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*Texas Behavioral Health  
Executive Council and Texas State  
Board of Examiners of Professional  
Counselors  
**Rules***

# **TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL NEW, AMENDED, REPEALED RULES**

The following is a list of the rules which have been added, amended, or repealed since the last update to these rules.

## **Online Act and Rules of the Council – September 2020**

Note: While every effort is made to keep this information as accurate and current as possible, the reader should bear in mind that statutes may be amended, subsequent legislation may be enacted and judicial determinations may be rendered that affect the impact of statutes and rules reported herein.

For any official listing of a rule, a licensee, applicant, or member of the public may consult the Texas Administrative Code on the Secretary of State's website: <http://www.sos.state.tx.us/tac/>. When accessing this website: (1) click on the TAC viewer, (2) scroll down and click on Title 22 Examining Boards, (3) scroll down and click on Part 41, Texas Behavioral Health Executive Council. To view rules that have been proposed but not finally adopted by the Board, access the following website: <https://texreg.sos.state.tx.us/public/regviewctx>

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COUNSELORS  
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# **TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL RULES**

## **GENERAL PROVISIONS**

### **Subchapter A. General Provisions.**

**881.1. Authority.** This chapter is promulgated under the authority of Occupations Code, Chapter 507, and applies to each member board.

*Adopted to be effective: September 1, 2020*

**881.2. Definitions.**

- (a) The following definitions are generally applicable throughout the agency's rules and policies:
- (1) The term "ALJ" as used herein shall refer to an administrative law judge employed by SOAH.
  - (2) The terms "Chapter 501," "Chapter 502," "Chapter 503," "Chapter 505," and "Chapter 507" as used herein shall refer to the corresponding chapter in the Occupations Code.
  - (3) The term "Executive Council" or "Council" as used herein shall refer to the Texas Behavioral Health Executive Council (BHEC).
  - (4) The term "member board" as used herein shall refer to:
    - (A) The Texas State Board of Examiners of Marriage and Family Therapists (TSBEMFT);
    - (B) The Texas State Board of Examiners of Professional Counselors (TSBEPC);
    - (C) The Texas State Board of Examiners of Psychologists (TSBEP); or
    - (D) The Texas State Board of Social Worker Examiners (TSBSWE).
  - (5) The term "PFD" as used herein shall refer to a proposal for decision issued by an ALJ.
  - (6) The terms "professional development" and "continuing education" as used herein have the same meaning.
  - (7) The term "SOAH" as used herein shall refer to the State Office of Administrative Hearings.

- (8) The term "TAC" as used herein shall refer to the Texas Administrative Code.
- (b) The following definitions apply only to those rules specific to the regulation of the practice of marriage and family therapy:
  - (1) "LMFT" refers to a licensed marriage and family therapist and has the same meaning as assigned by §502.002 of the Occupations Code.
  - (2) "LMFT Associate" refers to a licensed marriage and family therapist associate and has the same meaning as assigned by §502.002 of the Occupations Code.
- (c) The following definitions apply only to those rules specific to the regulation of the practice of professional counseling:
  - (1) "LPC" refers to a licensed professional counselor and has the same meaning as assigned by §503.002 of the Occupations Code.
  - (2) "LPC Associate" refers to an individual licensed as a professional counselor associate under §503.308 of the Occupations Code.
- (d) The following definitions apply only to those rules specific to the regulation of the practice of psychology:
  - (1) "LPA" or "Psychological Associate" refers to an individual licensed as a psychological associate under §501.259 of the Occupations Code.
  - (2) "LSSP" refers to an individual licensed as a specialist in school psychology under §501.260 of the Occupations Code.
  - (3) "Provisionally licensed psychologist" or "provisional licensee" means an individual licensed as a psychologist with provisional status under §501.253 of the Occupations Code.
  - (4) "PSYPACT" refers to the Psychology Interjurisdictional Compact found in Chapter 501, Subchapter L of the Occupations Code.
- (e) The following definitions apply only to those rules specific to the regulation of the practice of social work:
  - (1) "LBSW" refers to a licensed baccalaureate social worker and has the same meaning as assigned by §505.002 of the Occupations Code.
  - (2) "LCSW" refers to a licensed clinical social worker and has the same meaning as assigned by §505.002 of the Occupations Code.
  - (3) "LMSW" refers to a licensed master social worker and has the same meaning as assigned by §505.002 of the Occupations Code.

- (4) "LMSW-AP" refers to an individual licensed as a master social worker with the advanced practitioner specialty recognition.

*Adopted to be effective: September 1, 2020*

**881.3. Council and Board Meetings.**

- (a) Every regular, special, or called meeting of the Council or a member board shall be open to the public as provided by the Government Code, Chapter 551 ("the Open Meetings Act").
- (b) A quorum for the Council or a member board shall consist of a majority of all the respective members as designated by statute. When a quorum is present, a motion before the body is carried by an affirmative vote of the majority of the members present and participating in the vote.
- (c) The presiding officers of the Council and member boards may make and second motions, as well as vote on any matter brought before their respective body without the necessity of relinquishing the chair.
- (d) The Council and each member board shall provide the public with a reasonable opportunity to appear before the respective body and offer public comment on any issue under the Council's or member board's jurisdiction. Persons wishing to offer public comment must sign in at the beginning of the meeting and may speak during the public comment portion of the meeting. The presiding officer shall maintain decorum and orderly proceedings, and may limit the time allowed for each individual providing public comment.

*Adopted to be effective: September 1, 2020*

**881.4. Council Member Terms.**

- (a) The terms for the Council members selected by the Texas State Board of Examiners of Psychologists and the Texas State Board of Social Worker Examiners shall expire as follows:
  - (1) for professional members, on February 1st of odd years; and
  - (2) for public members, on February 1st of even years.
- (b) The terms for the Council members selected by the Texas State Board of Examiners of Professional Counselors and the Texas State Board of Examiners of Marriage and Family Therapists shall expire as follows:
  - (1) for professional members, on February 1st of even years; and
  - (2) for public members, on February 1st of odd years.
- (c) Member boards may reappoint members to serve on the Council without limitation as to the number of terms served.

- (d) A member selected to fill a vacancy on the Council holds office for the unexpired portion of the term.

*Adopted to be effective: September 1, 2020*

**881.5. Conflicts of Interest and Recusals.**

- (a) A Council or board member who has any personal or professional interest that might reasonably tend to influence the discharge of the member's duties in a matter pending before the agency, shall disclose that conflict in an open meeting called and held in compliance with Chapter 551 of the Government Code. Should the required disclosure relate to a matter to be considered during a closed meeting, the member shall disclose the conflict during the closed meeting. A Council or board member may neither vote nor otherwise participate in any discussion or decision on a pending matter where the member's personal or professional interest might reasonably tend to influence the discharge of the member's duties. Any conflict disclosed by a board member shall be entered in the minutes or certified agenda of the meeting.
- (b) An individual who has any personal or professional interest that might reasonably tend to influence the discharge of the individual's duties while serving on a committee, temporary suspension or disciplinary review panel, or workgroup, shall disclose that conflict to the committee, panel, or workgroup, as well as to the Executive Director. The individual may neither vote nor otherwise participate in any discussion or decision on a pending matter where the individual's personal or professional interest might reasonably tend to influence the discharge of the individual's duties. Any conflict shall be entered in any minutes or notes kept by the committee, panel, or workgroup.
- (c) A Council or board member may not vote or otherwise participate in any discussion or decision conducted during a meeting held in compliance with Chapter 551 of the Government Code regarding a complaint or eligibility proceeding previously heard by the member while serving on a temporary suspension panel or disciplinary review panel. A Council or board member who is disqualified under this subsection shall be recused from any voting or discussions on the matter, and the recusal shall be entered in the minutes or certified agenda of the meeting.
- (d) Any individual who is required to make a disclosure or is recused or restricted from voting or participating in some manner under this rule, shall refrain from influencing or attempting to influence the discussion or decision on a

matter in which the individual is prohibited from participating. The presiding officer or Executive Director may take reasonable steps to enforce this requirement, including requesting that the individual leave the room before beginning or continuing with a meeting, hearing, discussion, or vote.

- (e) A disclosure required by this rule must be made as soon as possible once an individual becomes aware of facts giving rise to a duty to take action under this rule. Any information received by a Council or board member or agency staff that might reasonably lead one to believe that an individual has a duty to take action under this rule must be sent to the Executive Director, who shall then forward the information to the individual.
- (f) Except as provided for in subsection (c) of this section, this rule shall not operate to preclude a Council member from voting or otherwise participating in any discussion or decision due solely to a member's service on an underlying member board.
- (g) It is presumed that the judgment of a reasonable person subject to this rule would not be materially affected because the individual holds a license issued by this agency or one of its member boards.
- (h) A person does not have an interest which is in conflict with the proper discharge of duties contemplated under this rule if any benefit or detriment accrues to the person, or any individual or group with whom the person is associated, to no greater extent than any other similarly situated person.

*Adopted to be effective: September 1, 2020*

**881.6. Limited Delegation of Executive Council Authority to Board Members.** By rule, policy, or custom, the Council may delegate to a member board any responsibility or authority not exclusively reserved to the Council in statute. The Council retains responsibility and oversight for any decisions or actions undertaken by a member board under this grant of authority. The Council may reverse, modify, or refer any decisions or actions taken by a member board under the authority of this rule back to that member board for further action or consideration.

*Adopted to be effective: September 1, 2020*

**881.7. Unofficial Statements and Decisions.** Statements and decisions made by an individual Council or board member, an advisory committee member, or a member of the agency staff are not binding on the Council, or its member boards, when conducting agency business, unless otherwise stated in these rules.

*Adopted to be effective: September 1, 2020*

**881.8. Former Council or Board Members.**

- (a) A Council or board member whose term has expired and who has ceased to serve will not be employed or utilized to represent the Council or one of its member boards for two years after the member's service has ended.
- (b) A former Council or board member may not represent that the member is an official or unofficial representative of the Council or one of its member boards. Any such representations are not binding in any way.
- (c) A former Council or board member may not disclose confidential or privileged information obtained during the member's service on the Council or board. Such disclosure is deemed unprofessional conduct and is grounds for disciplinary action.

*Adopted to be effective: September 1, 2020*

**881.9. Prohibition Against Dual Office Holding.**

- (a) The Executive Director and appointed members of the agency (i.e., Council and board members) may not accept an offer to serve in another non-elective office unless they first obtain from the Council or their respective member board, a finding that the member has satisfied Article XVI, §40, of the Texas Constitution.
- (b) The Council or board must make a written record of any finding under subsection (a) of this section. The finding must include any compensation that the member or Executive Director receives from holding the additional office, including salary, bonus, or per diem payment.

*Adopted to be effective: September 1, 2020*

**881.10. Conflict Between Other Laws and Council.**

- (a) In the event of a conflict between a Council rule and the state or federal constitution, a state or federal statute, or a rule, guideline, or requirement promulgated by a federal office or agency, the state or federal law, guideline, or requirement shall control.
- (b) In the event of a conflict between a rule in 22 TAC Part 41 and Parts 21, 30, 34, and 35; the rules in Part 41 shall prevail.

*Adopted to be effective: September 1, 2020*

**881.11. Access to Agency Records by Appointed Members.**

- (a) Each member of the Council is entitled to access all information and records written, produced, collected,

assembled, or maintained by the Council or a member board, including confidential information. The access granted under this subsection is limited to official agency business only.

