for independent practice may not provide direct social work services to clients from a location that she or he owns or leases and that is not owned or leased by an employer or other legal entity with responsibility for the client. This does not preclude in-home services such as in-home health care or the use of electronic media to provide services in an emergency.

(i) An LBSW or LMSW who is not recognized for independent practice may practice for remuneration in a direct employment or agency setting but may not work independently, bill directly to patients or bill directly to third party payers, unless the LBSW or LMSW is under a formal Council-approved supervision plan.

§781.303. General Standards of Practice. This section establishes standards of professional conduct required of a social worker. The licensee, following applicable statutes:

- (1) shall not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee shall take immediate and reasonable action to inform the other mental health services provider;
- (2) shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the relationship. If continued professional services are indicated, the licensee shall take reasonable steps to facilitate transferring the client by providing the client with the name and contact information of three sources of service;
- (3) shall not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the evaluation that the licensee has not personally interviewed the individual;
- (4) shall not persistently or flagrantly over treat a client;
- (5) shall not aid and abet the unlicensed practice of social work by a person required to be licensed under the Act;
- (6) shall not participate in any way in falsifying licensure applications or any other documents submitted to the Council;
- (7) shall ensure that, both before services commence and as services progress, the client knows the licensee's qualifications and any intent to delegate service provision; any restrictions the Council has placed on the licensee's license; the limits on confidentiality and privacy; and applicable fees and payment arrangements;
- (8) if the client must barter for services, it is the professional's responsibility to ensure that the client is in no way harmed. The value of the barter shall be agreed upon in advance and shall not exceed customary charges for the service or goods; and
- (9) shall ensure that the client or a legally authorized person representing the client has signed a consent for services, when appropriate. Prior to commencement of social work services with a minor client who is named in a Suit Affecting Parent Child Relationship (SAPCR), the licensee shall ensure that all legally authorized persons representing the client have signed a

consent for services, if applicable. A licensee shall maintain these documents in the client's record.

§781.304. Relationships with Clients.

- (a) A social worker shall inform in writing a prospective client about the nature of the professional relationship, which can include but is not limited to office procedures, after-hours coverage, services provided, fees, and arrangements for payment.
- (b) The social worker shall not give or receive a commission, rebate, or any other form of remuneration for referring clients. A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional. In accordance with the provisions of the Act, §505.451, a licensee is subject to disciplinary action if the licensee directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a client or patronage. Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter.
- (c) A social worker shall not enter into a business relationship with a client. This rule does not prohibit a professional social work relationship with a client, as described in this subchapter.
- (d) A social worker shall not engage in activities that seek to primarily meet the social worker's personal needs or personal gain instead of the needs of the client.
- (e) A social worker shall be responsible for setting and maintaining professional boundaries.
- (f) A social worker shall keep accurate records of services to include, but not be limited to, dates of services, types of services, progress or case notes and billing information for a minimum of seven years after the date of termination of services for an adult client or five years beyond the age of 18 years of age for a minor, whichever is greater.
- (g) A social worker shall bill clients or third parties for only those services actually rendered or as agreed to by mutual written understanding.
- (h) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the effectiveness of the licensee's services; the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; the type, effectiveness, qualifications, and products or services offered by an organization or agency; or the practice or field of social work.

(i) If the licensee learns that false, misleading, deceptive, fraudulent or exaggerated statements about the services, qualifications, or products have been made, the licensee shall take ~~all available~~ reasonable steps to correct the inappropriate claims, prevent their reoccurrence, and report the incident to the Council.

(j) A licensee shall provide social work intervention only in the context of a professional relationship.

(k) Electronic practice may be used judiciously as part of the social work process and the supervision process. Social workers engaging in electronic practice, providing services to clients located in the State of Texas, must be licensed in Texas and adhere to provisions of this chapter.

(l) The licensee shall not provide social work services or intervention to previous or current family members; personal friends; educational or business associates; or individuals whose welfare might be jeopardized by a dual or multiple relationship.

(m) The licensee shall not accept from or give to a client any gift with a value in excess of \$25. If the licensee's employer prohibits giving or receiving gifts, the licensee shall comply with the employer's policy.

(n) The licensee or relatives to the fourth degree of consanguinity or affinity of the licensee may not intentionally borrow or lend money or items of value to clients or relatives to the fourth degree of consanguinity or affinity of clients.

(o) The licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within individual and group settings.

(p) A licensee shall not promote the licensee's personal or business activities that are unrelated to the current professional relationship.

(q) A licensee shall set and maintain professional boundaries, avoiding dual or multiple relationships with clients. If a dual or multiple relationship develops, the social worker is responsible for ensuring the client is safe.

(r) A licensee may not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with the client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

§781.305. Sexual Misconduct.

(a) Definitions.

(1) Sexual contact--Any touching or behavior that can be construed as sexual in nature or as defined by the Texas Penal Code, §21.01, relating to assault.

(2) Therapeutic deception--A licensee's act or statement representing that sexual contact or sexual exploitation between the licensee and a client or client group is a valid part of the treatment process.

(3) Sexual exploitation--A pattern, practice or scheme of exploitation, which may include, but is not limited to, sexual contact with a client.

(b) A licensee shall not engage in sexual contact or sexual exploitation with a client or former client; a supervisee of the licensee; or a student at an educational institution at which the licensee provides professional or educational services.

(c) A licensee shall not practice therapeutic deception of a client or former client.

(d) It is not a defense to a disciplinary action under subsections (a) - (c) of this section, if the person was no longer emotionally dependent on the licensee when the sexual exploitation began, the sexual contact occurred, or the therapeutic deception occurred. It is also not a defense that the licensee terminated services with the person before the date the sexual exploitation began, the sexual contact occurred or the therapeutic deception occurred.

(e) It is not a defense to a disciplinary action under subsections (a) - (c) of this section, if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred with the client's consent; outside appointments with the client; or off the premises the licensee used for appointments with the client.

~~(f) Examples of sexual contact are those activities and behaviors described in the Texas Penal Code, §21.01, relating to assault.~~

(g) A licensee shall report sexual misconduct in accordance with Texas Civil Practice and Remedies Code, Chapter 81, relating to sexual exploitation by a mental health services provider. If a licensee has reasonable cause to suspect that a client has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee shall report the alleged conduct not later than the 30th day after the date the licensee became aware of the conduct or the allegations to:

(1) the prosecuting attorney in the county in which the alleged sexual exploitation, sexual contact or therapeutic deception occurred; and

(2) the Council if the conduct involves a licensee and any other state licensing agency which licenses the mental health services provider.

Commented [DS2]: No change recommended, however, there are some concerns about a permanent ban on relationships (and not just sexual relationships) following a reasonable time period after the conclusion of a professional relationship. For example, a licensee has a relationship with a former client with whom services were terminated 10 years ago. What is the basis for banning such a relationship, sexual or otherwise?

Commented [DS3]: OOG suggests striking this language because it is neither prescriptive nor proscriptive...it is merely informational. Rules need to be directive or prohibitory in nature. Additionally, 21.01 of the Penal Code defines terms related to sexual assault rather than assault.

(3) Before making a report under this subsection, the licensee shall inform the alleged victim of the licensee's duty to report and shall determine if the alleged victim wants to remain anonymous.

(4) A report under this subsection shall contain information necessary to identify the licensee; identify the alleged victim, unless the alleged victim has requested anonymity; express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and provide the alleged perpetrator's name.

(h) The following may constitute sexual exploitation if done for sexual arousal, sexual gratification, or sexual abuse of either the social worker or a person who is receiving or has received the licensee's professional services as a social worker:

(1) sexual harassment, sexual solicitation, physical advances, verbal or nonverbal conduct that is sexual in nature;

(2) any behavior, gestures, comments, or expressions which may reasonably be interpreted as inappropriately seductive or sexual, including making sexual comments about a person's body or making sexually demeaning comments about an individual's sexual orientation, or making comments about potential sexual performance except when the comment is pertinent to issues of sexual function or dysfunction in counseling;

(3) initiating conversation about the licensee's sexual problems, preferences, or fantasies; or requesting details of sexual history or sexual likes and dislikes when those details are not necessary for counseling;

(4) kissing or fondling, or making any other deliberate or repeated comments, gestures, or physical acts of a sexual nature, even if they are not sexually intimate;

(5) making a request to date;

(6) exposing genitals, anus or breasts; or

(7) encouraging another person to masturbate in the licensee's presence; or the licensee masturbating in front of another person.

§781.306. Professional Representation.

(a) A social worker shall not misrepresent any professional qualifications or associations.

(b) A social worker shall not misrepresent the attributes of any agency or organization, or make unreasonable, misleading, deceptive, fraudulent, exaggerated, or unsubstantiated claims about the effectiveness of any services.

(c) A social worker shall not encourage, or within the social worker's power, allow a client to hold exaggerated ideas about the effectiveness of the social worker's services.

§781.307. Testing.

(a) A social worker shall inform clients about the purposes and explicit uses of any testing done as part of a professional relationship.

(b) A social worker shall not appropriate, reproduce, or modify published tests or parts thereof without the publisher's permission.

(c) A social worker shall not administer any test without the appropriate training and experience to administer the test.

(d) A social worker must observe the necessary precautions to maintain the security of any test administered by the social worker or under the social worker's supervision.

§781.308. Drug and Alcohol Use. A licensee shall not use alcohol or drugs in ways that compromise the licensee's ability to practice social work.

§781.309. Client Records and Record Keeping. Following applicable statutes, the licensee shall:

- (1) keep accurate and legible records of the dates of services, types of services, progress or case notes, intake assessment, treatment plan, and billing information;
- (2) retain and dispose of client records in ways that maintain confidentiality;
- (3) in independent practice, establish a plan for the custody and control of the licensee's client records should the licensee die, become incapacitated, or cease offering professional services;
- (4) keep client records for seven years after the date of termination of services for adult clients or five years beyond the age of 18 for minor clients, whichever is greater;
- (5) provide a written explanation of the types of treatment and charges on a bill or statement to the client (this applies even if the charges are to be paid by a third party); and
- (6) comply with the requirements of Texas Health and Safety Code, Chapters 161 and 611; Texas Family Code, Chapter 261; and other applicable state law concerning confidentiality of protected health information and the release of mental health records.

§781.310. Billing and Financial Relationships.

- (a) A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional. In accordance with the provisions of the Act, §505.451, a licensee is subject to disciplinary action if the licensee directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a client or patronage. Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter.
- (b) A licensee employed or under contract with a chemical dependency facility or a mental health facility, shall comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code, Chapter 164, shall not be considered as a violation of state law relating to illegal remuneration.
- (c) A licensee shall not knowingly or flagrantly overcharge a client, and shall bill clients and/or third parties for only those services that the licensee actually renders.
- (d) Billing documents shall accurately reflect any collateral service the licensee uses to help serve the client.
- (e) A licensee may not submit to a client and/or a third party payer a bill for services that the licensee knows were not provided, with the exception of a missed appointment, or knows were improper, unreasonable or unnecessary.

§781.311. Client Confidentiality.

- (a) Communication between a licensee and client, as well as the client's records, however created or stored, are confidential under the provisions of the Texas Health and Safety Code, Chapter 181, Texas Health and Safety Code, Chapter 611, and other state or federal statutes or rules, including rules of evidence, where such statutes or rules apply to a licensee's practice.
- (b) A licensee shall not disclose any communication, record, or client identity except as provided in the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act (HIPAA), and/or other applicable state or federal statutes or rules.
- (c) A licensee shall comply with Texas Health and Safety Code, Chapter 611, concerning access to mental health records.

(d) To release information for or about clients, a licensee shall have written permission signed by the client or the client guardian. That permission, which must be dated, shall include the client's name and identifying information; the purpose for releasing the information; the individual or entity to which the information is released; the length of time the release is authorized; the signature of the client or guardian representative; and date of signature.

(e) The social worker shall maintain the written release of information in the permanent client record and shall review and update it at least every twelve months.

(f) A licensee shall report information if required by any of the following statutes:

(1) Texas Family Code, Chapter 261, concerning abuse or neglect of minors;

(2) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons;

(3) Texas Health and Safety Code, §161.131 et seq., concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an in-patient mental health facility, a chemical dependency treatment facility or a hospital providing comprehensive medical rehabilitation services; and

(4) Texas Civil Practice and Remedies Code, §81.006, concerning sexual exploitation by a mental health services provider.

(g) A licensee may take reasonable action to inform only medical or law enforcement personnel if the professional determines that a client or others are at imminent risk of physical injury, or a client is in immediate risk of mental or emotional injury, in accordance with the Texas Health and Safety Code, Chapter 611, concerning mental health records.

§781.312. Licensees and the Council.

(a) Any person licensed as a social worker is bound by the provisions of the Act and this chapter and Council rules and statutes.

(b) A social worker shall report alleged misrepresentations or violations of this chapter to the Council.

(c) The licensee shall report any and all employment setting changes to the Council within 30 days.

§781.313. Corporations and Business Names.

- (a) An independent clinical practice or an independent non-clinical practice by a social worker may be incorporated in accordance with the Professional Corporation Act, or other applicable law.
- (b) When a licensee uses an assumed name in any social work practice, the social worker's name must be listed in conjunction with the assumed name. An assumed name or credential that the social worker uses shall not be false, deceptive, or misleading.

§781.316. Advertising and Announcements.

- (a) Social workers' advertisements and announcements shall not contain deceptive, inaccurate, incomplete, out-of-date, or out-of-context information about services or competence. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, website entries, email, cell phone communications, social media communications, and billing statements.
- (b) The Council imposes no restrictions on the advertising medium a social worker uses, including personal appearances, use of personal voice, size or duration of the advertisement or use of a trade name.
- (c) All advertisements or announcements of a licensee's professional services, including website pages, social media communications, or telephone directory listings, shall clearly state the social worker's licensure designation and any specialty recognition, if any.
- (d) A social worker shall not announce or advertise any information or reference to the social worker's certification in a field outside of social work that is deliberately intended to mislead the public.
- (e) A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

§781.317. Research and Publications.

- (a) In research with a human subject, a social worker is responsible for the subject's welfare throughout a project, shall obtain informed consent and take reasonable precautions so that the subject shall suffer no injurious emotional, physical or social effect.
- (b) A social worker shall disguise data obtained from a professional relationship for the purposes of education or research to ensure full protection of the identity of the subject client.

- (c) When conducting and reporting research, a social worker must recognize previous work on the topic, as well as observe all copyright laws.
- (d) A social worker must give due credit through joint authorship, acknowledgment, footnote statements, Internet sources, or other appropriate means to those who have contributed significantly to the social worker's research or publication.

§781.318. Providing Social Studies. Licensees shall comply with the Texas Family Code, Chapter 107, and other applicable laws when providing social studies.

§781.319. Licensed Sex Offender Treatment. A social worker who is licensed as a sex offender treatment provider by the Council on Sex Offender Treatment is not subject to disciplinary action by the Council in relation to the social worker's provision of sex offender treatment. A social worker who is a sex offender treatment provider and who acts in conformance with the rules, policies, and procedures of the Council on Sex Offender Treatment is not subject to any administrative sanction by the Council. If the Council on Sex Offender Treatment takes disciplinary action against a social worker who is a sex offender treatment provider, the Council may consider the final order imposing such disciplinary action as grounds for disciplinary action by the Council.

§781.320. Parent Coordination.

- (a) In accordance with the Family Code, §153.601(3), "parenting coordinator" means an impartial third party:
 - (1) who, regardless of the title by which the person is designated by the court, performs any function described in the Family Code, §153.606, in a suit; and
 - (2) who:
 - (A) is appointed under Family Code, Chapter 153, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through confidential procedures; and
 - (B) is not appointed under another statute or a rule of civil procedure.
- (b) A licensee who serves as a parenting coordinator is not acting under the authority of a license issued by the Council, and is not engaged in the practice of social work. The services

provided by the licensee who serves as a parenting coordinator are not within the jurisdiction of the Council, but rather the jurisdiction of the appointing court.

(c) A licensee who serves as a parenting coordinator has a duty to provide the information in subsection (b) of this section to the parties to the suit.

(d) Records of a licensee serving as a parenting coordinator are confidential under the Civil Practices and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator shall comply with the Civil Practices and Remedies Code, Chapter 154, relating to the release of information.

(e) A licensee shall not provide social work services to any person while simultaneously providing parenting coordination services. This section shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

§781.321. Parenting Facilitation.

(a) In accordance with House Bill 1012, 81st Legislature, Regular Session, 2009, and Family Code, Chapter 153, this section establishes the practice standards for licensees who desire to serve as parenting facilitators.

(b) In accordance with the Family Code, §153.601(3-a), a "parenting facilitator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described by the Family Code, §153.6061, in a suit; and

(2) who:

(A) is appointed under Family Code, Chapter 153, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through procedures that are not confidential; and

(B) is not appointed under another statute or a rule of civil procedure.

(c) Notwithstanding any other provision of this chapter, licensees who desire to serve as parenting facilitators shall comply with all applicable requirements of the Family Code, Chapter 153, and this section. Licensees shall also comply with all requirements of this chapter unless a provision is clearly inconsistent with the Family Code, Chapter 153, or this section.

(d) In accordance with the Family Code, §153.6102(e), a licensee serving as a parenting facilitator shall not provide other social work services to any person while simultaneously providing parenting facilitation services. This section shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

(e) A licensee serving as a parenting facilitator utilizes child-focused alternative dispute resolution processes, assists parents in implementing their parenting plan by facilitating the resolution of disputes in a timely manner, educates parents about children's needs, and engages in other activities as referenced in the Family Code, Chapter 153.

(f) A licensee serving as a parenting facilitator shall assist the parties involved in reducing harmful conflict and in promoting the best interests of the children.

(g) A licensee serving as a parenting facilitator functions in four primary areas in providing services.

(1) Conflict management function. The primary role of the parenting facilitator is to assist the parties to work out disagreements regarding the children to minimize conflict. To assist the parents in reducing conflict, the parenting facilitator may monitor the electronic or written exchanges of parent communications and suggest productive forms of communication that limit conflict between the parents.

(2) Assessment function. A parenting facilitator shall review applicable court orders, including protective orders, social studies, and other relevant records to analyze the impasses and issues as brought forth by the parties.

(3) Educational function. A parenting facilitator shall educate the parties about child development, divorce, the impact of parental behavior on children, parenting skills, and communication and conflict resolution skills.

(4) Coordination/case management function. A parenting facilitator shall work with the professionals and systems involved with the family (for example, mental health, health care, social services, education, or legal) as well as with extended family, stepparents, and significant others as necessary.

(h) A licensee serving as a parenting facilitator shall be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parenting facilitator shall adhere to protection orders, if any, and take reasonable measures to ensure the safety of the participants, the children and the parenting facilitator, while understanding that even with appropriate precautions a guarantee that no harm will occur can be neither stated nor implied.

- (i) In order to protect the parties and children in domestic violence cases involving power, control and coercion, a parenting facilitator shall tailor the techniques used so as to avoid offering the opportunity for further coercion.
- (j) A licensee serving as a parenting facilitator shall be alert to the reasonable suspicion of substance abuse by parents or children, as well as mental health impairment of a parent or child.
- (k) A licensee serving as a parenting facilitator shall not provide legal advice.
- (l) A licensee serving as a parenting facilitator shall serve by written agreement of the parties and/or formal order of the court.
- (m) A licensee serving as a parenting facilitator shall not initiate providing services until the licensee has received and reviewed the fully executed and filed court order or the signed agreement of the parties.
- (n) A licensee serving as a parenting facilitator shall maintain impartiality in the process of parenting facilitation. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.
- (o) A licensee serving as a parenting facilitator:
- (1) shall terminate or withdraw services if the licensee determines the licensee cannot act in an impartial or objective manner;
 - (2) shall not give or accept a gift, favor, loan or other item of value from any party having an interest in the parenting facilitation process;
 - (3) shall not coerce or improperly influence any party to make a decision;
 - (4) shall not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting facilitator process; and
 - (5) shall not accept any engagement, provide any service, or perform any act outside the role of parenting facilitation that would compromise the facilitator's integrity or impartiality in the parenting facilitation process.
- (p) A licensee serving as a parenting facilitator may make referrals to other professionals to work with the family, but shall avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration shall be given or received by a licensee for parenting facilitation or other professional referrals.
- (q) A licensee serving as a parenting facilitator should attempt to bring about resolution of issues by agreement of the parties; however, the parenting facilitator is not acting in a formal mediation role. An effort towards resolving an issue, which may include therapeutic, mediation,

education, and negotiation skills, does not disqualify a licensee from making recommendations regarding any issue that remains unresolved after efforts of facilitation.

(r) A licensee serving as a parenting facilitator shall communicate with all parties, attorneys, children, and the court in a manner which preserves the integrity of the parenting facilitation process and considers the safety of the parents and children.

(s) A licensee serving as a parenting facilitator:

(1) may meet individually or jointly with the parties, as deemed appropriate by the parenting facilitator, and may interview the children;

(2) may interview any individuals who provide services to the children to assess the children's needs and wishes; and

(3) may communicate with the parties through face-to-face meetings or electronic communication.

(t) A licensee serving as a parenting facilitator shall, prior to the beginning of the parenting facilitation process and in writing, inform the parties of:

(1) the limitations on confidentiality in the parenting facilitation process; and

(2) the basis of fees and costs and the method of payment, including any fees associated with postponement, cancellation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(u) Information obtained during the parenting facilitation process shall not be shared outside the parenting facilitation process except for professional purposes, as provided by court order, by written agreement of the parties, or as directed by the Council.

(v) In the initial session with each party, a licensee serving as a parenting facilitator shall review the nature of the parenting facilitator's role with the parents to ensure that they understand the parenting facilitation process.

(w) A licensee serving as a parenting facilitator:

(1) shall comply with all mandatory reporting requirements, including but not limited to Family Code, Chapter 261, concerning abuse or neglect of minors;

(2) shall report to law enforcement or other authorities if they have reason to believe that any participant appears to be at serious risk to harm themselves or a third party;

(3) shall maintain records necessary to support charges for services and expenses, and shall make a detailed accounting of those charges to the parties and their counsel, if requested to do so;

(4) shall maintain notes regarding all communications with the parties, the children, and other persons with whom they speak about the case; and

(5) shall maintain records in a manner that is professional, legible, comprehensive, and inclusive of information and documents that relate to the parenting facilitation process and that support any recommendations made by the licensee.

(x) Records of a licensee serving as a parenting facilitator are not mental health records and are not subject to the disclosure requirements of Health and Safety Code, Chapter 611. At a minimum, records shall be maintained for the period of time described in §781.209(4) of this title (relating to Client Records and Record Keeping), or as otherwise directed by the court.

(y) Records of a licensee serving as a parenting facilitator shall be released on the request of either parent, as directed by the court, or as directed by the Council.

(z) Charges for parenting facilitation services shall be based upon the actual time expended by the parenting facilitator, or as directed by the written agreement of the parties, and/or formal order of the court.

(aa) All fees and costs shall be appropriately divided between the parties as directed by the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(bb) Fees may be disproportionately divided fees if one parent is disproportionately creating a need for services and if such a division is outlined in the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(cc) Services and activities for which a licensee serving as a parenting facilitator may charge include time spent interviewing parents, children and collateral sources of information; preparation of agreements, correspondence, and reports; review of records and correspondence; telephone and electronic communication; travel; court preparation; and appearances at hearings, depositions and meetings.

(dd) The minimum training for a licensee serving as a parenting facilitator that is required by the Family Code, §153.6101(b), and is determined by the court is:

(1) eight hours of family violence dynamics training provided by a family violence service provider;

(2) 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court;

(3) 24 classroom hours of training in the fields of family dynamics, child development, family law; and

(4) 16 hours of training in the laws and Council rules governing parenting coordination and facilitation, and the multiple styles and procedures used in different models of service.

(ee) A licensee serving as a parenting facilitator:

(1) shall complete minimum training as required by the Family Code, §153.6101, as determined by the appointing court;

(2) shall have extensive practical experience with high conflict or litigating parents;

(3) shall complete and document upon request advanced training in family dynamics, child maltreatment, co-parenting, and high conflict separation and divorce; and

(4) shall regularly complete continuing education related to co-parenting issues, high-conflict families and the parenting coordination and facilitation process.

(ff) A licensee serving as a parenting facilitator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the licensee's skill or expertise.

(gg) Since parenting facilitation services are addressed under multiple titles in different jurisdictions nationally, acceptability of training to meet the requirements of subsection (dd) of this section is based on functional skills taught during the training rather than the use of specific titles or names.

§781.322. Child Custody Evaluations.

(a) Licensees shall comply with Texas Family Code, Chapter 107, Subchapters D, E, and F, concerning Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.