- (b) Each member of an underlying board is entitled to access all information and records written, produced, collected, assembled, or maintained by the member's respective board, including confidential information. The access granted under this subsection is limited to official agency business only.
- (c) A request for access to information or records by a Council or board member must be directed to the Executive Director. If the request for access relates to the Executive Director, the request may be directed to the presiding officer for the Council and the General Counsel.
- (d) Notwithstanding the foregoing, a Council or board member may not access any confidential, non-public, or proprietary examination materials if the member intends to apply for or is a current applicant for licensure with this agency.

*Adopted to be effective: September 1, 2020*

**881.12. Statutory or Rule References.** Unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.

*Adopted to be effective: September 1, 2020*

**881.13. Conduct and Decorum.**

- (a) Persons having business with or interacting with the Council, member boards, or agency staff shall conduct themselves with proper dignity, courtesy, and respect. Disorderly or disruptive conduct will not be tolerated.
- (b) The presiding officers for the Council and member boards may, in their own discretion, exclude from a meeting or proceeding, a person who, with intent to prevent or disrupt an agency meeting or proceeding, obstructs or interferes with the meeting or proceeding by physical action or verbal utterance. A person excluded under this rule may be excluded for the remainder of the meeting or proceeding or for a shorter period of time as is deemed just and reasonable by the presiding officer.
- (c) Conduct or language directed at agency officials or staff by applicants or licensees that a reasonable person would find abusive or threatening is considered unprofessional conduct and may serve as grounds for a Council-initiated complaint and disciplinary action.

*Adopted to be effective: September 1, 2020*



## **Subchapter B. Rulemaking.**

### **881.20. Rulemaking by the Executive Council.**

- (a) The Council shall adopt rules necessary to perform its duties and implement Title 3, Subtitle I, Chapter 507 of the Occupations Code. When carrying out its rulemaking functions, the Council shall abide by the requirements of the Administrative Procedure Act found in Chapter 2001 of the Government Code.
- (b) The Council shall have exclusive rulemaking authority for the agency, including rules governing general agency operations, administration of licensure, investigation of complaints, and sanction procedures. In connection with this rulemaking authority, the Council must also review draft rules proposed by each member board for anti-competitive impacts, administrative consistency, and good governance concerns.
- (c) The Council may propose and adopt a rule governing those matters set forth in §507.153(a) of the Occupations Code if a draft rule has been proposed by the member board for the profession. Member boards may not propose new draft rules or changes to rules except as authorized by §507.153(a).
- (d) Member boards must submit a new draft rule or rule change to the Council for consideration by submitting a draft of the rule with any deletions crossed through and additions underlined. The draft must also contain each of the notice components required in a preamble (e.g., §2001.024 of the Government Code) when proposing a new rule or changes to an existing rule. When submitting a new draft rule or rule change to the Council, member boards must also submit any information or comments received from the public in connection with the proposed rule.
- (e) When reviewing a draft rule proposed by a member board, the Council may:
  - (1) Request additional information relevant to the rule from the member board;
  - (2) Require the member board to conduct new or additional analysis of possible implications of the rule;
  - (3) Solicit public comment or hold public hearings, or alternatively, request the member board do so; and
  - (4) Make non-substantive, editorial changes to the rule as necessary.
- (f) Following the review of a draft rule submitted by a member board, the Council shall either accept the draft rule as proposed and initiate formal rulemaking proceedings or

return the draft rule to the member board for revision. When returning a rule for revision, the Council must include an explanation of the decision to reject the rule as proposed, and may recommend changes that would make the rule acceptable to the Council.

- (g) The Council shall, with regard to rules proposed pursuant to §507.153(a) of the Occupations Code, share with the appropriate member board any public comments received following publication of a proposed rule in the *Texas Register*. Following publication of a proposed rule and review of any public comments received, a member board shall suggest any changes needed to the proposed rule or vote to recommend adoption, tabling, or withdrawal of the rule and advise the Council of such. Thereafter, the Council may adopt the rule as proposed, withdraw or table the rule in accordance with the member board's recommendation, or return the rule to the member board for further revision. When returning a rule for revision, the Council must include an explanation of the decision to not adopt the rule as proposed, and may recommend any changes that would make the rule acceptable to the Council.
- (h) The Council may make non-substantive, editorial changes to a draft rule as necessary.
- (i) The Council shall consider each of the following factors when reviewing a draft rule submitted by a member board:
  - (1) Whether the proposed rule promotes a clearly articulated and affirmatively expressed policy as established by the legislature to displace competition with government action, or whether the proposed rule reflects the exercise of discretion or implied authority by a member board;
  - (2) Whether absence of the proposed rule poses a significant risk of harm or danger to the public health, safety, or welfare of the residents of the state that is easily recognizable and not remote or dependent on tenuous argument;
  - (3) Whether the proposed rule seeks to regulate activities or services requiring specialized skill or training and whether the public clearly needs and will benefit from the proposed rule;
  - (4) Whether the proposed rule would have the effect of directly or indirectly increasing the cost of mental health services and, if so, whether the increase would be more harmful to the public than the harm that might result from the absence of the proposed rule;

- (5) Whether the proposed rule would significantly reduce market participation or competition in the state and, if so, whether the reduction would be more harmful to the public than the harm that might result from the absence of the proposed rule; and
- (6) Whether the residents of the state are or may be effectively protected by other means

*Adopted to be effective: September 1, 2020*

**881.21. Petition for Rulemaking.**

- (a) Any interested person may petition for rulemaking in accordance with §2001.021 of the Government Code by submitting to the Council a written request for the adoption of a rule or rule change. The written request must contain a return mailing address for the agency's response.
- (b) The written request must, at a minimum, set forth or identify the rule the petitioner wants the Council to adopt or change, reasons why the petitioner believes the requested rulemaking is necessary, and include a copy of the proposed rule or any proposed changes with deletions crossed through and additions underlined. Additionally, the written request must affirmatively show that the requestor qualifies as an interested person under this rule. Requests which do not affirmatively show that the requestor qualifies as an interested person under this rule may be denied.
- (c) The written request should also address the economic cost to persons required to comply with the rule, the effects of the rule on small or micro-businesses or rural communities, and the impact the rule would have on local employment or economies, if such information can be derived from available sources without undue cost or burden.
- (d) The Council will respond to a written request for adoption of a rule from an interested person in accordance with §2001.021 of the Government Code.
- (e) The term "interested person" as used in this rule, shall have the same meaning as that assigned by §2001.021(d) of the Government Code. Additionally, a person who submits a petition under this rule must affirm that they qualify as an interested person in the petition. Petitions which do not contain such an affirmation may be denied.

*Adopted to be effective: September 1, 2020*

## **Subchapter C. Personnel.**

### **881.30. Executive Director.**

- (a) The Council shall determine qualifications for and employ an Executive Director who shall be the Chief Executive Officer of the agency.
- (b) The duties of the Executive Director shall be to administer and enforce the applicable law, to assist in conducting Council meetings, and to carry out other responsibilities as assigned by the Council.
- (c) The Executive Director shall have the authority and responsibility for the operations and administration of the agency and such additional powers and duties as prescribed by the Council. As chief executive of the agency, the Executive Director shall be responsible for the management of all aspects of administration of the agency to include personnel, financial and other resources in support of the applicable law, rules, policies, mission and strategic plan of the agency. The Executive Director may delegate any responsibility or authority to an employee of the Council. Responsibility or authority granted to the Executive Director shall include an employee designated by the Executive Director, yet accountability to the Council for all management and activity rests with the Executive Director.
- (d) The Executive Director may implement any emergency orders or proclamations issued by the Governor to suspend or amend existing statutes and rules. The Executive Director will notify the Council of the actions taken to comply with the Governor's emergency orders or proclamations.

*Adopted to be effective: September 1, 2020*

### **881.31. Agency Staff Training and Education.**

- (a) In accordance with the State Employee Training Act found at Government Code, Chapter 656, Subchapter C, agency staff may be permitted or required to attend training or education programs if those programs relate to the employee's duties or prospective duties, materially aid effective administration of the agency's functions, and serve an important public purpose.
- (b) The Council's Executive Director shall be eligible to attend training and education programs, and shall determine which other employees will be permitted or required to attend training.
- (c) Employees who receive training must utilize the training opportunity to prepare for technological and legal

developments facing the agency, or to increase professional capabilities or competence directly related to the work of the agency.

- (d) An employee, prior to receiving training for three or more months, during which the employee does not perform the employee's regular duties, must enter into a written agreement with the Council to comply with the requirements of §656.103(a) of the Government Code. Employees who fail or refuse to enter into such an agreement shall not be permitted to attend training lasting three or more months.
- (e) The Council shall pay the costs and expenses related to approved training in accordance with the State Employee Training Act, the Comptroller's rules and regulations, and the Council's own policies relating to employee reimbursement.

*Adopted to be effective: September 1, 2020*

**881.32. Sick Leave Pool.**

- (a) The Council hereby establishes a sick leave pool to assist employees and their immediate families in dealing with catastrophic illness or injury that forces them to exhaust all accrued sick leave.
- (b) The Council's sick leave pool shall be administered by the Executive Director in accordance with Chapter 661 of the Government Code, the rules and regulations of the Employees Retirement System of Texas, and the Texas Human Resources Statutes Inventory manual published by the Texas State Auditor's Office.
- (c) The Executive Director shall develop and prescribe procedures for the operation of the sick leave pool, and include such procedures in the Council's personnel manual.

*Adopted to be effective: September 1, 2020*

## **Subchapter D. Contracts and Procurement.**

**881.40. Agency Contracts and Purchasing.**

- (a) In accordance with §2155.076 of the Government Code, the Council adopts by reference the rules of the Comptroller of Public Accounts regarding purchasing protest procedures set forth in 34 TAC, Part 1, Chapter 20, Subchapter F, Division 3. All vendor protests under this rule must be submitted to the Council's Chief Financial Officer, who shall initiate a review of the protest. Any appeal to a determination of a protest by the Chief Financial Officer shall be to the Executive Director, who may elect to submit the appeal to

the Council for final determination. The Council shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the Council's retention schedule.

- (b) In accordance with §2156.005 of the Government Code, the Council adopts by reference the rules of the Comptroller of Public Accounts regarding bid opening and tabulation set forth in 34 TAC, Part 1, Chapter 20, Subchapter C, Division 2.
- (c) In accordance with §2260.052 of the Government Code, the Council adopts by reference the rules of the Office of the Attorney General in 1 TAC Part 3, Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes). The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of the contract's complexity, subject matter, dollar amount, or method and time of performance.
- (d) In accordance with §2261.202 of the Government Code, the Executive Director shall be responsible for monitoring agency contracts and for monitoring agency compliance with all applicable laws governing agency contracting. The Executive Director may delegate those duties necessary to carry out this responsibility to other agency staff who report directly to the Executive Director.

*Adopted to be effective: September 1, 2020*

**881.41. Use of Historically Underutilized Businesses (HUBS).** In accordance with §2161.003 of the Government Code, the Council adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter D, Division 1.

*Adopted to be effective: September 1, 2020*

# APPLICATIONS AND EXAMINATIONS

## Subchapter A. License Applications.

- 882.1. Application Process.** Applications for licensure are processed in the following manner:
- (1) Applicants must submit for review an official application form, the corresponding application fee, and all information required by law to the Council. The responsibility for submitting a complete application resides solely with the applicant. An application submitted with the incorrect fee amount will be returned to the applicant.
  - (2) Applications are reviewed in the order in which they are received, unless the applicant qualifies for expedited processing under §55.005 of the Occupations Code. Applicants who qualify for expedited processing will have their applications processed as soon as practicable. The Council will notify applicants of any deficiency in their application.
  - (3) Applications for licensure under Chapters 502, 503, and 505 of the Occupations Code which are incomplete will be held open for one year from the date of receipt, after which, if still incomplete, they will expire. Applications for licensure under Chapter 501 of the Occupations Code which are incomplete will be held open for 90 days from the date of receipt, after which, if still incomplete, they will expire. If licensure is sought after an application has expired, a new application and filing fee must be submitted.
  - (4) Applications containing a substantive problem with an applicant's qualifications that cannot be resolved by reviewing staff shall proceed through the following chain of review until such matter is resolved to the agency's satisfaction:
    - (A) Reviewing staff's immediate supervisor;
    - (B) Licensing Manager;
    - (C) Executive Director;
    - (D) Committee established by the member board for the profession charged with addressing application or licensing matters; and

- (E) Full member board for the profession
- (5) Once an application is complete, the applicant is either approved or denied to sit for any required examinations, or approved or denied licensure. Agency staff will send out a letter reflecting the agency's determination and instructions for the next steps needed, if any.

*Adopted to be effective: September 1, 2020*

**882.2. General Application File Requirements.**

- (a) To be complete, an application file must contain all information needed to determine an applicant's eligibility to sit for the required examinations, or the information and examination results needed to determine an applicant's eligibility for licensure. At a minimum, all applications for licensure must contain:
  - (1) An application in the form prescribed by the Council based on member board rules and corresponding fee(s);
  - (2) An official transcript from a properly accredited institution indicating the date the degree required for licensure was awarded or conferred. Transcripts must be received by the Council directly from the awarding institution, a transcript or credential delivery service, or a credentials bank that utilizes primary source verification;
  - (3) A fingerprint based criminal history record check through the Texas Department of Public Safety and the Federal Bureau of Investigation;
  - (4) A self-query report from the National Practitioner Data Bank (NPDB) reflecting any disciplinary history or legal actions taken against the applicant. A self-query report must be submitted to the agency in the sealed envelope in which it was received from the NPDB;
  - (5) Verification of the citizenship and immigration status information of non-citizen, naturalized, or derived U.S. citizen applicants through the DHS-USCIS Systematic Alien Verification for Entitlements Program (SAVE). Applicants must submit the documentation and information required by the SAVE program to the Council;
  - (6) Examination results for any required examinations taken prior to applying for licensure;
  - (7) Documentation of any required supervised experience, supervision plans, and agreements with supervisors; and



- (8) Any other information or supportive documentation deemed relevant by the Council and specified in its application materials.
- (b) The Council will accept examination results and other documentation required or requested as part of the application process from a credentials bank that utilizes primary source verification.

*Adopted to be effective: September 1, 2020*

**882.3. Review and Appeal of License Denials.**

- (a) If an application for licensure is denied at the staff or committee level, the applicant will have 30 days from the date of denial as shown on the letter to submit a written request to the Council for review by the member board. The written request must be received on or before the 30th day following the date of denial for the request to be timely. If a timely written request for review is not made, the denial is final.
- (b) If an application for licensure is denied by a member board, the applicant will have 30 days from the date of denial as shown on the letter to submit a written request to the Council for a hearing at SOAH. The Council must receive the written request on or before the 30th day following the date of denial for the request to be timely. If a timely request is made, the Council shall refer the contested case to SOAH for a hearing. If a timely written request is not made, the denial is final.
- (c) The Council shall render a final decision on an application for licensure based upon the record following an appeal at SOAH. The final decision shall be in writing and shall be signed by the presiding officer for the Council or the Executive Director.

*Adopted to be effective: September 1, 2020*

**882.4. Assistance in Licensing Determinations.**

- (a) Each member board shall be responsible for reviewing any licensing matters and questions raised or brought to it by agency staff regarding an application or renewal. The member boards may utilize committees to address application or licensing matters, and shall provide the Council with a recommendation as to any licensing matters or questions raised or brought to it by agency staff regarding an application or renewal.
- (b) The Council shall review all licensing matters for anti-competitive impacts, administrative consistency, and good governance concerns. The Council may not substitute its

judgment in licensing determinations for that of a member board where, in its sole determination, none of the aforementioned concerns are present.

- (c) The Council shall solicit input from and request the assistance of a member board when considering an application for issuance or renewal of a license if there are concerns about an applicant related to the standard of care or professional qualifications. The Council may specify the format of the input and assistance requested to satisfy the requirements of this rule.

*Adopted to be effective: September 1, 2020*

**882.5. Jurisprudence Examination Requirements.** Applicants must take and pass the jurisprudence examination no more than 6 months prior to submitting an application for licensure to the Council

*Adopted to be effective: September 1, 2020*

**882.6. Limitations on Number of Examination Attempts.**

- (a) An applicant may take an examination administered or required by the Council no more than three times. Failure to pass an examination subject to this rule within three attempts, will result in an automatic denial of an application.
- (b) Notwithstanding subsection (a) of this section, an applicant whose application is denied under this rule may reapply for licensure, but will not be allowed or approved to sit for the exam again until the applicant has submitted a detailed study plan designed to address the known or suspected areas of deficiency. The study plan must be approved by the relevant member board before authorization will be given to retake the examination.
- (c) Examinations which do not require pre-authorization by the Council to take, are not subject to this rule.

*Adopted to be effective: September 1, 2020*

**882.7. Reasonable Accommodations for Persons with Disabilities and Dyslexia.**

- (a) The Council shall comply with applicable provisions of the Americans with Disabilities Act (ADA) in its applications procedures by providing reasonable accommodations that do not violate or undermine the agency's mission or state law.
- (b) It is the responsibility of the individual applicant to inform the Council in advance of any reasonable accommodations needed during the application process, including any examinations conducted by the agency. Only requests which give the Council sufficient notice and opportunity to provide

reasonable accommodations without disrupting the normal business of the agency will be considered.

- (c) Requests for reasonable accommodations under this rule must contain each of the following:
  - (1) a written description of the disability, as well as the functional limitations resulting from the disability;
  - (2) the specific accommodations requested;
  - (3) a description of any accommodations received in the past for the disability; and
  - (4) a formal medical or mental health diagnosis made or confirmed within the last five years by a licensed professional qualified to make the diagnosis describing the need for specific accommodations. The diagnosis must have been made or confirmed within the last 12 months for psychiatric disabilities. This requirement does not apply to physical or sensory disabilities of a permanent or unchanging nature.
- (d) The Council will provide reasonable examination accommodations to an applicant who has been diagnosed as having dyslexia, as defined in §51.970 of the Education Code. When requesting reasonable examination accommodations under this subsection, the applicant must comply with subsection (c) of this section.

*Adopted to be effective: September 1, 2020*

**882.8. Rescheduling of Examination Due to Religious Holy Day.**

- (a) Applicants wishing to observe a religious holy day on which their religious beliefs prevent them from taking an examination scheduled by the Council on that religious holy day will be allowed to take the examination on an alternate date.
- (b) Applicants wishing to take an examination, scheduled on a religious holy day, on an alternate date must submit a written request to take the examination on an alternate date and state the religious holy day they wish to observe. Applicants must submit their written request prior to being scheduled for an examination.
- (c) The Council may extend any time periods for completing an examination, as needed when scheduling an alternate examination date.

*Adopted to be effective: September 1, 2020*

**882.9. Established Application Processing Times.**

- (a) The Council shall publish the minimum, maximum, and median times for processing applications during the preceding 12-month period on its website, together with a

justification for each of these periods. These figures will be updated on an annual basis.

- (b) Applicants whose application processing time exceeds 90 days or the maximum processing time published on the agency's website, whichever is greater, may submit a written complaint to the Executive Director requesting a timely resolution of any dispute arising from the delay.
- (c) The Executive Director shall, upon receipt of a proper complaint, review the matter to determine whether the agency has good cause, as that term is defined in §2005.004 of the Government Code, for exceeding the maximum application processing time. If the maximum application processing time was exceeded and good cause is not found, the Council shall refund any application fee paid in connection with the delayed application.
- (d) There is no appeal of the determination made by the Executive Director under this rule. A complaint is waived if not filed within 30 days of licensure.

*Adopted to be effective: September 1, 2020*

**882.10. Applicants with Pending Complaints.** The Council may hold an application in abeyance up to 180 days if there is a complaint pending against the applicant concerning an alleged violation listed in §507.301 of the Occupations Code. A final decision on the application may not be rendered until the Council has made a final determination on the pending complaint. The applicant will be permitted to take all required exams while the complaint is pending, but will not be licensed unless approved by the Council.

*Adopted to be effective: September 1, 2020*

**882.11. Applicants with Foreign Degrees**

- (a) An applicant with a foreign degree must submit an official transcript and certified translation when applying for licensure. The official transcript must be translated to English by the issuing institution, a translator that is certified by the American Translators Association, a reputable foreign translator or translation service, or a U.S. college or university official.
- (b) An applicant with a foreign degree must have the degree evaluated to determine if it is comparable to the degree required for the particular license sought. Foreign degree evaluations must be sent directly to the Council from the evaluation service, submitted by the applicant in the sealed envelope in which they are received from the evaluation service, or be submitted as directed by agency staff.

- (c) Foreign degree evaluations must be conducted by a foreign degree evaluation service that is a member of the National Association of Credential Evaluation Services (NACES). Alternatively, the Council will accept foreign degree evaluations from the National Register of Health Service Psychologists for persons applying under Chapter 501 of the Occupations Code and the International Social Work Degree Recognition and Evaluation Service for persons applying under Chapter 505 of the Occupations Code.
- (d) The Council retains the exclusive authority to determine whether a foreign degree is comparable to the degree required for licensure

*Adopted to be effective: September 1, 2020*

**882.12. Refusal to Issue License for Failure to Pay Child Support.**

- (a) The Council shall, in accordance with §232.0135 of the Family Code, refuse to issue a license to an individual if the Council receives notice from a child support agency that the applicant has failed to pay child support under a support order for six months or more and the child support agency requests the Council to deny issuance of a license.
- (b) Following receipt of notice from a child support agency, the Council may not issue a license until the child support agency has notified the Council that the applicant has met one or more of the requirements set out in §232.0135(b) of the Family Code.
- (c) The Council may charge the applicant a fee equal to the application fee for a refusal under this rule.

*Adopted to be effective: September 1, 2020*

**882.13. Protections Based on Affiliation with Religious Organizations.**

In accordance with Chapter 2400 of the Government Code, the Council may not deny an application or renewal of a license based wholly or partly on a person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization.

*Adopted to be effective: September 1, 2020*

## **Subchapter B. License.**

**882.20. Form of License.**

- (a) Each member board shall be responsible for the content and design of its licenses, subject to the approval of the Council. A license issued by the Council shall prominently reflect the

member board for the profession and reference the board being a member of the Council.

- (b) A license shall include the full legal name of the license holder at the time of licensure and the unique license number assigned to the license.