(b) A licensee who has completed a doctoral degree and at least 10 court-ordered child custody evaluations under the supervision of an individual qualified by the Texas Family Code, Chapter 107 to perform child custody evaluations is qualified to conduct child custody evaluations under Texas Family Code, Chapter 107. All other licensees must comply with the qualification requirements stipulated in Texas Family Code, Chapter 107.

(c) Any complaint relating to the outcome of a child custody evaluation or adoption evaluation conducted by a licensee must be re-reported to the court that ordered the evaluation.

(d) Disclosure of confidential information in violation of Texas Family Code, §107.111 or §107.163 is grounds for disciplinary action, up to and including revocation of license, by the Council.

(e) A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal proceeding, such as a divorce, child custody determination, disability claim, or criminal prosecution, must comply with all applicable Council rules in this chapter regardless of whether the licensee is acting as a factual witness or an expert.

(f) A licensee may not provide therapy and any other type of service, including but not limited to a child custody evaluation or parenting facilitation, in the same case, whether such services are delivered sequentially or simultaneously.

(g) Licensees may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child unless the licensee has conducted a child custody evaluation relating to the child under Texas Family Code, Chapter 107, Subchapter D.

(h) Licensees providing child custody evaluations or adoption evaluations shall, prior to beginning the evaluation, in writing inform the parties of:

(1) the limitations on confidentiality in the evaluation process; and

(2) the basis of fees and costs and the method of payment, including any fees associated with postponement, cancelation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(i) A Licensed Baccalaureate Social Worker shall not conduct child custody evaluations or adoption evaluations unless qualified to provide such services by another professional license or otherwise by Texas Family Code, Chapter 107.

§781.323. Technology in Social Work Practice. When social workers use technology to provide services, they are subject to all rules and statutes, including this chapter and Occupations Code, Chapter 505, as if providing face to face services.

Adopted Rules

§781.401. Qualifications for Licensure.

(a) Licensure. The following education and experience is required for licensure as designated. If an applicant for a license has held a substantially equivalent license in good standing in another jurisdiction for one year immediately preceding the date of application, the applicant will be deemed to have met the experience requirement under this chapter.

(1) Licensed Clinical Social Worker (LCSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited institution of higher learning acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has had 3000 hours of Council-approved supervised professional clinical experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Council-approved supervised professional experience must comply with §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process) and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of Council-approved supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LCSW application. If the social worker completed supervision in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

(D) Has passed the Clinical examination administered nationally by ASWB.

(2) Licensed Master Social Worker (LMSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited university ~~acceptable to the Council~~, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has passed the Master's examination administered nationally by ASWB.

(3) Licensed Baccalaureate Social Worker (LBSW).

Commented [DS1]: OOG believes this phrase creates ambiguity and may leave the agency open to claims of being arbitrary in deciding what is acceptable.

(A) Has been conferred a baccalaureate degree in social work from a CSWE accredited social work program.

(B) Has passed the Bachelors examination administered nationally by ASWB.

(b) Specialty Recognition. The following education and experience is required for specialty recognitions.

(1) Licensed Master Social Worker-Advanced Practitioner (LMSW-AP).

(A) Is currently licensed in the State of Texas or meets the current requirements for licensure as an LMSW.

(B) While fully licensed as a social worker, has had 3000 hours of Council-approved supervised professional non-clinical social work experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Council-approved supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of Council-approved supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LMSW-AP application. If supervision was completed in another jurisdiction, the social worker must have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

(D) Has passed the Advanced Generalist examination administered nationally by the ASWB.

(2) Independent Non-clinical Practice.

(A) Is currently licensed in the State of Texas as an LBSW or LMSW.

(B) While fully licensed as a social worker has had 3000 hours of Council-approved supervised full-time social work experience over a minimum two-year period, but within a maximum five-year period or its equivalent if the experience was completed in another state. Council-approved supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of Council-approved supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the 5 calendar years immediately preceding the date of application for IPR specialty recognition. If supervision was completed in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such

verification is impossible, the social worker may request that the Council accept alternate verification.

(c) Applicants for a license must complete the Council's jurisprudence examination and submit proof of completion at the time of application.

§781.402. Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition.

(a) A person who has obtained a temporary license may not begin the supervision process toward independent non-clinical practice or independent clinical practice until the regular license is issued.

(b) An LMSW who plans to apply for the LCSW must:

(1) within 30 days of initiating supervision, submit to the Council one clinical supervisory plan for each location of practice for approval by the Council or its designee;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead. In order for a plan to be approved, the position description or other relevant documentation must demonstrate that the duties of the position are clinical as defined in this chapter;

(3) submit a separate supervision verification form for each location of practice to the Council for approval within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend that the supervisee is eligible to examine for LCSW, the supervisor must indicate such on the clinical supervision verification form and provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification submitted by the supervisee;

(4) submit a new supervisory plan within 30 days of changing supervisors or practice location; and

(5) submit an application for re-categorizing his/her licensure to Licensed Clinical Social Worker.

(c) An LMSW who plans to apply for the LCSW may not open an independent social work practice to provide clinical social work to clients.

(d) An LBSW or an LMSW who plans to apply for the Independent Practice Recognition must:

- (1) submit one supervisory plan to the Council for each location of practice for approval by the Council or its designee within 30 days of initiating supervision;
- (2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the LBSW or LMSW intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the LBSW or LMSW in the setting;
- (3) submit a separate supervision verification form for each practice location to the Council within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend that the supervisee is eligible for independent practice recognition, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification that the supervisee submits; and
- (4) submit a new supervisory plan within 30 days of changing supervisors or practice location.

(e) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

- (1) submit one supervisory plan for each practice location to the Council for approval by the Council or its designee within 30 days of initiating supervision;
- (2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;
- (3) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and
- (4) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

§781.403. Independent Practice Recognition (Non-Clinical).

(a) An LBSW or LMSW who seeks to obtain Council approval for the specialty recognition of independent non-clinical practice shall meet requirements and parameters set by the Council in §781.401 of this title (relating to Qualifications for Licensure).

(b) An individual supervising an LBSW for independent non-clinical practice recognition shall be an LBSW recognized for independent non-clinical practice; an LMSW recognized for independent non-clinical practice; an LMSW-AP; or an LCSW. The supervisor shall be Council-approved.

(c) An individual supervising an LMSW for the independent non-clinical practice recognition shall be Council-approved and shall be an LMSW recognized for independent non-clinical practice, an LMSW-AP, or an LCSW.

(d) A person who has obtained only the temporary license may not begin supervision until the Council issues a regular license.

(e) The Council may use the Internal Revenue Service (IRS) guidelines developed in 1996 to demonstrate whether a professional is an independent contractor or an employee. These guidelines revolve around the control an employer has in an employer-employee relationship, in which the employer has the right to control the "means and details" by which services are performed.

(1) Behavioral control. The employer can control the employee's behavior by giving instructions about how the work gets done rather than simply looking at the end products of work. The more detailed the instructions, the more control the employer exercises. An employer requiring that employees be trained for the job is also an example of behavioral control, though contractors may also go through training.

(2) Financial control. The employer determines the amount and regularity of payments to employees. A contractor is typically paid when he/she completes the work, and the contractor usually sets a timeframe for completing the work. The most important element of financial control is that a contractor has more freedom to make business decisions that affect the profitability of his/her work. A contractor, for instance, may invest in renting an office or buying equipment, while the employee does not. While employees are usually reimbursed for job-related expenses, the contractor may or may not be reimbursed, but lack of reimbursement usually signals that a worker is independent. An independent contractor often makes his or her services available to other potential clients, while an employee does not.

(3) Relationship of the parties. The intent of the relationship is significant. The relationship is usually outlined in the written contract and gives one party more control than the other. If a company gives a worker employee benefits, the worker is an employee. The ability to terminate

the relationship is another evidence of control in the relationship. If the employer-employee relationship appears to be permanent, it denotes an employee, not contractor, relationship. If a worker performs activities that are a key aspect of the company's regular business, that denotes an employee status.

(f) An LBSW or LMSW who plans to apply for the specialty recognition of non-clinical independent practice shall follow procedures set out in §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition).

(g) An LBSW or LMSW may practice independently when the LMSW or LBSW holds the independent practice specialty recognition, or when under a supervision plan for independent practice that has been approved by the Council.

§781.404. Recognition as a Council-approved Supervisor and the Supervision Process.

(a) Types of supervision include:

(1) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(2) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(3) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a Council-approved supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council--approved supervisor delivers this supervision;

(4) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor;

(5) non-clinical supervision of a Licensed Master Social Worker who is providing non-clinical social work service toward qualifications for the LMSW-AP; this supervision is delivered by a Council-approved supervisor; or

(6) Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(b) A person who wishes to be a Council-approved supervisor must file an application and pay the applicable fee.

(1) A Council-approved supervisor must be actively licensed in good standing by the Council as an LBSW, an LMSW, an LCSW, or be recognized as an Advanced Practitioner (LMSW-AP), or hold the equivalent social work license in another jurisdiction. The person applying for Council-approved status must have practiced at his/her category of licensure for two years. The Council-approved supervisor shall supervise only those supervisees who provide services that fall within the supervisor's own competency.

(2) The Council-approved supervisor is responsible for the social work services provided within the supervisory plan.

(3) The Council-approved supervisor must have completed a supervisor's training program acceptable to the Council.

(4) The Council-approved supervisor must complete three hours of continuing education every biennium in supervision theory, skills, strategies, and/or evaluation.

(5) The Council-approved supervisor must designate at each license renewal that he/she wishes to continue Council-approved supervisor status.

(6) The Council-approved supervisor must submit required documentation and fees to the Council.

(7) When a licensee is designated Council-approved supervisor, he or she may perform the following supervisory functions.

(A) An LCSW may supervise clinical experience toward the LCSW license, non-clinical experience toward the Advanced Practitioner specialty recognition, non-clinical experience toward the Independent Practice Recognition (non-clinical), and Council-ordered probated suspension;

(B) An LMSW-AP may supervise non-clinical experience toward the Advanced Practitioner specialty recognition; non-clinical experience toward the non-clinical Independent Practice Recognition; and Council-ordered probated suspension for non-clinical practitioners;

(C) An LMSW with the Independent Practice Recognition (non-clinical) who is a Council-approved supervisor may supervise an LBSW's or LMSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW or LMSW (non-clinical) under Council-ordered probated suspension;

Commented [DS2]: No change recommended at this time, but may need to revisit. OOG questioned whether the 3 hours required is part of the total number of continuing education hours needed or is in addition to those hours. OOG had concerns about requiring 3 additional hours over and above the standard number of hours required for renewal.

(D) An LBSW with the non-clinical Independent Practice Recognition who is a Council-approved supervisor may supervise: an LBSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW under Council-ordered probated suspension.

(8) The approved supervisor must renew the approved supervisor status in conjunction with the biennial license renewal. The approved supervisor may surrender supervisory status by documenting the choice on the appropriate Council renewal form and subtracting the supervisory renewal fee from the renewal payment. If a licensee who has surrendered supervisory status desires to regain supervisory status, the licensee must reapply and meet the current requirements for approved supervisor status.

(9) A supervisor must maintain the qualifications described in this section while he or she is providing supervision.

(10) A Council-approved supervisor who wishes to provide any form of Council-approved or Council-ordered supervision must comply with the following:

(A) The supervisor is obligated to keep legible, accurate, complete, signed supervision notes and must be able to produce such documentation for the Council if requested. The notes shall document the content, duration, and date of each supervision session.

(B) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the Council.

(C) A Council-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.

(D) Before entering into a supervisory agreement, the supervisor shall be aware of all conditions of exchange with the clients served by her or his supervisee. The supervisor shall not provide supervision if the supervisee is practicing outside the authorized scope of the license. If the supervisor believes that a social worker is practicing outside the scope of the license, the supervisor shall make a report to the Council.

(E) A supervisor shall not be employed by or under the employment supervision of the person who he or she is supervising.

(F) A supervisor may not supervise an individual who is related within the second degree of affinity or consanguinity. ~~A supervisor shall not be a family member of the person being supervised.~~

(G) A supervisee must have a clearly defined job description and responsibilities.

(H) A supervisee who provides client services for payment or reimbursement shall submit billing to the client or third-party payers which clearly indicates the services provided and who

Commented [DS3]: OOG felt the phrase family member was too vague and suggested this change.