*Adopted to be effective: September 1, 2020*

**882.21. License Statuses.**

- (a) Active Status. Any licensee with a license on active status may practice pursuant to that license, subject to any restrictions imposed by the Council. Active status is the only status under which a licensee may engage in the practice of the licensee's respective profession.
- (b) Inactive Status.
  - (1) A licensee with an unrestricted active license may elect inactive status through the Council's online licensing system. A licensee who elects inactive status must return the licensee's current renewal certificate for the license to the Council, and pay the associated fee.
  - (2) A licensee with an inactive license is not required to comply with continuing education requirements while the license is inactive.
  - (3) The inactive status period for a license shall coincide with the license renewal period. At the end of the renewal period, if the inactive status has not been renewed or the license returned to active status, the license will expire.
  - (4) In order to continue on inactive status, an inactive licensee must renew the inactive status each renewal period. Licensees may renew their inactive status through the Council's online licensing system by completing the online renewal requirements and paying the associated fee.
  - (5) A licensee with a pending complaint may not place a license on inactive status. If disciplinary action is taken against a licensee's inactive license, the licensee must reactivate the license until the terms of the disciplinary action or restricted status have been terminated. Failure to reactivate a license when required by this paragraph shall constitute grounds for further disciplinary action.
  - (6) An inactive license may be reactivated at any time by submitting a written request to return to active status to the Council's office. When reactivating a license, a licensee must pay the renewal fee associated with the license. A license that has been reactivated is subject

to the standard renewal schedule and requirements, including renewal and late fees. Notwithstanding the foregoing, a license that is reactivated within 60 days of its renewal date will be considered as having met all renewal requirements and will be renewed for the next renewal period.

- (7) Any licensee reactivating a license from inactive status must provide proof of completion of the continuing education requirements for renewal of that particular license before reactivation will occur.
- (8) A licensee wishing to reactivate a license that has been on inactive status for four years or more must take and pass the relevant jurisprudence exam with the minimum acceptable score, unless the licensee holds another license on active status within the same profession.
- (c) Delinquent Status. A licensee who fails to renew a license for any reason when required is considered to be on delinquent status. Any license delinquent for more than 12 consecutive months shall expire. A licensee may not engage in the practice of the licensee's respective profession under a delinquent license. The Council may sanction a delinquent licensee for violations of its rules.
- (d) Restricted Status. Any license that is currently suspended, on probated suspension, or is currently required to fulfill some requirements in an agency order is a restricted license.
- (e) Retirement Status. A licensee who is on active or inactive status may retire the license by notifying the Council in writing prior to the renewal date for the license. A licensee with a delinquent status may also retire the license by notifying the Council in writing prior to the license expiring. However, a licensee with a pending complaint or restricted license may not retire the license. A licensee who retires a license shall be reported to have retired in good standing.
- (f) Resignation Status. A licensee may resign only upon express agreement with the Council.
- (g) Expired Status. A license that has been delinquent for more than 12 consecutive months or any inactive license that is not renewed or reactivated is considered to be expired.
- (h) Revoked Status. A revoked status results from a license being revoked pursuant to an agency order.

*Adopted to be effective: September 1, 2020*

**882.22. Reinstatement of a License.**

- (a) A person whose license has expired or been retired, revoked, or resigned, may apply for reinstatement of the license. A

person seeking re-licensure must apply for reinstatement, rather than applying for a new license.

- (b) An application for reinstatement shall be in writing and in the form prescribed by the Council.
- (c) In the case of revocation or resignation, application for reinstatement shall not be made prior to one year after the effective date of the revocation or resignation or prior to any time period specified in the order of revocation or resignation. A person whose license was revoked under §108.053 may apply for reinstatement of the license if the person meets the requirements of §108.055 of the Occupations Code.
- (d) A person seeking reinstatement of a license shall appear before the Council or member board to answer any questions or address any concerns raised by the person's application if requested by a council or board member or the Executive Director. Failure to comply with this paragraph shall constitute grounds for denial of the application for reinstatement.
- (e) The Council may approve or deny an application for reinstatement, and in the case of a denial, the Council may also set a reasonable period that must elapse before another application may be filed. The Council may also impose reasonable terms and conditions that an applicant must satisfy before reinstatement of an unrestricted license.
- (f) An application for reinstatement of an expired, retired, revoked, or resigned license may be granted upon proof of each of the following:
  - (1) payment of the application fee;
  - (2) submission of a self-query report from the National Practitioner Data Bank (NPDB) reflecting any disciplinary history or legal actions taken against the applicant. A self-query report must be submitted to the agency in the sealed envelope in which it was received from the NPDB;
  - (3) a fingerprint based criminal history check which reflects no disqualifying criminal history;
  - (4) passage of any examinations required by a member board;
  - (5) documentation of any continuing education required by a member board; and
  - (6) submission of any other documentation or information requested in the application or which the Council or a member board may deem necessary in order to ensure the public's safety.



- (g) The Council will evaluate each of the following criteria when considering reinstatement of an expired, revoked, or resigned license:
  - (1) circumstances surrounding the expiration, revocation, or resignation of the license;
  - (2) conduct of the applicant subsequent to the expiration, revocation, or resignation of the license;
  - (3) lapse of time since the expiration, revocation, or resignation of the license;
  - (4) compliance with all terms and conditions imposed by the Council or a member board in any previous order; and
  - (5) applicant's present qualification to practice the regulated profession based upon the history of related employment, service, education, or training, as well as the applicant's continuing education since the expiration, revocation, or resignation of the license.
- (h) Notwithstanding time limits on original applications and examinations found elsewhere in these rules, an applicant seeking reinstatement of a license must submit all required documentation and information, and successfully pass all required examinations within the period specified by the Council. Failure to do so shall result in the application for reinstatement expiring.

*Adopted to be effective: September 1, 2020*

**882.23. License Required to Practice.**

- (a) A person may not engage in or represent that the person is engaged in the practice of marriage and family therapy, professional counseling, psychology, or social work within this state, unless the person is licensed or otherwise authorized to practice by law.
- (b) A person is engaged in the practice of marriage and family therapy within this state if any of the criteria set out in §502.002(6) of the Occupations Code occurs either in whole or in part in this state.
- (c) A person is engaged in the practice of professional counseling within this state if any of the criteria set out in §503.003(a) of the Occupations Code occurs either in whole or in part in this state.
- (d) A person is engaged in the practice of psychology within this state if any of the criteria set out in §501.003(b) of the Occupations Code occurs either in whole or in part in this state.
- (e) A person is engaged in the practice of social work within this state if any of the criteria set out in §505.0025 of the

Occupations Code occurs either in whole or in part in this state.

*Adopted to be effective: September 1, 2020*

**882.24. Authorized Practice of Marriage and Family Therapy Without a License.** Notwithstanding Rule §882.23 of this chapter, the activities or services described in §502.004 of the Licensed Marriage and Family Therapist Act are exempt from the Council's jurisdiction and do not require a license.

*Adopted to be effective: September 1, 2020*

**882.25. Authorized Practice of Professional Counseling Without a License.** Notwithstanding Rule §882.23 of this chapter, the activities or services described in Subchapter B of the Licensed Professional Counselor Act, together with the use of titles and descriptions of persons as contemplated therein, are exempt from the Council's jurisdiction and do not require a license.

*Adopted to be effective: September 1, 2020*

**882.26. Authorized Practice of Psychology Without a License.**

- (a) Notwithstanding Rule §882.23 of the chapter, the activities or services described in §501.004 of the Psychologists' Licensing Act are exempt from the Council's jurisdiction and do not require a license.
- (b) The activity or service of a post-doctoral fellow or resident in psychology is exempt from the Council's jurisdiction pursuant to §501.004(a)(2) of the Psychologists' Licensing Act if all of the following criteria are met:
  - (1) The person is enrolled in a formal post-doctoral program that is:
    - (A) accredited by the American Psychological Association (APA) or is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC); or
    - (B) substantially equivalent to a program described in subparagraph (A) of this paragraph;
  - (2) The activities or services take place under qualified supervision and are part of the formal post-doctoral program; and
  - (3) The person is designated as a psychological intern or trainee, or by another title that clearly indicates the person's training status.
- (c) A formal post-doctoral program which meets the following criteria will be considered substantially equivalent to an APA accredited or APPIC member program:

- (1) An organized experience with a planned and programmed sequence of supervised training experiences.
- (2) A designated psychologist responsible for the program who possesses expertise or competence in the program's area.
- (3) Two or more licensed psychologists on staff, at least one designated as supervisor with expertise in area of practice.
- (4) A minimum of 2 hours per week of face-to-face supervision.
- (5) A minimum of 2 additional hours per week of learning activities.
- (6) A minimum of 25% of the fellow's time is spent providing professional psychological services.
- (7) Admission requirements that require the applicant to complete all professional degree requirements and a pre-doc internship, which at a minimum meets Council requirements.
- (8) A requirement that participants use titles such as intern, resident, fellow, or trainee.
- (9) Documentation describing the goals, content, organization, entrance requirements, staff, mechanisms for a minimum of 2 evaluations per year, and a statement that the program meets Texas' licensure requirements.
- (10) At a minimum, an informal due process procedure regarding deficiencies and grievances.
- (11) A written requirement for at least 1500 hours to be completed in not less than 9 months and not more than 24 months.

*Adopted to be effective: September 1, 2020*

**882.27. Authorized Practice of Social Work Without a License.**

Notwithstanding Rule §882.23, the activities or services described in §505.003 of the Social Work Practice Act are exempt from the Council's jurisdiction and do not require a license.

*Adopted to be effective: September 1, 2020*

## **Subchapter C. Duties and Responsibilities.**

**882.30. Display of License.**

- (a) A licensee must display an official copy of the holder's license in a prominent place in the office, building, complex, or facility where services are delivered. An official copy of a

license is the original or a copy issued by the Council bearing the state agency's seal.

- (b) In lieu of subsection (a) of this section, a person licensed under Chapter 501 or 505 may provide to a patient or client written notification of the holder's license number accompanied by instructions for verification of same.

*Adopted to be effective: September 1, 2020*

**882.31. Advertising Restriction.** Licensees may not authorize, use, or make any public statements or advertisements that are false, deceptive, misleading or fraudulent, either because of what they state, convey or suggest or what they omit concerning their own training, experience, supervision status, abilities or competence; their academic degrees; their credentials; their institutional or association affiliations; or their publications or research.

*Adopted to be effective: September 1, 2020*

**882.32. Duty to Update Name and Address.**

- (a) Applicants and licensees must update their name, main address, business address, email address, and phone number in the Council's online licensing system within 30 days of a change. The main address entered by an applicant or licensee must be capable of receiving mail addressed to the applicant or licensee from the agency. It is the responsibility of the individual to ensure the agency has the correct contact information for that individual.
- (b) Official agency correspondence will be sent to an applicant's or licensee's main address, unless otherwise required by law. The street address portion of an applicant's or licensee's main address will not be displayed in results returned from the online licensee search function, but will continue to be publicly available via the Public Information Act. Applicants and licensees may also enter a business address in the agency's online licensing system which will be displayed, without redaction, in public search results.
- (c) A name change request must be accompanied by a copy of a current driver's license, social security card, marriage license, divorce decree or court order reflecting the change of name.

*Adopted to be effective: September 1, 2020*

**882.33. Disclosure of Proprietary Examination Materials of Information Prohibited.** It is considered unprofessional conduct and grounds for disciplinary action, including denial of licensure or renewal, for any applicant or licensee to disclose the contents or

any proprietary materials or information from the examinations utilized by the Council.

**882.34. Filing a False or Misleading Information with the Council.**

- (a) Applicants. Applicants are prohibited from providing false or misleading statements, information, or omissions in their applications, documents, and communications with the Council or member boards. For an infraction of this type, the Council may agree to process an application or other document pursuant to an eligibility order. For a serious infraction of this type that could lead to licensure of an unqualified person, the Council may deny licensure.
- (b) Licensees. The Council will open a complaint against a licensee for false or misleading statements, information, or omissions made in connection with an application, renewal, document, or other communication with the Council. For an infraction that led to the licensure or renewal of an unqualified person or a change in license status, the Council may revoke the license or deny any future renewal of the license.

*Adopted to be effective: September 1, 2020*

**882.35. Required Profile Information.** Pursuant to §2054.2606 of the Government Code, all licensed psychologists must establish and maintain a public profile within the profile system maintained by the Council. The licensee's profile must contain all of the following information:

- (1) the name of the license holder and the address and telephone number of the license holder's primary practice location;
- (2) whether the license holder's patient, client, user, customer, or consumer service areas, as applicable, are accessible to disabled persons, as defined by federal law;
- (3) the type of language translating services, including translating services for a person with impairment of hearing, that the license holder provides for patients, clients, users, customers, or consumers, as applicable;
- (4) if applicable, insurance information, including whether the license holder participates in the state child health plan under Chapter 62, Health and Safety Code, or the Medicaid program;
- (5) the education and training received by the license holder, as required by the licensing entity;
- (6) any specialty certification held by the license holder;

- (7) the number of years the person has practiced as a license holder; and
- (8) if applicable, any hospital affiliation of the license holder.

*Adopted to be effective: September 1, 2020*

**882.36. Compliance with State and Federal Law.** Licensees comply with all applicable state and federal laws affecting the practice of marriage and family therapy, professional counseling, psychology, or social work including, but not limited to:

- (1) Health and Safety Code, Chapter 611, Mental Health Records;
- (2) Family Code:
  - (A) Chapter 32, Consent to Medical, Dental, Psychological and Surgical Treatment,
  - (B) Chapter 153, Rights to Parents and Other Conservators to Consent to Treatment and Access to Child's Records, and
  - (C) Chapter 261, Duty to Report Child Abuse and Neglect;
- (3) Human Resource Code, Chapter 48, Duty to Report Elder Abuse and Neglect;
- (4) Civil Practice and Remedy Code, Chapter 81, Duty to Report Sexual Exploitation of a Patient by a Mental Health Services Provider;
- (5) Insurance Code as it relates to submission of billing and third-party payments for mental health services provided by a licensee;
- (6) Code of Criminal Procedure, Chapter 46B, Incompetency to Stand Trial, and Chapter 46C, Insanity Defense;
- (7) Occupations Code, Chapter 102, Solicitation of Patients; Chapter 104, Healing Art Practitioners; Chapter 105, Unprofessional Conduct; and Chapter 113, Mental Health Telemedicine and Telehealth Services;
- (8) Education Code, Chapter 51, Duty to Report Sexual Harassment and Assault, Dating Violence, and Stalking; and
- (9) 18 United States Code §1347 Health Care Fraud.

*Adopted to be effective: September 1, 2020*

## **Subchapter D. Criminal History and License Eligibility.**

**882.40. Criminal History Background Checks.**

- (a) Before the Council will issue a license, an applicant must undergo a fingerprint-based criminal history record check.
- (b) The Council may require a licensee to obtain an updated fingerprint-based criminal history record check at any time.
- (c) A licensee who was not required to undergo a fingerprint based criminal history record check as a condition of licensure, must undergo a fingerprint based criminal history check if directed by the Council as a condition for renewal of a license. A licensee may fulfill all other renewal requirements, but a report must be received by the Council from the Texas Department of Public Safety and the Federal Bureau of Investigation before a license will be renewed.
- (d) Applicants and licensees who hold a license issued by the Council or one of its member boards, and who underwent a fingerprint-based criminal history record check as part of the licensing process for that license, do not need to undergo another checks.

*Adopted to be effective: September 1, 2020*

**882.41. Criminal History Evaluation.**

- (a) In compliance with Chapter 53 of the Occupations Code, the Council will provide criminal history evaluation letters.
- (b) A person may request the Council provide a criminal history evaluation letter if the person is planning to enroll or is enrolled in an educational program that prepares the person for a license with this agency and the person has reason to believe that the person may be ineligible for licensure due to a conviction or deferred adjudication for a felony or misdemeanor offense.
- (c) The requestor must submit to the Council a completed application form requesting an evaluation letter, the required fee, and certified copies of court documentation about all convictions, deferred adjudications, or other final dispositions which may form the basis for the person's ineligibility.
- (d) Requestors must obtain a fingerprint criminal history record check after they have submitted an application for a criminal history evaluation letter.
- (e) The Council has the authority to investigate a request for a criminal history evaluation letter and may require the requestor to provide additional information about the convictions and other dispositions.
- (f) The Council will provide a written response to the requestor within 90 days of receipt of the request, unless a more extensive investigation is required or the requestor fails to comply with the Council's investigation.

- (g) In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the licensing authority at the time the letter is issued, the Council's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

*Adopted to be effective: September 1, 2020*

**882.42. Ineligibility Due to Criminal History.**

- (a) The Council may revoke or suspend a license, disqualify a person from receiving or renewing a license, or deny a person the opportunity to be examined for a license due to a felony or misdemeanor conviction, or a plea of guilty or nolo contendere followed by deferred adjudication, if the offense:
  - (1) is listed in Article 42A.054 of the Code of Criminal Procedure;
  - (2) was a sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure; or
  - (3) directly relates to the duties and responsibilities of a licensee.
- (b) In determining whether a criminal conviction directly relates to the duties and responsibilities of a licensee, the agency shall consider the factors listed in §53.022 of the Occupations Code. Each member board shall determine which crimes are directly related to the duties and responsibilities of its licensees.
- (c) If the agency determines that a criminal conviction directly relates to the duties and responsibilities of a licensee, the agency must consider the factors listed in §53.023 of the Occupations Code when determining whether to suspend or revoke a license, disqualify a person from receiving a license, or deny a person the opportunity to take a licensing examination. It shall be the responsibility of the applicant or licensee to provide documentation or explanations concerning each of the factors listed in the law. Any documentation or explanations received will be considered by the agency when deciding whether to suspend or revoke a license, disqualify a person from receiving a license, or deny a person the opportunity to take a licensing examination.
- (d) Notwithstanding any schedule of sanctions adopted by the Council or a member board, the Council shall:
  - (1) revoke a license due to a felony conviction under §35A.02 of the Penal Code, concerning Medicaid fraud, in accordance with §36.132 of the Human Resources Code;



- (2) revoke or suspend a license for unprofessional conduct in accordance with §105.002 of the Occupations Code; and
  - (3) revoke a license due to a license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.
- (e) In accordance with Chapter 108 of the Occupations Code, an application for licensure as a psychologist or social worker will be denied if the applicant:
- (1) is required to register as a sex offender under Chapter 62 of the Code of Criminal Procedure;
  - (2) has been previously convicted of or placed on deferred adjudication for the commission of a felony offense involving the use or threat of force; or
  - (3) has been previously convicted of or placed on deferred adjudication for the commission of an offense:
    - (A) under §§22.011, 22.02, 22.021 or 22.04 of the Penal Code, or an offense under the laws of another state or federal law that is equivalent to an offense under one of those sections;
    - (B) during the course of providing services as a health care professional; and
    - (C) in which the victim of the offense was a patient.
- (f) A person whose application was denied under subsection (e) of this section may reapply for licensure if the person meets the requirements of §108.054 of the Occupations Code.
- (g) In accordance with §108.053 of the Occupations Code, the Council shall revoke the license of a psychologist or social worker if the licensee is:
- (1) convicted or placed on deferred adjudication for an offense described by subsection (e)(2) or (3) of this section; or
  - (2) required to register as a sex offender under Chapter 62 of the Code of Criminal Procedure.
- (h) The Council will provide notice to a person whose application has been denied due to criminal history as required by §53.0231 and §53.051 of the Occupations Code.

*Adopted to be effective: September 1, 2020*

## **Subchapter E. Continuing Education.**

### **882.50. Continuing Education and Audits.**

- (a) All persons issued a license by the Council are obligated to continue their professional education by completing a minimum amount of continuing education during each renewal period that they hold a license from this agency. The specific continuing education requirements for a license holder will be determined by the member board authorized to set those requirements.
- (b) The Council conducts two types of audits regarding continuing education. Licensees shall comply with all agency requests for documentation and information concerning compliance with continuing education requirements.
  - (1) Random audits. Each month, 10% of the licensees will be selected by an automated process for an audit of the licensee's compliance with the agency's continuing education requirements. The agency will notify a licensee of the audit. Upon receipt of an audit notification, a licensee must submit continuing education documentation through the agency's online licensing system, or by fax, email, or regular mail before a license will be renewed.
  - (2) Individualized audits. The Council may also conduct audits of a specific licensee's compliance with its continuing education requirements at any time the agency determines there are grounds to believe that a licensee has not complied with the requirements of this rule. Upon receipt of notification of an individualized audit, the licensee must submit all requested documentation within the time period specified in the notification.

*Adopted to be effective: September 1, 2020*

## **Subchapter F. Licensing Provisions Related To Military Service Members, Veterans, and Military Spouses.**

### **882.60. Special Provisions Applying to Military Service Members, Veterans, and Spouses.**

- (a) The Council adopts by reference the definitions set forth in Chapter 55 of the Occupations Code.
- (b) A license may be issued to a military service member, military veteran, or military spouse upon proof of one of the following:
  - (1) the applicant holds a current license in another jurisdiction that has licensing requirements that are

- substantially equivalent to the requirements for the license sought in this state; or
- (2) within the five years preceding the application date, the applicant held the license sought in this state.
  - (c) An applicant applying as a military spouse must submit proof of marriage to a military service member.
  - (d) Each member board shall develop and maintain a method for determining substantial equivalency under subsection (b) of this section.
  - (e) As part of the application process, the Executive Director may waive any prerequisite for obtaining a license, other than the requirements in subsection (b) of this section, the jurisprudence examination, and the fingerprint criminal history background check, if it is determined that the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice under the license sought. When making this determination, the Executive Director must consult with the relevant member board or its designated application or licensing committee and consider the board's or committee's input and recommendations. In the event the Executive Director does not follow a recommendation of the board or committee, the Executive Director must submit a written explanation to the board or committee explaining why its recommendation was not followed. No waiver may be granted where a military service member or military veteran holds a license issued by another jurisdiction that has been restricted, or where the applicant has a disqualifying criminal history.
  - (f) Each member board may develop and maintain alternate methods for a military service member, military veteran, or military spouse to demonstrate competency in meeting the requirements for obtaining a license.
  - (g) Each member board shall develop and maintain a method for applying credit toward license eligibility requirements for applicants who are military service members or military veterans with verifiable military service, training, or education. An applicant may not receive credit toward licensing requirements under this subsection if the applicant holds another license that has been restricted, or the applicant has a disqualifying criminal history.
  - (h) The initial renewal date for a license issued pursuant to this rule shall be set in accordance with the agency's rule governing initial renewal dates.