Degrees of affinity and consanguinity are defined in Ch. 573 of the Gov't Code.

provided the services, and specifying the supervisee's licensure category and the fact that the licensee is under supervision.

(I) If either the supervisor or supervisee has an expired license or a license that is revoked or suspended during supervision, supervision hours accumulated during that time will be accepted only if the licensee appeals to and receives approval from the Council.

(J) A licensee must be a current Council-approved supervisor in order to provide professional development supervision toward licensure or specialty recognition, or to provide Council-ordered supervision to a licensee. Providing supervision without having met all requirements for current, valid Council-approved supervisor status may be grounds for disciplinary action against the supervisor.

(K) The supervisor shall ensure that the supervisee knows and adheres to Subchapter B, Rules of Practice, of this Chapter.

(L) The supervisor and supervisee shall avoid forming any relationship with each other that impairs the objective, professional judgment and prudent, ethical behavior of either.

(M) Should a supervisor become subject to a Council disciplinary order, that person is no longer a Council-approved supervisor and must so inform all supervisees, helping them to find alternate supervision. The person may reapply for Council-approved supervisor status by meeting the terms of the disciplinary order and having their license in good standing, in addition to submitting an application for Council-approved supervisor, and proof of completion of a 40-hour Council-approved supervisor training course, taken no earlier than the date of execution of the Council order.

(N) The Council may deny, revoke, or suspend Council-approved supervisory status for violation of the Act or rules. Continuing to supervise after the Council has denied, revoked, or suspended Council-approved supervisor status, or after the supervisor's supervisory status expires, may be grounds for disciplinary action against the supervisor.

(O) If a supervisor's Council-approved status is expired, suspended, or revoked, the supervisor shall refund all supervisory fees the supervisee paid after the date the supervisor ceased to be Council-approved.

(P) A supervisor is responsible for developing a well-conceptualized supervision plan with the supervisee, and for updating that plan whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided.

(Q) All Council-approved supervisors shall have taken a Council-approved supervision training course by January 1, 2014 in order to renew Council-approved supervisor status. The Council recognizes that many licensees have had little, if any, formal education about supervision theories, strategies, problem-solving, and accountability, particularly LBSWs who

may supervise licensees toward the IPR. Though some supervisors have functioned as employment supervisors for some time and have acquired practical knowledge, their practical supervision skills may be focused in one practice area, and may not include current skills in various supervision methods or familiarity with emerging supervisory theories, strategies, and regulations. Therefore, the Council values high-quality, contemporary, multi-modality supervision training to ensure that all supervisors have refreshed their supervisory skills and knowledge in order to help supervisees practice safely and effectively.

Commented [DS4]: OOG recommends repealing this provision unless the Board can provide a good explanation for why an explanatory provision should be included in the rule.

(11) A Council-approved supervisor who wishes to provide supervision towards licensure as an LCSW or towards specialty recognition in Independent Practice (IPR) or Advanced Practitioner (LMSW-AP), which is supervision for professional growth, must comply with the following:

(A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions, in group sessions, or in a combination of one-on-one and group sessions. Session may transpire in the same geographic location, or via audio, web technology or other electronic supervision techniques that comply with HIPAA and Texas Health and Safety Code, Chapter 611, and/or other applicable state or federal statutes or rules.

(B) Supervision groups shall have no fewer than two members and no more than six.

(C) Supervision shall occur in proportion to the number of actual hours worked, with a base line of one hour of supervision for every 40 hours worked. If the supervisee works full-time, supervision shall occur on average at least twice a month and for no less than four hours per month; if the supervisee works part-time (at least 20 hours per week), supervision shall occur on average at least once a month and no less than two hours per month. Supervisory sessions shall last at least one hour and no more than two hours per session. No more than 10 hours of supervision may be counted in any one month, or 30-day period, as appropriate, towards satisfying minimum requirements for licensure or specialty recognition.

Commented [DS5]: OOG recommends repealing this provision unless the Board can provide a good explanation for why this limitation is necessary.

(D) The Council considers supervision toward licensure or specialty recognition to be supervision which promotes professional growth. Therefore, all supervision formats must encourage clear, accurate communication between the supervisor and the supervisee, including case-based communication that meets standards for confidentiality. Though the Council favors supervision formats in which the supervisor and supervisee are in the same geographical place for a substantial part of the supervision time, the Council also recognizes that some current and future technology, such as using reliable, technologically-secure computer cameras and microphones, can allow personal face-to-face, though remote, interaction, and can support professional growth. Supervision formats must be clearly described in the supervision plan, explaining how the supervision strategies and methods of delivery meet the supervisee's professional growth needs and ensure that confidentiality is protected. The plan must be approved by the Council.

(E) Supervision toward licensure or specialty recognition must extend over a full 3000 hours over a period of not less than 24 full months and a period of not more than 48 full months for LCSW or LMSW-AP or not more than 60 full months for Independent Practice Recognition (IPR). Even if the individual completes the minimum of 3000 hours of supervised experience and minimum of 100 hours of supervision prior to 24 months from the start date of supervision, supervision which meets the Council's minimum requirements shall extend to a minimum of 24 full months. A month is a 30-day period or the length of the actual calendar month, whichever is longer.

(F) The supervisor and the supervisee bear professional responsibility for the supervisee's professional activities.

(G) If the supervisor determines that the supervisee lacks the professional skills and competence to practice social work under a regular license, the supervisor shall develop and implement a written remediation plan for the supervisee.

(H) Council-approved supervised professional experience towards licensure must comply with §781.401 of this title (relating to Qualifications for Licensure) and §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition) of this title and all other applicable laws and rules.

(12) A Council-approved supervisor who wishes to provide supervision required as a result of a Council order must comply with this title, all other applicable laws and rules, and/or the following.

(A) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(i) submit one supervisory plan for each practice location to the Council for approval by the Council or its designee within 30 days of initiating supervision;

(ii) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(iii) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must

provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(iv) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

(B) The supervisor who agrees to provide Council--ordered supervision of a licensee who is under Council disciplinary action must understand the Council order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to Council discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(C) Council-ordered and mandated supervision timeframes are specified in the Council order.

(c) A licensee who submits one of the following: a Clinical Supervision Plan, a Non-Clinical Supervision Plan, or a Council-Ordered Supervision Plan, to the Council for approval, shall receive a written response from the Council of either approval or deficiency related to the plan. If no written response is received by the licensee within four weeks of submission of the plan, it is the responsibility of the licensee who has submitted the plan to follow-up with the Council office related to receipt and/or status of the plan within 60 days of submission. If written approval or deficiency is sent to the last known address of the licensee, a Council response related to acceptance of the plan shall be considered to have been sent. Supervision and supervised experience hours are not acceptable to meet minimum requirements towards licensure or specialty recognition or to satisfy the terms of a Council order if not accrued under a Council-approved plan without explicit authorization from the Council.

§781.405. Application for Licensure.

A licensure or specialty application must be submitted in accordance with Council rules ~~881.2.1~~882.1 of this title (relating to Application Process) and 882.2 of this title (relating to General Application File Requirements) .

Commented [DS6]: Typo needs to be corrected.

§781.406. Required Documentation of Qualifications for Licensure.

(a) Application form. An applicant for licensure must submit a completed official application form with all requested information.

(b) Education verification.

(1) The applicant's education must be documented by official college transcripts from social work educational units accredited by CSWE.

(2) Degrees for licensure as an LBSW or LMSW must be from programs accredited or in candidacy for accreditation by CSWE.

(c) Experience verification.

(1) An applicant's experience for licensure or for specialty recognition must meet the requirements of §781.401 of this title (relating to Qualifications for Licensure), §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition), and §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process). The applicant must document the names and addresses of supervisors; beginning and ending dates of supervision; job description; and average number of hours of social work activity per week. The applicant must further document the appropriate supervision plan and verification form, both approved by the Council, for each practice location. If any elements described in the supervision plan change, including but not limited to work hours, full- or part-time work status, location of supervision, or name of supervisor, the applicant must submit the appropriate verification form within 30 days of the change or supervision termination. The applicant must submit a new, complete supervision plan for Council approval within 30 days of beginning the new supervision agreement.

(2) The applicant's experience must have been in a position providing social work services, under the supervision of a qualified supervisor, with written evaluations to demonstrate satisfactory performance.

(3) Supervised experience must have occurred within the five calendar years immediately preceding the date of application.

(4) The applicant must maintain and upon request, provide to the Council documentation of employment status, pay vouchers, or supervisory evaluations.

§781.411. Temporary License.

(a) Prior to examination, a licensure applicant may obtain a temporary social work license as long as the applicant meets all the requirements, except the licensing examination, for the license category the applicant seeks.

(b) A person holding a temporary license must take the designated examination within six months of issuance of the temporary license.

(c) The temporary license is valid until the licensee attempts the appropriate examination or the end of the six-month issuance of the temporary license.

- (d) A person holding a temporary license must display the license at the licensee's place of business and must use the appropriate licensed title or initials followed by the word "Temporary" in all professional use of the licensee's name.
- (e) Should the applicant take and fail the examination, the temporary license is no longer valid. The applicant must immediately cease and desist from using the temporary license and title, and return the license certificate and certificate card to the Council.
- (f) Should the applicant pass the examination, the Council will issue the license or specialty recognition. ~~A Temporary-temporary~~ license holder who has passed the licensing examination continues to be temporarily licensed until the ~~————~~Council issues a regular license or the temporary license expires.
- (g) A person who failed the examination and is without a valid temporary license may retake the examination under §781.412 of this title (relating to Examination Requirement).
- (h) A temporary license will not be granted to an applicant who has held a temporary license for the same license category previously within his/her lifetime.
- (i) An applicant for LCSW or specialty recognition is not eligible for a temporary or provisional license.
- (j) Applicants requesting a temporary license must submit the application form and fee required by the Council.

§781.412. Examination Requirement.

- (a) An applicant for licensure or specialty recognition must pass an examination designated by the Council.
- (b) When an applicant passes the examination, the individual has no more than one year from the date of passing the examination to complete the requirements for licensure, completing all documentation and paying all fees or the passing examination score will no longer count towards licensure.
- (c) If an applicant fails the examination on the first attempt of his/her lifetime, the individual may retake the examination no more than two additional times. An applicant who has failed the examination on the first, second, and third attempts must comply with Council rule 882.6.
- (d) The Council may waive the examination for an applicant with a valid certificate or license from another state if the certificate or license was issued before January 1, 1986, if petitioned in writing.

(e) On the basis of a verified report from ASWB that an applicant has cheated on the examination, the application shall be denied.

§781.414. Issuance License Certificates.

The licensee must include the license title or associated initials in all professional uses of the licensee's name as required by the Act, §505.351, as in Licensed Clinical Social Worker - LCSW; Licensed Master Social Worker - LMSW; or Licensed Baccalaureate Social Worker - LBSW. If the licensee holds a specialty recognition, he or she shall use the specialty recognition initials as well: Licensed Master Social Worker with non-clinical Independent Practice Recognition - LMSW-IPR; Licensed Baccalaureate Social Worker with non-clinical Independent Practice Recognition - LBSW-IPR; or Licensed Master Social Worker with Advanced Practitioner Recognition -LMSW-AP.

§781.418. Issuance of Licenses to Certain Out-of-State Applicants.

(a) Notwithstanding any other licensing requirement of this chapter or the Act:

(1) The Council may not require an applicant who is licensed in good standing in another state to retake a licensing examination conducted by the Council under the Act if the applicant has passed the same examination in another jurisdiction.

(2) The Council may issue a license to an applicant who is currently licensed in another jurisdiction to independently practice social work if the Council determines that the applicant demonstrates sufficient experience and competence; has passed the licensing examination appropriate to the category of licensure the applicant seeks; has passed the jurisprudence examination conducted by the Council under the Texas Occupations Code, §505.3545; and is in good standing with the regulatory body of the licensing jurisdiction at the time the applicant applied in Texas.

(b) When assessing the applicant's experience and competence, the Council may consider any supervision the applicant received in another jurisdiction if the Council determines that the supervision would be considered for licensing or certification in the jurisdiction in which the applicant received the supervision.

§781.419. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) An applicant applying for licensure under this section must comply with Council rule §882.60.

(b) Licensing requirements that either match or exceed Texas requirements are considered substantially equivalent.

(c) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

§781.420.Licensing of Persons with Criminal Backgrounds.