*Adopted to be effective: September 1, 2020*

**882.61. Special Licensing Provisions for Military Spouses.**

- (a) A military spouse shall be issued a license to marriage and family therapy, professional counseling, practice psychology, or social work if the person meets each of the following requirements:
  - (1) the spouse notifies the Council on an agency approved form, of the spouse's intent to practice a particular profession in this state;
  - (2) the spouse provides verification of licensure in good standing in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for licensure in this state;
  - (3) the spouse submits a copy of the law reflecting the current licensing standards for the relevant profession in the state where the spouse is licensed, with the relevant portions highlighted for easy reference;
  - (4) the spouse submits proof of residency in this state and a copy of the spouse's military identification card; and
  - (5) the Council provides confirmation to the spouse that it has verified the spouse's license in the other jurisdiction and that the spouse is authorized to practice a particular profession.
- (b) The Council shall determine substantial equivalency based upon the determinations made by the member boards under subsection §882.60(d) of this chapter.
- (c) The Council may rely upon the following when verifying licensure under this subsection: official verification received directly from the other jurisdiction, a government website reflecting active licensure and good standing, or verbal or email verification directly from the other jurisdiction.
- (d) A military spouse issued a license under this rule is subject to all laws and regulations in the same manner as a regularly licensed provider.
- (e) A license issued under this rule is valid while the holder's spouse is stationed at a military installation in this state or for three years from the date of issuance, whichever is less. A license issued under this rule cannot be renewed or extended.

*Adopted to be effective: September 1, 2020*

## **Subchapter G. Emergency Temporary License.**

### **882.70. Emergency Temporary License.**

- (a) The Council shall issue an emergency temporary license to practice marriage and family therapy, professional counseling, psychology, or social work if:
  - (1) the Governor declares a disaster under §418.014 and issues a proclamation in accordance with Government Code §418.016 suspending regulatory statutes and rules which would prevent, hinder, or delay necessary action in coping with the declared disaster;
  - (2) the Executive Director determines that enacting these emergency licensing provisions are necessary in that disaster area; and
  - (3) the applicant meets the requirements set forth herein below.
- (b) An emergency temporary license issued pursuant to this rule will expire thirty (30) days after issuance or upon termination of the state of disaster, whichever occurs first.
- (c) An emergency temporary license issued pursuant to this rule is valid only for the practice of marriage and family therapy, professional counseling, psychology, or social work within the disaster area designated by the governor.
- (d) To be eligible for an emergency temporary license, an applicant must:
  - (1) submit an application in the form prescribed by the Council; and
  - (2) submit written verification that the applicant is actively licensed, certified, or registered to practice, marriage and family therapy, professional counseling, psychology, or social work in another jurisdiction and that the licensure, certification, or registration is in good standing.
- (e) For purposes of subsection (d) of this section, the term "good standing" means there is not current disciplinary action on the out-of-state license, certification, or registration.
- (f) An emergency temporary license may be renewed in thirty (30) day increments if the disaster declaration has not expired or been terminated. To renew a license, an individual must submit a renewal application on a board-approved form on or before the license expiration date.
- (g) An individual practicing under an emergency temporary license must:
  - (1) display a copy of the emergency temporary license in a conspicuous location when delivering services, or

- provide written notification of the license number and instructions on how to verify the status of a license when initiating services with a patient or client;
- (2) provide notification to the public and the patient or client regarding how a complaint may be filed with the Council; and
  - (3) comply with all other applicable Council rules.
- (h) There is no fee associated with the application, issuance, or renewal of an emergency temporary license.

*Adopted to be effective: September 1, 2020*

# RENEWALS

## Subchapter A. General Provisions.

### 883.1. **Renewal of a License.**

- (a) All licenses subject to the jurisdiction of the Council are renewable on a biennial basis and must be renewed online.
- (b) Renewals are due on the last day of the license holder's birth month, but may be completed up to 60 days in advance.
- (c) Licensees must pay all applicable renewal and late fees, indicate compliance with any continuing education requirements, and comply with any other requests for information or requirements contained within the online renewal system as a prerequisite for renewal of a license.
- (d) In addition to the requirements of subsection (c) of this section, licensees must also show compliance with each of the following as a condition of renewal:
  - (1) provide or update the standardized set of information about their training and practices required by §105.003 of the Health and Safety Code; and
  - (2) affirm or demonstrate successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code.
- (e) Licensed psychologists must update their online profile information when renewing their license.
- (f) A license may not be renewed until a licensee has complied with the requirements of this rule.
- (g) A licensee who falsely reports compliance with continuing education requirements on his or her renewal form or who practices with a license renewed under false pretenses will be subject to disciplinary action.
- (h) Licensees will be sent notification of their approaching renewal date at least 30 days before their renewal date. This notification will be sent to the licensee's main address via first class mail. Responsibility for renewing a license rests exclusively with the licensee, and the failure of the licensee to receive the reminder notification from the Council shall not operate to excuse a licensee's failure to timely renew a license or any unlawful practice with a subsequent delinquent license.

*Adopted to be effective: September 1, 2020*

### 883.2. **Initial License Renewal Dates.**

- (a) The license expiration date for a license issued by this agency is the last day of the licensee's birth month.
- (b) The initial renewal date for a license issued or reinstated by this agency shall be set as follows:
  - (1) A license issued or reinstated within 180 days prior to the last day of a licensee's birth month shall be set for renewal on the next expiration date following a period of two years from the date of issuance or reinstatement.
  - (2) A license issued or reinstated more than 180 days prior to the last day of a licensee's birth month shall be set for renewal on the next expiration date following a period of one year from the date of issuance or reinstatement.
- (c) Following the initial renewal dates set forth in subsection (b) of this section, a license shall become subject to the standard renewal schedule and requirements.
- (d) Notwithstanding subsection (b) of this section, for individuals with more than one license from a member board, the initial renewal date for a newly issued or reinstated license shall coincide with the individual's existing license renewal date.

*Adopted to be effective: September 1, 2020*

**883.3. Nonrenewal for Failure to Pay Child Support.**

- (a) The Council shall, in accordance with §232.0135 of the Family Code, refuse to renew a license if the Council receives notice from a child support agency that the licensee has failed to pay child support under a support order for six months or more and the child support agency requests the Council to deny the renewal of an existing license.
- (b) Following receipt of notice from a child support agency, the Council may not renew a license until the child support agency has notified the Council that the licensee has met one or more of the requirements set out in §232.0135(b) of the Family Code.
- (c) The Council may charge the licensee a fee equal to the renewal fee for a denial under this rule.

*Adopted to be effective: September 1, 2020*

## **Subchapter B. Renewal Provisions For Military Personnel.**

**883.10. Renewal Terms for Military Personnel on Active Duty.**



- (a) Licensees serving on active duty, as defined by §55.001 of the Occupations Code, may request a waiver from the continuing education requirements and renewal fees associated with the renewal of their license. Licensees who submit a written request to the Council prior to their renewal date each renewal period, and provide the Council with official verification of active duty status during their renewal period, will be granted a waiver from the continuing education requirements and renewal fees associated with the renewal of their license for that renewal period.
- (b) Licensees with an expired or delinquent license may request their license be reinstated or returned to active status if they would have been eligible for a waiver under subsection (a) of this section prior to their license expiring or becoming delinquent. Licensees seeking relief under this subsection must do so within two years of their license becoming delinquent.

*Adopted to be effective: September 1, 2020*

## **COMPLAINTS AND ENFORCEMENT**

### **Subchapter A. Filing A Complaint.**

**884.1. Timeliness of Complaints.**

- (a) A complaint not involving sexual misconduct will be considered timely if brought within five years of the date of the termination of professional services.
- (b) A complaint alleging sexual misconduct will be considered timely if brought within seven years after the date of termination of services or within five years of the patient, client or recipient of services reaching the age of majority, whichever is greater.
- (c) A complaint arising out of a matter required to be reported to the Council pursuant to rule §884.32 of this chapter, will be considered timely if brought within five years of the date the matter is reported to the Council. Limitations shall not begin to run for any such complaint until the matter is reported in accordance with Council rules.

*Adopted to be effective: September 1, 2020*

**884.2. Standardized Complaint Form.** All complaints must be submitted on the Council-approved complaint form. The complaint form shall be obtained free of charge from the Council's website or by requesting a copy from the Council.

*Adopted to be effective: September 1, 2020*

**884.3. Special Requirements for Complaints Alleging Violations Related to Court Ordered Evaluations.**

- (a) A person who seeks to file a complaint alleging a statutory or rule violation arising out of or related to a court ordered evaluation (e.g. child custody evaluation, adoption evaluation, competency or insanity evaluation, psychological evaluation) must, in addition to submitting a Council-approved complaint form, comply with the requirements of this rule when filing a complaint. This rule does not apply to evaluations conducted in administrative proceedings before a state or federal agency.
- (b) A complaint subject to this rule may not be filed prior to entry of judgment or final order by the trial court, or alternatively, prior to dismissal of the case. A complaint received by the Council prior to these specified events will be dismissed by staff as premature. A complaint dismissed as premature may be resubmitted as a new complaint upon the occurrence of one of these events.
- (c) A complaint subject to this rule will be considered timely filed if brought within the time period specified by the general rule governing timeliness of complaints or within one year of the relevant event specified in subsection (b) of this section, whichever is greater.

- (d) A complaint subject to this rule must include the following documentation or information:
  - (1) A copy of the court order appointing the licensee to conduct the evaluation, or alternatively, a transcript or excerpt therefrom or written statement from an attorney-of-record in the case reflecting the licensee's appointment;
  - (2) A copy of the licensee's expert report, or a statement that no such report was produced or provided;
  - (3) A copy of any judgment, final order, or dismissal entered by the trial court; and
  - (4) A copy of any documents provided by the licensee describing the costs of services, the nature of the services provided, as well as any limitations associated with those services, or a statement that no such documents were provided.
- (e) A complaint that does not substantially comply with subsection (d) of this section shall be dismissed by agency staff. A complaint may be held open for no more than 30 days following notice to the complainant regarding any such deficiency, after which, agency staff shall dismiss the complaint if the deficiency is not cured.
- (f) A complaint subject to this rule shall be dismissed unless the complainant can show:
  - (1) The licensee was disqualified or struck as an expert witness by the trial court;
  - (2) The licensee's opinion or inferences (i.e. testimony or report) complained of were ruled inadmissible by the trial court;
  - (3) A curriculum vitae and written report by an expert that provides a fair summary of the expert's opinions regarding the applicable law governing the licensee's expert opinion or report (i.e. standard of care) and the manner in which the licensee failed to meet the requirements of the applicable law. The report must come from an expert qualified to render an expert opinion under Texas law on the relevant subject;
  - (4) A letter from an attorney licensed to practice law in Texas setting forth the applicable law governing the licensee's expert opinion or report and reflecting an opinion as to the manner in which the licensee failed to meet the requirements of the applicable law; or
  - (5) The agency would be likely to prevail at a hearing before SOAH based upon the information provided.

*Adopted to be effective: September 1, 2020*

**884.5. Complaints Alleging Violation of Court Orders or Education Law.**

- (a) A person who seeks to file a complaint alleging a violation of a court order in connection with the delivery of services by a licensee must, in addition to submitting a Council-approved complaint form, submit a certified copy of the court order violated and a certified copy of the judgment, order, or minutes of the court reflecting a finding of violation by the licensee. A complaint subject to this rule not in strict compliance with this requirement will be dismissed by agency staff.
- (b) Complaints Involving Standard of Care Issues in Schools:
  - (1) An individual wishing to file a complaint against a licensee for any matter relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education to a student, must first exhaust all administrative remedies available to that individual under 19 TAC §89.1150 of the Commissioner's Rules Concerning Special Education Services, Texas Education Agency. An individual that has gone through a due process hearing with the Texas Education Agency will be considered to have exhausted all administrative remedies.
  - (2) For purposes of this rule, limitations shall not begin to run until all of the administrative remedies referenced in paragraph (1) of this subsection have been exhausted.
  - (3) Notwithstanding paragraph (1) of this subsection, an individual employed or contracted by the same public or private school as the licensee may file a complaint covered by paragraph (1) of this subsection regardless of whether any administrative remedies available under state or federal education law are utilized by the parent or legal guardian of a student. A complaint brought under this provision shall be subject to the rule of limitations.
  - (4) This rule shall not operate to preclude any individual from filing a complaint against a licensee for any matter other than those described in paragraph (1) of this subsection, nor shall it operate to limit the Council's ability to bring a complaint for any matter within the agency's jurisdiction.

*Adopted to be effective: September 1, 2020*

**884.6. Protections Based on Affiliation with Religious Organizations.** In accordance with Chapter 2400 of the Government Code, the Council and member boards may not initiate or take disciplinary action, including eligibility proceedings, against applicants or licensees based wholly or partly on the person's membership in, affiliation

with, or contribution, donation, or other support provided to a religious organization.

*Adopted to be effective: September 1, 2020*

## **Subchapter B. Investigations and Disposition of Complaints.**

### **884.10. Investigation of Complaints.**

- (a) The following priority rating system shall serve to distinguish between categories of complaints. The priority rating system is as follows:
  - (1) cases involving a probability of imminent physical harm to the public or a member of the public;
  - (2) cases involving sexual misconduct;
  - (3) cases involving applicants for licensure; and
  - (4) cases involving all other violations of state or federal law.
- (b) The Enforcement Division shall investigate all complaints in a timely manner. A schedule shall be established for conducting each phase of a complaint that is under the control of the Council not later than the 30th day after the date the complaint is received. The schedule shall be kept in the information file of the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file, and all parties to the complaint must be notified in writing not later than the seventh day after the date the change is made.
- (c) The Council may accept, but is not obligated to investigate, a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.
- (d) A complainant may explain the allegations made in the complaint by attaching or including with the complaint any evidence the complainant believes is relevant to a determination of the allegations, including written statements or communications, medical or mental health records, recordings, photographs, or other documentary evidence.
- (e) A review will be conducted upon receipt of a complaint to determine if the Council has jurisdiction over the complaint, and if so, whether the complaint states an allegation which, if true, would constitute a violation of the Council's rules or other law within the jurisdiction of the Council.
- (f) Complaints that do not state a violation of a law within the jurisdiction of the Council shall be dismissed. If the complaint

- alleges a violation of a law within the jurisdiction of another agency, the complaint will be referred to that agency as required or allowed by law.
- (g) Complaints that state a violation of a law within the jurisdiction of the Council shall be investigated by an investigator assigned by the Enforcement Division.
  - (h) Licensees will receive written notice of any alleged complaint(s), including specific information regarding any violation(s) encountered. Notice to a licensee is effective and service is complete when sent by registered or certified mail to the licensee's address of record at the time of the mailing.
  - (i) Following completion of the investigation, an investigation report shall be drafted. This report shall include a recommendation as to whether the investigation has produced sufficient evidence to establish probable cause that a violation has occurred.
  - (j) The Enforcement Division Manager (or the manager's designee) and legal counsel shall review the investigation report to determine if there is probable cause that a violation occurred.
  - (k) A complaint for which the staff determines probable cause exists shall be referred for an informal conference by agency staff or a member board's Disciplinary Review Panel. Agency staff shall send the respondent notice of the date and time of the informal conference.
  - (l) A complaint for which staff or a Disciplinary Review Panel determines that probable cause does not exist shall be referred for dismissal.
  - (m) The services of a private investigator shall be retained only in the event that staff investigator positions are vacant or inadequate to provide essential investigative services. The services of a private investigative agency shall be obtained in accordance with the state's procurement procedures.
  - (n) If a complainant or respondent are represented by an attorney, any notice or service required by law shall be made upon the attorney at the attorney's last known address.

*Adopted to be effective: September 1, 2020*

**884.11. Informal Conferences.**

- (a) The purpose of an informal conference shall be to provide the complainant with an opportunity to be heard, the respondent with an opportunity to show compliance with the law, and for the agency staff or Disciplinary Review Panel to make a recommendation regarding the informal disposition of the complaint. An informal disposition may be made of any complaint by stipulation, conditional letter of agreement, agreed or consent order, or dismissal.

- (b) Agency staff may conduct an informal conference if counsel for the agency reasonably believes that expert testimony is not required to prove a violation of a standard of care or the scope of practice for the profession. Agency staff shall exercise reasonable control over the mode and order of the appearance by the parties, the presentation of witnesses and evidence, and the overall order and decorum during the proceedings. Complainants and respondents will be provided an opportunity to be heard by staff, at a time separate and apart from the other.
- (c) A Disciplinary Review Panel shall consist of not more than three board members selected by the member board. The panel shall confer with each other and select a chair for the informal conference. The panel chair shall exercise reasonable control over the mode and order of the appearance by the parties, the presentation of witnesses and evidence, and the overall order and decorum during the proceedings. Complainants and respondents will be provided an opportunity to be heard by the panel, at a time separate and apart from the other.
- (d) Complainants and respondents may appear with legal counsel at informal conferences and shall be provided with an opportunity to present witnesses and any evidence they believe is relevant to a determination of the allegations, including written statements or communications, medical or mental health records, recordings, photographs, or other documentary evidence.
- (e) Complainants and respondents are encouraged to attend informal conferences, but attendance is voluntary.
  - (1) Failure by a respondent to attend an informal conference does not constitute professional misconduct or failure to cooperate with a Council investigation, but a respondent is not entitled to a new or additional informal conference if agency staff or the panel makes a disciplinary recommendation regarding the licensee in absentia.
  - (2) Failure by a complainant to attend an informal conference may result in a recommendation for dismissal of the complaint.
- (f) A complaint which is not dismissed or resolved by agreement following an informal conference, shall be filed as a contested case with the State Office of Administrative Hearings.
- (g) An attorney for the agency must be present at all informal conferences.

- (h) Informal conferences are not open meetings subject to Chapter 551 of the Government Code and no formal record of the proceedings shall be made or maintained.
- (i) The Council finds and declares that informal conferences are part of the confidential complaint and investigation process, and as such, the Disciplinary Review Panel and agency staff shall take any and all steps necessary to ensure the confidentiality of informal conferences in accordance with §507.205 of the Occupations Code.

*Adopted to be effective: September 1, 2020*

**884.12. Complaint Disposition.**

- (a) The Council must approve and enter all final orders following a contested case before SOAH or where no agreement exists between the agency and the respondent regarding the disposition of a contested enforcement related matter. However, each member board shall be responsible for reviewing complaints involving the standard of care, ethical guidelines, or scope of practice following a contested case before SOAH and making a recommendation to the Council regarding the final disposition. A recommendation from a member board must include any recommended modifications to the findings of fact and conclusions of law in the PFD, as well as the recommended sanction. A proposed final order reflecting a member board's recommendations shall satisfy the requirements of this rule.
- (b) The Council shall review recommendations from member boards for anti-competitive impacts, administrative consistency, and good governance concerns. The Council may not substitute its judgment in contested enforcement matters for that of a member board where, in the Council's determination, none of the aforementioned concerns are present.
- (c) The Council may solicit input from and request the assistance of a member board when considering a contested enforcement matter if there are concerns about the standard of care or ethical practice shown by a licensee. The Council may specify the format of the input and assistance requested to satisfy the requirements of this rule.
- (d) Each member board is authorized to dismiss complaints and approve and enter agreed final orders and informal dispositions; Council ratification is not required. The Executive Director shall report the number of dismissals and agreed orders entered under this rule at Council meetings.
- (e) Disposition by the Executive Director.
  - (1) The Executive Director is authorized to:



- (A) dismiss a complaint if the investigator and legal counsel agree that a violation did not occur or that the agency lacks jurisdiction over the complaint;
  - (B) dismiss a complaint recommended for dismissal by a Disciplinary Review Panel;
  - (C) dismiss a complaint following a contested case hearing before SOAH where the ALJ finds no violation of the law has occurred;
  - (D) accept the voluntary resignation of a license;
  - (E) offer, approve, and enter agreed orders if the disciplinary sanction imposed complies with the disciplinary guidelines and relevant schedule of sanctions; and
  - (F) enter an order suspending a license upon receipt of an order suspending a license issued under Chapter 232 of the Family Code. Council ratification is not required.
- (2) The Executive Director shall report the number of agreed orders, dismissals, resignations, and suspensions ordered, along with a brief summary of the basis for each, to the Council and relevant member board at the next regular meeting.
  - (3) The Executive Director must, when offering an agreed order or resignation order prior to an informal conference, advise the respondent of the right to an informal conference and that the matter will be set for an informal conference if requested or if an informal disposition cannot be agreed upon.
- (f) Any person who files a complaint will be notified of the disposition of the complaint. A person who filed a complaint that is dismissed will be notified of the dismissal by letter and the letter will reflect the legal basis or reason for the dismissal. A person who filed a complaint resulting in disciplinary action will be sent a copy of the Council's final order.

*Adopted to be effective: September 1, 2020*

## **Subchapter C. Disciplinary Guidelines and Schedule of Sanctions.**

### **884.20. Disciplinary Guidelines and General Schedule of Sanctions.**

- (a) Purpose. These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Occupations Code, Chapter 507, and the Council's rules. The purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if

appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

- (1) Single Violation. The standard disciplinary sanctions outlined in the applicable schedule of sanctions shall apply to cases involving a single violation, and in which there are no aggravating or mitigating factors.
  - (2) Multiple Violations. The Council may impose more severe or restrictive sanctions for multiple violations.
  - (3) Aggravating and Mitigating Factors. The Council may impose more or less severe or restrictive sanctions, based on any aggravating and/or mitigating factors that are found to apply in a particular case.
  - (4) The standard and minimum disciplinary sanctions outlined below are applicable to persons who are being sanctioned for the first time. The Council may consider more severe or restrictive sanctions if the persons have had sanctions assessed against them previously.
  - (5) The maximum disciplinary sanction in all cases is revocation of the license, which may be accompanied by an administrative penalty of up to \$5,000 per violation. In accordance with §507.352 of the Occupations Code, each day the violation continues or occurs is a separate violation.
  - (6) Each violation constitutes a separate offense, even if arising out of a single act.
  - (7) Failure to list a specific violation or Council rule in this rule does not prevent the Council from taking disciplinary action for such a violation.
  - (8) If a sanction for a violation of state or federal law is not listed in this rule, or specifically stated elsewhere, the sanction shall be a reprimand and administrative penalty.
  - (9) Notwithstanding paragraph (8) of this subsection, the Council will evaluate and determine the appropriate sanction for a licensee with a qualifying criminal conviction in accordance with §53.021 of the Occupations Code.
  - (10) The Council may combine an administrative penalty with another standard disciplinary sanction to protect the public or deter future violations.
- (b) Standard Disciplinary Sanctions. The Council may impose the following disciplinary sanctions which are listed in descending order of severity:
- (1) Revocation;

- (2) Suspension for a definite period of time;
  - (3) Suspension plus probation of any or all of the suspension period;
  - (4) Probation of the license for a definite period of time;
  - (5) Reprimand; and
  - (6) Administrative penalty.
- (c) The following standard disciplinary sanctions shall apply to violations of:

<u>Council Rule or Violation</u>	<u>Revocation</u>	<u>Suspension</u>	<u>Probated Suspension</u>	<u>Reprimand</u>	<u>Administrative Penalty</u>
§882.30 Display of License					X
§882.31 Advertising Restrictions				X	
§882.32 Duty to Update Name and Address					X
§882.33 Disclosure of Proprietary Examination Materials or Information Prohibited		X			
§882.34 Filing of False or Misleading Information with the Council		X			
§884.30 Cooperation with Council Investigations		X			
§884.31 Notice to the Public of Complaint Process					X
§884.32 Reportable Legal Action and Discipline					X

- (d) Additional Conditions. The Council may impose additional conditions or restrictions upon a license deemed necessary to facilitate the rehabilitation and education of the licensee and to protect the public, including but not limited to:
- (1) Consultation with the licensee on matters of ethics rules, laws and standards of practice by a licensed professional approved by the Council;
  - (2) Restrictions on the licensee's ability to provide certain types of services or to provide services to certain classes of patients;
  - (3) Restrictions on the licensee's supervision of others in a particular area of practice;
  - (4) Completion of a specified number of continuing education hours on specified topics approved in advance by the Council in addition to any minimum number required of all licensees as a condition of licensure;
  - (5) Taking and passing with the minimum required score of any examination required by the Council of a licensee; and
  - (6) Undergoing a psychological or medical evaluation by a qualified professional approved in advance by the

Council and undergoing any treatment recommended pursuant to the evaluation.