The following felonies and misdemeanors directly related to the duties and responsibilities of a licensee:

- (1) failing to report child abuse or neglect;
- (2) a criminal act involving deceptive business practices;
- (3) the offense of assault or sexual assault;
- (4) the felony offense of fraud;
- (5) offenses listed in Article 42A.054 of the Code of Criminal Procedure;
- (6) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;
- (7) any criminal violation of the Act;
- (8) any criminal violation of Chapter 35 (Insurance Fraud) or Chapter 35A (Medicaid Fraud) of the Penal Code;
- (9) any criminal violation of Chapter 32, Subchapter B (Forgery) of the Penal Code;
- (10) any criminal violation of Sections 32.42 (Deceptive Business Practices), 32.43 (Commercial Bribery), 32.45 (Misapplication of Fiduciary Property), 32.46 (Securing Execution of Document by Deception), 32.50 (Deceptive Preparation and Marketing of Academic Product), 32.51 (Fraudulent Use or Possession of Identifying Information), 32.52 (Fraudulent, Substandard, or Fictitious Degree), or 32.53 (Exploitation of Child, Elderly or Disabled Individual) of the Penal Code;
- (11) any criminal violation of Chapter 37 (Perjury and Other Falsification) of the Penal Code;

- (12) any offense involving the failure to report abuse;
- (13) any criminal violation of Section 38.12 (Barratry and Solicitation of Professional Employment) of the Penal Code;
- (14) any criminal violation involving a federal health care program, including 42 USC Section 1320a-7b (Criminal penalties for acts involving Federal health care programs);
- (15) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of social work;
- (16) any attempt, solicitation, or conspiracy to commit an offense listed herein;
- (17) any criminal violation of section 22.041 (abandoning or endangering a child);
- (18) any criminal violation of section 21.15 (invasive visual recording);
- (19) any criminal violation of section 21.08 (indecent exposure);
- (20) any criminal violation of section 22.02 (aggravated assault);
- (21) any criminal violation of section 25.04 (enticing a child);
- (22) any criminal violation of section 43.26 (possession of child pornography);
- (23) any criminal violation of section 20.03 (kidnapping); and
- (24) any criminal violation of chapter 19 (criminal homicide).

§781.508. Hour Requirements for Continuing Education.

- (a) A licensee must complete a total of 30 clock-hours biennially of continuing education which also includes the first renewal of the licensure following issuance of the license.
- (b) As part of the required 30 biennial clock-hours, a licensee must complete a minimum of six clock-hours of continuing education in professional ethics and social work values.
- (c) A clock-hour is defined as 60 minutes of standard time.
- (d) A licensee may earn credit for ethics as a presenter or a participant.

§781.509. Types of Acceptable Continuing Education.

To be acceptable for the purposes of license renewal or satisfaction of disciplinary stipulations the education must be received from a continuing education provider that:

- (1) ensures that the education provided is directly related to the practice of social work;
- (2) ensures that the individual(s) presenting the information have the necessary experience and knowledge in the topic(s) presented;
- (3) verifies attendance of participants and provides participants with a letter, certificate, or transcript that displays the licensee's name, topic covered, date(s) or academic period course was taken, and hours of credit earned;
- (4) provides participants a mechanism for evaluation of each continuing education activity; and
- (5) maintains all continuing education records and documentation for at least three years.

§781.510. Activities Unacceptable as Continuing Education.

The Council will not give credit hours for:

- (1) education incidental to the regular professional activities of a social worker such as learning occurring from experience or research;
- (2) organizational activity such as serving on committees or councils or as an officer in a professional organization;
- (3) meetings and activities such as in-service programs required as a part of one's job, unless the in-service training is acceptable continuing education under §781.509 of this title (relating to Types of Acceptable Continuing Education);
- (4) college academic courses which are audited or not taken for credit; or
- (5) any experience which does not fit the types of acceptable continuing education in §781.509 of this title.

§781.514. Credit Hours Granted.

The Council will grant the following credit hours toward the continuing education requirements for license renewal.

- (1) One credit hour will be given for each hour of participation in a continuing education program.

- (2) Credit may be earned, post-licensure, through successfully completing postgraduate training programs (e.g., intern, residency, or fellowship programs) or successfully completing social work courses in a graduate school of social work at a rate of five credit hours per each semester hour or its equivalent not to exceed 10 hours per renewal period. A licensee may complete the ethics requirement in §781.508(a) of this title (relating to Hour Requirements for Continuing Education) only through a course specifically designated as an ethics course.
- (3) Credit may be earned for teaching social work courses in an accredited college or university. Credit will be applied at the rate of five credit hours for every course taught, not to exceed 15 hours per renewal period. A licensee may complete the ethics requirement in §781.508(a) of this title only through teaching a course specifically designated as an ethics course.
- (4) A field instructor for a social work intern will be granted five credit hours for each college semester completed, not to exceed 20 credit hours per renewal period.
- (5) A presenter of a continuing education program or an author of a published work, which imparts social work knowledge and skills, may be granted five credit hours for each original or substantially revised presentation or publication, not to exceed 20 credit hours per renewal period.
- (6) A licensee may carry over to the next renewal period up to 10 credit hours earned in excess of the continuing education renewal requirements. Continuing education earned during the licensee's birth month may be used for the current renewal or for the following year.
- (7) Completing the jurisprudence examination shall count as three hours of the continuing education requirement in ethics and social work values, as referenced in §781.508(b) of this title.

Adopted Rules

§781.801. Purpose. The schedule of sanctions is adopted by rule pursuant to the Act, §505.2015(2)

§781.803. Severity Levels. The following are severity levels for the schedule of sanctions:

(1) Level One--Revocation of license. These violations evidence the licensee's intentional or gross misconduct, cause or pose a high degree of harm to the public, and/or require severe punishment to deter the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure. The Council may also impose an administrative penalty of not less than \$250 or more than \$5,000 for each Level One violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a financial penalty.

(2) Level Two--Extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require ~~termination~~ suspension of licensure for a period of not less than one year. The Council may also impose an administrative penalty of not less than \$250 or more than \$4,000 for each Level Two violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(3) Level Three--Moderate suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level Two violations, but require ~~termination~~ suspension of licensure for some period of time. The Council may also impose an administrative penalty of not less than \$250 or more than \$3,000 for each Level Three violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(4) Level Four--Probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant ~~termination~~ suspension of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Possible probationary terms are set out as in §781.806 of this title (relating to Probation) and may be ordered as appropriate. The Council may also impose an administrative penalty of not less than \$250 or more than \$2,000 for each Level Four violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(5) Level Five--Reprimand. These violations involve minor misconduct not directly involving the health, safety or welfare of the particular member of the public at issue. The Council may also impose an administrative penalty of not less than \$250 or more than \$1,000 for each Level Five violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

§781.804. Other Disciplinary Actions.

Complaints may be resolved by issuance of a warning letter or a conditional letter of agreement, which do not involve a formal disciplinary action.

(1) Warning letters informing licensees of their duties under the Act or this chapter, and whether the conduct or omission complained of may appear to violate such duties.

(2) A conditional letter of agreement informs the licensee of the licensee's duties under the Act of this chapter, whether the conduct or omission complained of may appear to violate such duties, and creating Council ordered conditions for the resolution of the issues in the complaint. Staff may issue the conditional letter of agreement to the licensee, a signature by the licensee is required, and the letter will specify the disposition of the complaint. If the licensee fails to comply with all the Council ordered conditions in the specified time frame outlined in the conditional letter agreement, staff will open a new complaint arising out of non-compliance with the conditional letter agreement and/or the underlying conduct.

§781.805. Schedule of Sanctions.

The following standard sanctions shall apply to violations of the Act and these rules.

Insert Figure 22 TAC §781.805.

Figure 22 TAC §781.805

DISCIPLINARY ACTIONS (reported to the National Practitioner Databank)

Level 5: Reprimand (Administrative Penalty: not less than \$250; no more than \$1,000 per day)

- _____ Failure to inform consumer of all required items, provide a written explanation of treatment and charges (§§781.301(6); 781.303(7); 781.304(a); 781.309(5); and 781.313(b))
- _____ Failure to discourage others from making exaggerated or false claims (§781.304(i))
- _____ Failure to protect individual from harm resulting from individual or group setting (§781.234(o))
- _____ Failure to inform client about testing as part of treatment (§781.307(a))
- _____ Appropriate, reproduce, or modify published tests or parts thereof without publisher's permission (§781.307(b))
- _____ Failure to report name or address change to the Council within 30 days of change (§781.312(c))
- _____ Failure to set and maintain proper supervisor-supervisee relationship (§781.404(b)(10)(E) and (L))
- _____ Failure to ensure supervisee knows of, and complies with, all Council rules (§781.404(b)(10)(K))
- _____ Failure to develop and implement written supervision remediation plan (§781.404(b)(11)(G))
- _____ Failure to keep accurate records, keep records for appropriate retention period (§§781.304(f); 781.309(1) and (4))
- _____ Failure to assess proper fee(s), maintain accurate billing records (§§781.304(g); 781.310(d))
- _____ Failure to establish a plan for custody of records when professional services cease (§781.309(3))
- _____ Failure to maintain written release of information in permanent record, review and update (§781.311(e))
- _____ Failure to maintain and timely submit accurate supervised experience records (§781.404(b)(10)(A))
- _____ Make misleading, exaggerated, or false claims (§§781.301(a)(2); 781.304(h); 781.306(a) and (b); 781.316(a), (c), and (d))
- _____ Failure to base all services on an assessment, evaluation or diagnosis of the client; evaluate client's condition without personally interviewing client or disclosing that a personal interview has not been completed (§§781.301(5); 781.303(3))
- _____ Failure to maintain client confidentiality except when disclosure is prescribed by statute or Council rules (§§781.301(a)(7); 781.309(6); 781.311(b) and (g))
- _____ Failure to set and maintain professional boundaries and avoid dual relationships (§§781.301(a)(8); 781.304(e), (l), and (q))
- _____ Failure to evaluate a client's progress on a continuing basis to guide service delivery and make use of supervision and consultation as indicated by client's needs (§§781.301(12))
- _____ Failure to inform other provider when providing concurrent therapy (§781.203(1))
- _____ Failure to obtain informed consent (or court order) with all related items (§781.303(9))
- _____ Engage in activities ~~to~~for personal needs or for personal gain; promotion of personal or business activities that are unrelated to the current professional relationship (§781.234(d) and (p))
- _____ Accept from or give gift to a client with a value in excess of \$25.00 (§781.304(m))
- _____ Failure to comply with Texas Health and Safety Code concerning access to mental health records; release information only with a written permission signed by client or client guardian (§§781.311(c) and (d))
- _____ Failure to report alleged violation to the Council (except sexual misconduct)

(§781.312(b))

- ___ Failure to assume responsibility for human subject's emotional, physical, and social welfare when conducting research (§781.317(a))
- ___ Failure to provide written information to parties in child custody or adoption evaluations (§781.322(h)(1) and (2))
- ___ Charge or collect a fee or anything of value from employee or contract employee for supervision (§781.404(b)(10)(C))
- ___ Provide supervision to a family member (§781.404(b)(10)(F))
- ___ Failure to develop and update supervision plan (§781.404(b)(10)(P))
- ___ Failure to terminate non-beneficial counseling relationship; transfer client to appropriate care (§§781.301(a)(13); 781.303(2))

Level 4: Probated Suspension (Admin Penalty: not less than \$250; no more than \$2,000 per day)

- ___ ~~Refuse~~ Refusing to serve a client based solely on basis of prohibited discrimination (§781.301(a)(1))
- ___ Failure to practice within scope of competency and accepted professional standards as appropriate to client's needs (§§781.301(a)(3), 781.302(d), (e), and (g)-(i); 781.303(4); 781.321(ff); 781.322(i))
- ___ ~~Exploit~~ Exploiting a position of trust with client or former client (§781.301(a)(11))
- ___ Failure to assume responsibility for clients during bartering of services (§781.303(8))
- ___ ~~Enter~~ Entering into a business relationship with a client (§781.304(c))
- ___ Failure to provide services in the context of a professional relationship (§781.304(j))
- ___ ~~Borrow or lend~~ Borrowing or lending money or items of value to clients or relatives of clients (§§781.304(n))
- ___ Failure to report alleged sexual misconduct to the Council (§781.305(g)(1)-(4))
- ___ Failure to administer or interpret test only with training and experience (§781.307(c))
- ___ Failure to retain and dispose of client records in ways that maintain confidentiality (§781.309(2))
- ___ Knowingly or flagrantly overcharge; bill for improper, unreasonable or unnecessary services (§781.310(c) and (e))
- ___ Failure to report information concerning abuse or neglect of minors, elderly, or disabled; report exploitation by a mental health services provider (§781.321(f)(1-4))
- ___ Failure to ensure subject's identity and confidentiality when obtaining data from a professional relationship for purposes of research (§781.317(b))
- ___ ~~Provide~~ Providing therapy ~~and/or~~ any other type of service, including but not limited to a child custody evaluation or parenting facilitation, in the same case (§§781.320(e); 781.321(d); 781.322(f))
- ___ Failure to supervise only supervisees within scope of competency (§781.404(b)(1))
- ___ Failure to clearly indicating services, licensure category, and that supervisee is under supervision on billing documentation (§781.404(b)(10)(H))
- ___ Failure to address issues outlined in Council ordered supervision (§781.404(b)(12)(B))

Commented [DS1]: Clarification

Level 3: Suspension (less than a year, Admin Penalty: not less than \$250; no more than \$3,000 per day)

- ___ Practice while impaired by alcohol or drugs or use any illegal drug; promote, encourage, or concur in the illegal use or possession of alcohol or drugs (§§781.301(a)(10) and 781.308)
- ___ Offer to pay or agree to accept any remuneration for securing or soliciting clients or patronage (§§781.304(b); 781.310(a) and (b))
- ___ Provide expert opinion or recommendation without conducting appropriate child custody

evaluation (§781.322(g))

- ___ Failure to maintain qualifications of supervisory status while providing supervision (§781.404(b)(9))
- ___ Provide supervision without having met all requirements for current, valid Council-approved supervisor status (§781.404(b)(10)(J))
- ___ Failure to inform all supervisees of termination of supervisor status and help them to find alternate supervision (§781.404(b)(10)(M))

Level 2: Suspension (one year or more, Admin Penalty: not less than \$250; no more than \$4,000 per day)

Level 1: Revocation (Admin Penalty: not less than \$250; no more than \$5,000 per day)

- ___ Engage in sexual misconduct; therapeutic deception (§§781.301(a)(9); 781.305(b) and (c))
- ___ Aid or abet unlicensed practice (§781.303(5))
- ___ Participate in falsifying documents submitted to the Council (§781.203(6))
- ___ Continue to supervise or fail to refund all supervisory fees paid after termination or expiration of supervisor status (§781.404(b)(10)(N) and (O))

Commented [DS2]: typo

Repealed Rules

- [781.201.——Code of Conduct.]
- [781.202.——The Practice of Social Work.]
- [781.203.——General Standards of Practice.]
- [781.204.——Relationships with Clients.]
- [781.205.——Sexual Misconduct.]
- [781.206.——Professional Representation.]
- [781.207.——Testing.]
- [781.208.——Drug and Alcohol Use.]
- [781.209.——Client Records and Record Keeping.]
- [781.210.——Billing and Financial Relationships.]
- [781.211.——Client Confidentiality.]
- [781.212.——Licensees and the Board.]
- [781.213.——Corporations and Business Names.]
- [781.214.——Consumer Information.]
- [781.215.——Display of License Certificate.]
- [781.216.——Advertising and Announcements.]
- [781.217.——Research and Publications.]
- [781.218.——Providing Social Studies.]
- [781.219.——Licensed Sex Offender Treatment.]
- [781.220.——Parent Coordination.]
- [781.221.——Parenting Facilitation.]
- [781.222.——Child Custody Evaluations.]
- [781.223.——Technology in Social Work Practice.]

Adopted Repeals

- [781.301. — Board Rules.]
- [781.302. — Board Meetings.]
- [781.303. — Board Training.]
- [781.304. — Transaction of Official Board Business.]
- [781.305. — Board Agendas.]
- [781.306. — Board Minutes.]
- [781.307. — Elections.]
- [781.308. — Officers of the Board.]
- [781.309. — Committees of the Board.]
- [781.310. — Executive Director.]
- [781.311. — Official Records of the Board.]
- [781.312. — Impartiality and Non-discrimination.]
- [781.313. — Applicants with Disabilities.]
- [781.314. — The License.]
- [781.315. — Roster of Licensees.]
- [781.316. — Fees.]
- [781.317. — Criminal History Evaluation Letter.]

Adopted Repeals

[781.401. — ~~Qualifications for Licensure.~~]

[781.402. — ~~Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition.~~]

[781.403. — ~~Independent Practice Recognition (Non-Clinical).~~]

[781.404. — ~~Recognition as a Board-approved Supervisor and the Supervision Process.~~]

[781.405. — ~~Application for Licensure.~~]

[781.406. — ~~Required Documentation of Qualifications for Licensure.~~]

[781.407. — ~~Fitness of Applicants for Licensure.~~]

[781.408. — ~~Materials Considered in Determination of Fitness of Applicants.~~]

[781.409. — ~~Finding of Non-fitness.~~]

[781.410. — ~~Provisional Licenses.~~]

[781.411. — ~~Temporary License.~~]

[781.412. — ~~Examination Requirement.~~]

[781.413. — ~~Alternate Method of Examining Competency (AMEC) Program.~~]

[781.414. — ~~Issuance of License Certificates.~~]

[781.415. — ~~Application Denial.~~]

[781.416. — ~~Required Reports of the Board.~~]

[781.417. — ~~Surrender of License.~~]

[781.418. — ~~Issuance of Licenses to Certain Out-of-State Applicants.~~]

[781.419. — ~~Licensing of Military Service Members, Military Veterans, and Military Spouses.~~]

Adopted Repeals

[781.501. — General.]

[781.502. — Renewal Cycles.]

[781.503. — License Renewal.]

[781.504. — Late Renewal.]

[781.505. — Inactive Status.]

[781.506. — Emeritus Status.]

[781.507. — Active Military Duty.]

[781.508. — Hour Requirements for Continuing Education.]

[781.509. — Types of Acceptable Continuing Education.]

[781.510. — Activities Unacceptable as Continuing Education.]

[781.511. — Requirements for Continuing Education Providers.]

[781.512. — Evaluation of Continuing Education Providers.]

[781.513. — Acceptance of Continuing Education Approved by Another Licensing Board.]

[781.514. — Credit Hours Granted.]

[781.515. — Continuing Education Department.]

[781.516. — Requirements of Supervisor Training Course Providers.]

[781.517. — Evaluation of Supervisor Training Course Providers.]

Adopted Repeals

[781.601. — Purpose.]

[781.602. — Disciplinary Action and Notices.]

[781.603. — Complaint Procedures.]

[781.604. — Ethics Committee Meetings and Policy.]

[781.605. — Informal Conferences.]

[781.606. — Licensing of Persons with Criminal Backgrounds.]

[781.607. — Suspension, Revocation, or Non-renewal.]

[781.608. — Informal Disposition.]

[781.609. — Monitoring of Licensee.]

[781.610. — Due Process Following Violation of an Order.]

Adopted Repeal

[781.701.——Purpose.]

[781.702.——Notice.]

[781.703.——Default.]

[781.704.——Action after Hearing.]

Adopted Repeal

[781.801.——Purpose.]

[781.802.——Relevant Factors.]

[781.803.——Severity Level and Sanction Guide.]

[781.804.——Other Disciplinary Actions.]

[781.805.——State Office of Administrative Hearings.]

[781.806.——Probation.]

[781.807.——Release from Probation.]

[781.808.——Peer Assistance Program.]

Rule: 781.420. Licensing of Persons with Criminal Backgrounds

Action: Withdrawn Rule

Comment: This rule is being withdrawn due to substantive changes

~~781.420. Licensing of Persons with Criminal Backgrounds. The following felonies and misdemeanors directly related to the duties and responsibilities of a licensee:~~

~~(1) failing to report child abuse or neglect;~~

~~(2) a criminal act involving deceptive business practices;~~

~~(3) the offense of assault or sexual assault;~~

~~(4) the felony offense of fraud;~~

~~(5) offenses listed in Article 42A.054 of the Code of Criminal Procedure;~~

~~(6) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;~~

~~(7) any criminal violation of the Act;~~

~~(8) any criminal violation of Chapter 35 (Insurance Fraud) or Chapter 35A (Medicaid Fraud) of the Penal Code;~~

~~(9) any criminal violation of Chapter 32, Subchapter B (Forgery) of the Penal Code;~~

~~(10) any criminal violation of Sections 32.42 (Deceptive Business Practices), 32.43 (Commercial Bribery), 32.45 (Misapplication of Fiduciary Property), 32.46 (Securing Execution of Document by Deception), 32.50 (Deceptive Preparation and Marketing of Academic Product), 32.51 (Fraudulent Use or Possession of Identifying Information), 32.52 (Fraudulent, Substandard, or Fictitious Degree), or 32.53 (Exploitation of Child, Elderly or Disabled Individual) of the Penal Code;~~

~~(11) any criminal violation of Chapter 37 (Perjury and Other Falsification) of the Penal Code;~~

~~(12) any offense involving the failure to report abuse;~~

- ~~(13) any criminal violation of Section 38.12 (Barratry and Solicitation of Professional Employment) of the Penal Code;~~
- ~~(14) any criminal violation involving a federal health care program, including 42 USC Section 1320a-7b (Criminal penalties for acts involving Federal health care programs);~~
- ~~(15) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of social work;~~
- ~~(16) any attempt, solicitation, or conspiracy to commit an offense listed herein;~~
- ~~(17) any criminal violation of section 22.041 (abandoning or endangering a child);~~
- ~~(18) any criminal violation of section 21.15 (invasive visual recording);~~
- ~~(19) any criminal violation of section 21.08 (indecent exposure);~~
- ~~(20) any criminal violation of section 22.02 (aggravated assault);~~
- ~~(21) any criminal violation of section 25.04 (enticing a child);~~
- ~~(22) any criminal violation of section 43.26 (possession of child pornography);~~
- ~~(23) any criminal violation of section 20.03 (kidnapping); and~~
- ~~(24) any criminal violation of chapter 19 (criminal homicide).~~

Rule: 781.420. Licensing of Persons with Criminal Convictions.

Action: Proposed New Rule

Comment: The proposed new rule limits an applicants eligibility for a license based on the applicants criminal history. This rule is required by statute for the Board to propose to the Executive Council.

781.420. Licensing of Persons with Criminal Convictions

(a) The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensee:

(1) offenses listed in Article 42A.054 of the Code of Criminal Procedure;

(2) a sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure;

(3) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;

(4) any criminal violation of Chapter 505 (Social Work Practice Act) of the Occupations Code;

(5) any criminal violation of Chapter 35 (Insurance Fraud) or Chapter 35A (Medicaid Fraud) of the Penal Code;

(6) any criminal violation involving a federal health care program, including 42 USC Section 1320a-7b (Criminal penalties for acts involving Federal health care programs);

(7) any offense involving the failure to report abuse or neglect;

(8) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of social work;

(9) any criminal violation of Section 22.041 (abandoning or endangering a child) of the Penal Code;

(10) any criminal violation of Section 21.15 (invasive visual recording) of the Penal Code;

(11) any criminal violation of Section 43.26 (possession of child pornography) of the Penal Code;

- (12) any criminal violation of Section 22.04 (injury to a child, elderly individual, or disabled individual) of the Penal Code;
- (13) three or more drug or alcohol related convictions within the last 10 years, evidencing possible addiction that will have an effect on the licensee's ability to provide competent services; and
- (14) any attempt, solicitation, or conspiracy to commit an offense listed herein.

Rule: 781.102. Definitions.

Action: Proposed Amendments

Comment: The proposed amendments will address the backlog of applications and expedite future applications received.

781.102. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1-39 No changes)

(40) LMSW-AP--Licensed Master Social Worker with the Advanced Practitioner specialty recognition for non-clinical practice. This specialty recognition will no longer be conferred after September 1, 2017. Licensees under a ~~Council approved~~ supervision plan for this specialty recognition before September 1, 2017 will be permitted to complete supervision and examination for this specialty recognition.

(41-49 No changes)

(50) Supervision--Supervision includes:

- (A) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;
- (B) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;
- (C) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a ~~Council~~ ~~approved~~ supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;
- (D) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is

providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor;

- (E) Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(No changes)

Rule: 781.302. The Practice of Social Work.

Action: Proposed Amendments

Comment: The proposed amendments will address the backlog of applications and expedite future applications received.

781.302. The Practice of Social Work.

- (a) Practice of Baccalaureate Social Work--Applying social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, organizations and communities. Baccalaureate Social Work is generalist practice and may include interviewing, assessment, planning, intervention, evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, problem solving, supervision, consultation, education, advocacy, community organization, and policy and program development, implementation, and administration.
- (b) Practice of Independent Non-Clinical Baccalaureate Social Work--An LBSW recognized for independent practice, known as LBSW-IPR, may provide any non-clinical baccalaureate social work services in either an employment or an independent practice setting. An LBSW-IPR may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LBSW-IPR must restrict his or her independent practice to providing non-clinical social work services.
- (c) Practice of Master's Social Work--Applying social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, organizations and communities. An LMSW may practice clinical social work in an agency employment setting under clinical supervision, under a ~~Council-approved~~ supervision plan, or under contract with an agency when under a ~~Council-approved~~ clinical supervision plan. Master's Social Work practice may include applying specialized knowledge and advanced practice skills in assessment, treatment, planning, implementation and evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, supervision, consultation, education, research, advocacy, community organization and developing, implementing and administering policies, programs and activities. An LMSW may engage in Baccalaureate Social Work practice.
- (d) Advanced Non-Clinical Practice of LMSWs--An LMSW recognized as an Advanced Practitioner (LMSW-AP) may provide any non-clinical social

work services in either an employment or an independent practice setting. An LMSW-AP may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LMSW-AP must restrict his or her practice to providing non-clinical social work services.

- (e) Independent Practice for LMSWs--An LMSW recognized for independent practice may provide any non-clinical social work services in either an employment or an independent practice setting. This licensee is designated as LMSW-IPR. An LMSW-IPR may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LMSW-IPR must restrict his or her independent practice to providing non-clinical social work services.
- (f) Practice of Clinical Social Work--The practice of social work that requires applying social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of clinical social work requires applying specialized clinical knowledge and advanced clinical skills in assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness and serious emotional disturbances in adults, adolescents, and children. The clinical social worker may engage in Baccalaureate Social Work practice and Master's Social Work practice. Clinical treatment methods may include but are not limited to providing individual, marital, couple, family, and group therapy, mediation, counseling, supportive counseling, direct practice, and psychotherapy. Clinical social workers are qualified and authorized to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), Current Procedural Terminology (CPT) Codes, and other diagnostic classification systems in assessment, diagnosis, treatment and other practice activities. An LCSW may provide any clinical or non-clinical social work service or supervision in either an employment or independent practice setting. An LCSW may work under contract, bill directly for services, and bill third parties for service reimbursements.
- (g) A licensee who is not recognized for independent practice or who is not under a Council-approved non-clinical supervision plan must not engage in any independent practice that falls within the definition of social work practice in §781.102 of this title (relating to Definitions) without being licensed and recognized by the Council, unless the person is licensed in another profession and acting solely within the scope of that license. If the person is practicing professionally under another license, the person may

not use the titles "licensed clinical social worker," "licensed master social worker," "licensed social worker," or "licensed baccalaureate social worker," or any other title or initials that imply social work licensure unless one holds the appropriate license or independent practice recognition.

- (h) An LBSW or LMSW who is not recognized for independent practice may not provide direct social work services to clients from a location that she or he owns or leases and that is not owned or leased by an employer or other legal entity with responsibility for the client. This does not preclude in-home services such as in-home health care or the use of electronic media to provide services in an emergency.
- (i) An LBSW or LMSW who is not recognized for independent practice may practice for remuneration in a direct employment or agency setting but may not work independently, bill directly to patients or bill directly to third party payers, unless the LBSW or LMSW is under a formal ~~Council-~~ ~~approved~~ supervision plan.

Rule: 781.401. Qualifications for Licensure.
Action: Proposed Amendments
Comment: The proposed amendments will address the backlog of applications and expedite future applications received.

781.401. Qualifications for Licensure.

- (a) Licensure. The following education and experience is required for licensure as designated. If an applicant for a license has held a substantially equivalent license in good standing in another jurisdiction for one year immediately preceding the date of application, the applicant will be deemed to have met the experience requirement under this chapter.
- (1) Licensed Clinical Social Worker (LCSW).
- (A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited institution of higher learning acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.
- (B) Has had 3000 hours of ~~Council-approved~~ supervised professional clinical experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. ~~Council-approved~~ Supervised professional experience must comply with §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process) and all other applicable laws and rules.
- (C) Has had a minimum of 100 hours of ~~Council-approved~~ supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LCSW application. If the social worker completed supervision in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

- (D) Has passed the Clinical examination administered nationally by ASWB.
- (2) Licensed Master Social Worker (LMSW).
 - (A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited university acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.
 - (B) Has passed the Master's examination administered nationally by ASWB.
- (3) Licensed Baccalaureate Social Worker (LBSW).
 - (A) Has been conferred a baccalaureate degree in social work from a CSWE accredited social work program.
 - (B) Has passed the Bachelors examination administered nationally by ASWB.
- (b) Specialty Recognition. The following education and experience is required for specialty recognitions.
 - (1) Licensed Master Social Worker-Advanced Practitioner (LMSW-AP).
 - (A) Is currently licensed in the State of Texas or meets the current requirements for licensure as an LMSW.
 - (B) While fully licensed as a social worker, has had 3000 hours of Council-approved supervised professional non-clinical social work experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Council-approved Supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.
 - (C) Has had a minimum of 100 hours of Council-approved supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LMSW-AP application. If supervision was completed in another jurisdiction, the social worker must have the supervision verified by the regulatory authority in the other jurisdiction.

If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

- (D) Has passed the Advanced Generalist examination administered nationally by the ASWB.
- (2) Independent Non-clinical Practice.
- (A) Is currently licensed in the State of Texas as an LBSW or LMSW.
 - (B) While fully licensed as a social worker has had 3000 hours of ~~Council-approved~~ supervised full-time social work experience over a minimum two-year period, but within a maximum five-year period or its equivalent if the experience was completed in another state. ~~Council-approved~~ Supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.
 - (C) Has had a minimum of 100 hours of ~~Council-approved~~ supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the 5 calendar years immediately preceding the date of application for IPR specialty recognition. If supervision was completed in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification.
- (c) Applicants for a license must complete the Council's jurisprudence examination and submit proof of completion at the time of application.

Rule: 781.402. Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition.

Action: Proposed Amendment

Comment: To address the backlog of applications and expedite future applications received.

781.402. Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition.

(a) A person who has obtained a temporary license may not begin the supervision process toward independent non-clinical practice or independent clinical practice until the regular license is issued.

~~(b) To accrue supervised clinical experience required for the issuance of a LCSW:~~

~~(1) an LMSW shall complete a supervision plan form prescribed by the Council, or a form with substantially equivalent information, and signed by both the LMSW and the Council-approved clinical supervisor;~~

~~(2) the Council-approved clinical supervisor shall keep a supervision file on the LMSW that includes the supervision plan, list of locations where the LMSW provides supervised clinical services, and a log of clinical experience and supervision earned by the LMSW;~~

~~(3) the Council-approved clinical supervisor shall submit a completed and signed supervision verification form prescribed by the Council when the LMSW submits an application for re-categorization; and~~

~~(4) the LMSW shall submit an application for re-categorization of his or her licensure to LCSW upon fulfillment of the supervision requirements.~~

~~(b) — An LMSW who plans to apply for the LCSW must:~~

~~(1) — within 30 days of initiating supervision, submit to the Council one clinical supervisory plan for each location of practice for approval by the Council or its designee;~~

~~(2) — submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead. In order for a plan to be approved, the position description or other~~

relevant documentation must demonstrate that the duties of the position are clinical as defined in this chapter;

(3) submit a separate supervision verification form for each location of practice to the Council for approval within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend that the supervisee is eligible to examine for LCSW, the supervisor must indicate such on the clinical supervision verification form and provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification submitted by the supervisee;

(4) submit a new supervisory plan within 30 days of changing supervisors or practice location; and

(5) submit an application for re-categorizing his/her licensure to Licensed Clinical Social Worker.

(c) An LMSW who plans to apply for the LCSW may not open an independent social work practice to provide clinical social work to clients.

(d) To accrue supervised experience required for an LBSW or an LMSW to apply for Independent Practice Recognition the LBSW or LMSW shall:

(1) complete a supervision plan form prescribed by the Council, or a form with substantially equivalent information, and signed by both the LBSW or LMSW and the Council-approved supervisor;

(2) the Council-approved supervisor shall keep a supervision file on the LBSW or LMSW that includes the supervision plan, list of locations where the LBSW or LMSW provides supervised services, and a log of experience and supervision earned by the LBSW or LMSW;

(3) the Council-approved supervisor shall submit a completed and signed supervision verification form prescribed by the Council when the LBSW or LMSW submits an application for Independent Practice Recognition; and

(4) submit an application for Independent Practice Recognition upon fulfillment of the supervision requirements.

(d) An LBSW or an LMSW who plans to apply for the Independent Practice Recognition must:

- (1) submit one supervisory plan to the Council for each location of practice for approval by the Council or its designee within 30 days of initiating supervision;
- (2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the LBSW or LMSW intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the LBSW or LMSW in the setting;
- (3) submit a separate supervision verification form for each practice location to the Council within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend that the supervisee is eligible for independent practice recognition, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification that the supervisee submits; and
- (4) submit a new supervisory plan within 30 days of changing supervisors or practice location.

- (e) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:
- (1) submit one supervisory plan for each practice location to the Council for approval by the Council or its designee within 30 days of initiating supervision;
 - (2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;
 - (3) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor

must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

- (4) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

(f) This rule shall apply to all pending applications, supervision plans awaiting review or previously approved, as well as all future applications filed with the Council.

Rule: 781.403. Independent Practice Recognition (Non-Clinical).
Action: Proposed Amendments
Comment: The proposed amendments will address the backlog of applications and expedite future applications received.

781.403. Independent Practice Recognition (Non-Clinical).

- (a) An LBSW or LMSW who seeks to obtain ~~Council approval for~~ the specialty recognition of independent non-clinical practice shall meet requirements and parameters set by the Council in §781.401 of this title (relating to Qualifications for Licensure).
- (b) An individual supervising an LBSW for independent non-clinical practice recognition shall be an LBSW recognized for independent non-clinical practice; an LMSW recognized for independent non-clinical practice; an LMSW-AP; or an LCSW. The supervisor shall be Council-approved.
- (c) An individual supervising an LMSW for the independent non-clinical practice recognition shall be Council-approved and shall be an LMSW recognized for independent non-clinical practice, an LMSW-AP, or an LCSW.
- (d) A person who has obtained only the temporary license may not begin supervision until the Council issues a regular license.
- (e) The Council may use the Internal Revenue Service (IRS) guidelines developed in 1996 to demonstrate whether a professional is an independent contractor or an employee. These guidelines revolve around the control an employer has in an employer-employee relationship, in which the employer has the right to control the "means and details" by which services are performed.
 - (1) Behavioral control. The employer can control the employee's behavior by giving instructions about how the work gets done rather than simply looking at the end products of work. The more detailed the instructions, the more control the employer exercises. An employer requiring that employees be trained for the job is also an example of behavioral control, though contractors may also go through training.
 - (2) Financial control. The employer determines the amount and regularity of payments to employees. A contractor is typically paid when he/she completes the work, and the contractor usually sets a timeframe for completing the work. The most important element of

financial control is that a contractor has more freedom to make business decisions that affect the profitability of his/her work. A contractor, for instance, may invest in renting an office or buying equipment, while the employee does not. While employees are usually reimbursed for job-related expenses, the contractor may or may not be reimbursed, but lack of reimbursement usually signals that a worker is independent. An independent contractor often makes his or her services available to other potential clients, while an employee does not.

(3) Relationship of the parties. The intent of the relationship is significant. The relationship is usually outlined in the written contract and gives one party more control than the other. If a company gives a worker employee benefits, the worker is an employee. The ability to terminate the relationship is another evidence of control in the relationship. If the employer-employee relationship appears to be permanent, it denotes an employee, not contractor, relationship. If a worker performs activities that are a key aspect of the company's regular business, that denotes an employee status.

(f) An LBSW or LMSW who plans to apply for the specialty recognition of non-clinical independent practice shall follow procedures set out in §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition).

(g) An LBSW or LMSW may practice independently when the LMSW or LBSW holds the independent practice specialty recognition, or when under a supervision plan for independent practice ~~that has been approved by the Council~~ but the Council-approved supervisor is still responsible for the acts or omissions of the supervisee while providing services under the supervision plan.

Rule: 781.404. Recognition as a Council-approved Supervisor and the Supervision Process.

Action: Proposed Amendments

Comment: The proposed amendments will address the backlog of applications and expedite future applications received.

781.404. Recognition as a Council-approved Supervisor and the Supervision Process.

- (a) Types of supervision include:
- (1) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;
 - (2) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;
 - (3) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a **Council-approved** supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;
 - (4) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor;
 - (5) non-clinical supervision of a Licensed Master Social Worker who is providing non-clinical social work service toward qualifications for the LMSW-AP; this supervision is delivered by a Council-approved supervisor; or
 - (6) Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

- (b) A person who wishes to be a Council-approved supervisor must file an application and pay the applicable fee.
- (1) A Council-approved supervisor must be actively licensed in good standing by the Council as an LBSW, an LMSW, an LCSW, or be recognized as an Advanced Practitioner (LMSW-AP), or hold the equivalent social work license in another jurisdiction. The person applying for Council-approved status must have practiced at his/her category of licensure for two years. The Council-approved supervisor shall supervise only those supervisees who provide services that fall within the supervisor's own competency.
 - (2) The Council-approved supervisor is responsible for the social work services provided within the supervisory plan.
 - (3) The Council-approved supervisor must have completed a supervisor's training program acceptable to the Council.
 - (4) The Council-approved supervisor must complete three hours of continuing education every biennium in supervision theory, skills, strategies, and/or evaluation.
 - (5) The Council-approved supervisor must designate at each license renewal that he/she wishes to continue Council-approved supervisor status.
 - (6) The Council-approved supervisor must submit required documentation and fees to the Council.
 - (7) When a licensee is designated Council-approved supervisor, he or she may perform the following supervisory functions.
 - (A) An LCSW may supervise clinical experience toward the LCSW license, non-clinical experience toward the Advanced Practitioner specialty recognition, non-clinical experience toward the Independent Practice Recognition (non-clinical), and Council-ordered probated suspension;
 - (B) An LMSW-AP may supervise non-clinical experience toward the Advanced Practitioner specialty recognition; non-clinical experience toward the non-clinical Independent Practice Recognition; and Council-ordered probated suspension for non-clinical practitioners;
 - (C) An LMSW with the Independent Practice Recognition (non-clinical) who is a Council-approved supervisor may supervise an LBSW's or LMSW's non-clinical experience toward the non-clinical Independent Practice Recognition;

and an LBSW or LMSW (non-clinical) under Council-ordered probated suspension;

- (D) An LBSW with the non-clinical Independent Practice Recognition who is a Council-approved supervisor may supervise an LBSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW under Council-ordered probated suspension.
- (8) The approved supervisor must renew the approved supervisor status in conjunction with the biennial license renewal. The approved supervisor may surrender supervisory status by documenting the choice on the appropriate Council renewal form and subtracting the supervisory renewal fee from the renewal payment. If a licensee who has surrendered supervisory status desires to regain supervisory status, the licensee must reapply and meet the current requirements for approved supervisor status.
 - (9) A supervisor must maintain the qualifications described in this section while he or she is providing supervision.
 - (10) A Council-approved supervisor who wishes to provide any form of **Council-approved supervision** or Council-ordered supervision must comply with the following:
 - (A) The supervisor is obligated to keep legible, accurate, complete, signed supervision notes and must be able to produce such documentation for the Council if requested. The notes shall document the content, duration, and date of each supervision session.
 - (B) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the Council.
 - (C) A Council-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.
 - (D) Before entering into a supervisory **agreement plan**, the supervisor shall be aware of all conditions of exchange with the clients served by her or his supervisee. The supervisor shall not provide supervision if the supervisee is practicing outside the authorized scope of the license. If the supervisor believes that a social worker is practicing

outside the scope of the license, the supervisor shall make a report to the Council.

- (E) A supervisor shall not be employed by or under the employment supervision of the person who he or she is supervising.
- (F) ~~A supervisor shall not be a family member of the person being supervised. A supervisor may not supervise an individual who is related within the second degree of affinity or consanguinity.~~
- (G) A supervisee must have a clearly defined job description and responsibilities.
- (H) A supervisee who provides client services for payment or reimbursement shall submit billing to the client or third-party payers which clearly indicates the services provided and who provided the services, and specifying the supervisee's licensure category and the fact that the licensee is under supervision.
- (I) If either the supervisor or supervisee has an expired license or a license that is revoked or suspended during supervision, supervision hours accumulated during that time will be accepted only if the licensee appeals to and receives approval from the Council.
- (J) A licensee must be a current Council-approved supervisor in order to provide professional development supervision toward licensure or specialty recognition, or to provide Council-ordered supervision to a licensee. Providing supervision without having met all requirements for current, valid Council-approved supervisor status may be grounds for disciplinary action against the supervisor.
- (K) The supervisor shall ensure that the supervisee knows and adheres to Subchapter B, Rules of Practice, of this Chapter.
- (L) The supervisor and supervisee shall avoid forming any relationship with each other that impairs the objective, professional judgment and prudent, ethical behavior of either.
- (M) Should a supervisor become subject to a Council disciplinary order, that person is no longer a Council-approved supervisor and must so inform all supervisees, helping them to find alternate supervision. The person may

reapply for Council-approved supervisor status by meeting the terms of the disciplinary order and having their license in good standing, in addition to submitting an application for Council-approved supervisor, and proof of completion of a 40-hour Council-approved supervisor training course, taken no earlier than the date of execution of the Council order.

- (N) The Council may deny, revoke, or suspend Council-approved supervisory status for violation of the Act or rules. Continuing to supervise after the Council has denied, revoked, or suspended Council-approved supervisor status, or after the supervisor's supervisory status expires, may be grounds for disciplinary action against the supervisor.
- (O) If a supervisor's Council-approved status is expired, suspended, or revoked, the supervisor shall refund all supervisory fees the supervisee paid after the date the supervisor ceased to be Council-approved.
- (P) A supervisor is responsible for developing a well-conceptualized supervision plan with the supervisee, and for updating that plan whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided.
- (Q) All Council-approved supervisors shall have taken a Council-approved supervision training course by January 1, 2014 in order to renew Council-approved supervisor status. The Council recognizes that many licensees have had little, if any, formal education about supervision theories, strategies, problem solving, and accountability, particularly LBSWs who may supervise licensees toward the IPR. Though some supervisors have functioned as employment supervisors for some time and have acquired practical knowledge, their practical supervision skills may be focused in one practice area, and may not include current skills in various supervision methods or familiarity with emerging supervisory theories, strategies, and regulations. Therefore, the Council values high-quality, contemporary, multi-modality supervision training to ensure that all supervisors have refreshed their supervisory skills and knowledge in order to help supervisees practice safely and effectively.

(11) A Council-approved supervisor who wishes to provide supervision towards licensure as an LCSW or towards specialty recognition in Independent Practice (IPR) or Advanced Practitioner (LMSW-AP), which is supervision for professional growth, must comply with the following:

(A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions, in group sessions, or in a combination of one-on-one and group sessions. Session may transpire in the same geographic location, or via audio, web technology or other electronic supervision techniques that comply with HIPAA and Texas Health and Safety Code, Chapter 611, and/or other applicable state or federal statutes or rules.

(B) Supervision groups shall have no fewer than two members and no more than six.

(C) Supervision shall occur in proportion to the number of actual hours worked, with a base line of one hour of supervision for every 40 hours worked. If the supervisee works full-time, supervision shall occur on average at least twice a month and for no less than four hours per month; if the supervisee works part-time (at least 20 hours per week), supervision shall occur on average at least once a month and no less than two hours per month. Supervisory sessions shall last at least one hour and no more than two hours per session. ~~No more than 10 hours of supervision may be counted in any one month, or 30-day period, as appropriate, towards satisfying minimum requirements for licensure or specialty recognition.~~

(D) The Council considers supervision toward licensure or specialty recognition to be supervision which promotes professional growth. Therefore, all supervision formats must encourage clear, accurate communication between the supervisor and the supervisee, including case-based communication that meets standards for confidentiality. Though the Council favors supervision formats in which the supervisor and supervisee are in the same geographical place for a substantial part of the supervision time, the Council also recognizes that some current and future technology, such as using reliable, technologically-secure computer cameras and microphones, can allow personal face-to-face, though remote, interaction, and can support

professional growth. Supervision formats must be clearly described in the supervision plan, explaining how the supervision strategies and methods of delivery meet the supervisee's professional growth needs and ensure that confidentiality is protected. ~~The plan must be approved by the Council.~~

- (E) Supervision toward licensure or specialty recognition must extend over a full 3000 hours over a period of not less than 24 full months and a period of not more than 48 full months for LCSW or LMSW-AP or not more than 60 full months for Independent Practice Recognition (IPR). Even if the individual completes the minimum of 3000 hours of supervised experience and minimum of 100 hours of supervision prior to 24 months from the start date of supervision, supervision which meets the Council's minimum requirements shall extend to a minimum of 24 full months. A month is a 30-day period or the length of the actual calendar month, whichever is longer.
 - (F) The supervisor and the supervisee bear professional responsibility for the supervisee's professional activities.
 - (G) If the supervisor determines that the supervisee lacks the professional skills and competence to practice social work under a regular license, the supervisor shall develop and implement a written remediation plan for the supervisee.
 - (H) ~~Council approved~~ Supervised professional experience ~~towards required for~~ licensure must comply with §781.401 of this title (relating to Qualifications for Licensure) and §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition) of this title and all other applicable laws and rules.
- (12) A Council-approved supervisor who wishes to provide supervision required as a result of a Council order must comply with this title, all other applicable laws and rules, and/or the following.
- (A) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:
 - (i) submit one supervisory plan for each practice location to the Council for approval by the Council

or its designee within 30 days of initiating supervision;

- (ii) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;
 - (iii) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and
 - (iv) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.
- (B) The supervisor who agrees to provide Council-ordered supervision of a licensee who is under Council disciplinary action must understand the Council order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to Council discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(C) Council-ordered and mandated supervision timeframes are specified in the Council order.

~~(e) A licensee who submits one of the following: a Clinical Supervision Plan, a Non-Clinical Supervision Plan, or a Council Ordered Supervision Plan, to the Council for approval, shall receive a written response from the Council of either approval or deficiency related to the plan. If no written response is received by the licensee within four weeks of submission of the plan, it is the responsibility of the licensee who has submitted the plan to follow up with the Council office related to receipt and/or status of the plan within 60 days of submission. If written approval or deficiency is sent to the last known address of the licensee, a Council response related to acceptance of the plan shall be considered to have been sent. Supervision and supervised experience hours are not acceptable to meet minimum requirements towards licensure or specialty recognition or to satisfy the terms of a Council order if not accrued under a Council approved plan without explicit authorization from the Council.~~

Rule: 781.406. Required Documentation of Qualifications for Licensure.
Action: Proposed Amendments
Comment: The proposed amendments would address the backlog of applications and expedite future applications received.

781.406. Required Documentation of Qualifications for Licensure.

- (a) Application form. An applicant for licensure must submit a completed official application form with all requested information.
- (b) Education verification.
 - (1) The applicant's education must be documented by official college transcripts from social work educational units accredited by CSWE.
 - (2) Degrees for licensure as an LBSW or LMSW must be from programs accredited or in candidacy for accreditation by CSWE.
- (c) Experience verification.
 - (1) An applicant's experience for licensure or for specialty recognition must meet the requirements of §781.401 of this title (relating to Qualifications for Licensure), §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition), and §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process). The applicant must document the names and addresses of supervisors; beginning and ending dates of supervision; job description; and average number of hours of social work activity per week. The applicant must further document the appropriate supervision plan and verification form, both approved by the Council, for each practice location. ~~If any elements described in the supervision plan change, including but not limited to work hours, full- or part-time work status, location of supervision, or name of supervisor, the applicant must submit the appropriate verification form within 30 days of the change or supervision termination. The applicant must submit a new, complete supervision plan for Council approval within 30 days of beginning the new supervision agreement.~~
 - (2) The applicant's experience must have been in a position providing social work services, under the supervision of a qualified

supervisor, with written evaluations to demonstrate satisfactory performance.

- (3) Supervised experience must have occurred within the five calendar years immediately preceding the date of application.
- (4) The applicant must maintain and upon request, provide to the Council documentation of employment status, pay vouchers, or supervisory evaluations.