- (e) Aggravating Factors. Aggravating factors are those which may increase the severity of unprofessional conduct, justifying the imposition of a more severe penalty. Such factors include, but are not limited to the following:
  - (1) Physical or emotional harm and the type and severity thereof;
  - (2) Economic harm to any individual or entity and the severity thereof;
  - (3) Increased potential for harm to the public;
  - (4) Attempted concealment of misconduct;
  - (5) Premeditated conduct;
  - (6) Intentional misconduct;
  - (7) Prior written warnings or written admonishments from any supervisor or governmental agency or official regarding statutes or regulations pertaining to the licensee's practice;
  - (8) Prior misconduct of a similar or related nature;
  - (9) Disciplinary history;
  - (10) Likelihood of future misconduct of a similar nature;
  - (11) Violation of a Council order;
  - (12) Failure to implement remedial measures to correct or alleviate harm arising from the misconduct;
  - (13) Lack of rehabilitative effort or potential; and
  - (14) Improper or inappropriate motive.
- (f) Mitigating Factors. Mitigating factors are those which may reduce the severity of unprofessional conduct. Such factors include, but are not limited to the following:
  - (1) Acceptance of responsibility;
  - (2) Self-reporting of unprofessional conduct;
  - (3) Implementation of remedial measures to correct or mitigate harm arising from the unprofessional conduct;
  - (4) Good-faith motive;
  - (5) Rehabilitative efforts or potential; and
  - (6) Prior community service.

*Adopted to be effective: September 1, 2020*

**884.21. Assessment of Sanction.** The Council, subject to §507.306 of the Occupations Code, has the exclusive authority to assess sanctions against licensees who are found to have violated a law within its jurisdiction. While the Council will consider an ALJ's recommendations as to the sanctions to be imposed, it is not bound by such recommendations. The appropriate sanction is not a proper finding of fact or conclusion of law, and the determination of the

appropriate sanction is reserved to the Council based upon the relevant schedule of sanctions and record in a contested case.

*Adopted to be effective: September 1, 2020*

## **Subchapter D. Duties and Responsibilities.**

**884.30. Cooperation with Council Investigations.** Licensees must cooperate with and respond to Council investigations. Failure to cooperate or respond may serve as grounds for a Council-initiated complaint and disciplinary action.

*Adopted to be effective: September 1, 2020*

**884.31. Notice to the Public of Complaint Process.**

- (a) Licensees shall provide notice to the public (e.g., patients, clients) that complaints can be filed with the Council by any of the following methods:
  - (1) on a registration form, application, written contract for services, or other intake paperwork required by licensees prior to delivering services;
  - (2) on a sign prominently displayed in the licensee's place of business or location where services are delivered. The sign must be printed on paper of no less than 8-1/2 inches by 11 inches in size;
  - (3) in a prominent and easily accessible location on the licensee's website; or
  - (4) in a bill for services.
- (b) The notice required by this rule must include the Council's name, mailing address, and telephone number, as well as the following statement:

### **NOTICE TO CLIENTS**

The Texas Behavioral Health Executive Council investigates and prosecutes professional misconduct committed by marriage and family therapists, professional counselors, psychologists, psychological associates, social workers, and licensed specialists in school psychology.

Although not every complaint against or dispute with a licensee involves professional misconduct, the Executive Council will provide you with information about how to file a complaint.

Please call 1-800-821-3205 for more information.

*Adopted to be effective: September 1, 2020*

**884.32. Reportable Legal Action and Discipline.**

- (a) Licensees are required to report legal actions as follows:
  - (1) Any conviction, sentence, dispositive agreement, or order placing the licensee on community supervision or pretrial diversion, must be reported in writing to the Council within thirty days of the underlying event. A report must include the case number, court, and county where the matter is filed, together with a description of the matter being reported. A licensee shall provide copies of court documents upon request from agency staff.
  - (2) Any lawsuit brought by or against a licensee concerning or related to the delivery of services regulated by this agency or billing practices by the licensee. A report must include a copy of the initial pleading filed by or served upon the licensee, and must be submitted to the Council within thirty days of either filing by or service upon the licensee.
  - (3) Any administrative or disciplinary action initiated against a licensee by another health regulatory agency in this state or any other jurisdiction, or any agency or office within the federal government, must be reported to the Council by sending notification of the action within thirty days of the licensee receiving notice of the action. A report must include a copy of any complaint, notice of violation, or other documentation received by the licensee from the initiating entity which describes the factual basis for the action. A licensee must also supplement this report to the Council with a copy of any order, letter, or determination setting forth the final disposition of the matter within thirty days following the final disposition.
- (b) A complaint shall be opened if a reported criminal action constitutes grounds for disciplinary action under applicable state or federal law. A complaint may be opened if a reported civil action constitutes grounds for disciplinary action under Council rules.
- (c) Reciprocal Discipline:
  - (1) A complaint may be opened upon receipt of a report of discipline against a licensee by another health licensing agency in this state or any other jurisdiction.
  - (2) The Council may impose disciplinary action on a licensee according to its own schedule of sanctions for the conduct forming the basis of the other health licensing agency's disciplinary action.
  - (3) A voluntary surrender of a license in lieu of disciplinary action or during an investigation by another health

licensing agency constitutes disciplinary action under this rule.

*Adopted to be effective: September 1, 2020*

## **Subchapter E. License Suspension.**

### **884.40. Temporary Suspension of a License.**

- (a) In accordance with §507.302 of the Occupations Code, a license shall be temporarily suspended when the Council or an executive committee of the Council determines that the continued practice by a licensee (respondent) would constitute a continuing and imminent threat to the public welfare.
- (b) An executive committee of the Council shall convene as follows:
  - (1) For each temporary suspension proceeding, the Council shall appoint a three-member executive committee, called a "suspension panel," to consider the information and evidence presented by agency staff. The suspension panel must have at least one member from the same profession as the respondent and a majority of members from the respondent's member board. The suspension panel shall confer with each other and name a chair of the suspension panel.
  - (2) In the event of the recusal of a suspension panel member or the inability of a suspension panel member to attend a temporary suspension proceeding, the presiding officer for the Council may appoint an alternate council member to serve on the suspension panel.
  - (3) The suspension panel may convene in-person or via telephone, video conference, or other electronic means.
- (c) **Temporary Suspension Hearing.** The meeting at which the suspension panel considers a temporary suspension is a temporary suspension hearing. At the temporary suspension hearing, agency staff shall present evidence and information to the suspension panel that the continued practice by a person licensed by the Council would constitute a continuing and imminent threat to the public welfare. Notice of the temporary suspension hearing shall be sent to the respondent no less than 10 days before the hearing by personal service or by registered or certified mail.
- (d) **Order of Temporary Suspension.** If a majority of the suspension panel votes to temporarily suspend a license, the suspension shall have immediate effect, and the chair of the suspension panel will sign an Order of Temporary Suspension.

The Order of Temporary Suspension shall include a factual and legal basis establishing imminent peril to the public health, safety, or welfare, as required by §2001.054(c-1) of the Government Code. The Order shall be sent to the respondent by first-class mail or email.

- (e) Temporary Suspension Without Notice. In accordance with §507.302(b) of the Occupations Code, a license may be suspended without notice to the respondent if at the time of the suspension, agency staff request a hearing before SOAH to be held as soon as practicable but no later than 14 days after the date of the temporary suspension. The hearing is referred to as the "probable cause hearing."
- (f) Notice, Continuance, and Waiver of Probable Cause Hearing. Agency staff shall serve notice of the probable cause hearing upon the respondent in accordance with SOAH's rules. The respondent may request a continuance or waiver of the probable cause hearing. If the ALJ grants the continuance request or the respondent waives the probable cause hearing, the suspension remains in effect until the suspension is considered by SOAH at the continued probable cause hearing or at the final hearing. If the probable cause hearing is not held within 14 days and the respondent did not request a continuance or waive the probable cause hearing, the suspended license is reinstated.
- (g) Probable Cause Hearing. At the probable cause hearing, an ALJ shall determine whether there is probable cause to continue the temporary suspension of the license and issue an order on that determination.
- (h) Final Hearing. The State Office of Administrative Hearings shall hold a hearing no later than 61 days from the date of the temporary suspension. At this hearing, agency staff shall present evidence supporting the continued suspension of the license and may present evidence of any additional violations related to the licensee. This hearing is referred to as the "final hearing."
- (i) Notice and Continuance of Final Hearing. Agency staff shall send notice of the final hearing in accordance with SOAH's rules. The respondent may request a continuance or waive the final hearing. If a final hearing is not held within 61 days of the date of the temporary suspension and the respondent did not request a continuance or waive the final hearing, the license is reinstated.
- (j) Proposal for Decision. Following the final hearing, the ALJ shall issue a PFD on the suspension. The PFD may also address any other additional violations related to the licensee.



- (k) A temporary suspension takes effect immediately and shall remain in effect until:
  - (1) a final or superseding order of the Council is entered;
  - (2) the ALJ issues an order determining that there is no probable cause to continue the temporary suspension of the license; or
  - (3) a SOAH hearing is not timely held.

*Adopted to be effective: September 1, 2020*

**884.41. Suspension of License for Failure to Pay Child Support.**

- (a) On receipt of a final court order or order from a Title IV-D agency (e.g. the Texas Attorney General) suspending a license due to failure to pay child support, the Executive Director shall immediately determine if the Council has issued a license to the obligor named on the order, and, if a license has been issued:
  - (1) enter an order of suspension of the license;
  - (2) report the suspension as appropriate; and
  - (3) demand surrender of the suspended license.
- (b) The Council shall implement the terms of an order suspending a license without additional review or hearing. The Council will provide notice of suspension as appropriate to the licensee and others concerned with the license.
- (c) The Council may not modify, remand, reverse, vacate, or stay an order suspending a license issued under Chapter 232 of the Family Code and may not review, vacate, or reconsider the terms of a final order suspending the license.
- (d) A licensee who is the subject of a court order or order from a Title IV-D agency suspending the individual's license is not entitled to a refund for any fee paid to the Council.
- (e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures.
- (f) An individual who continues to engage in the practice of marriage and family therapy, professional counseling, psychology, or social work after the implementation of the order suspending the individual's license is liable for the same civil and criminal penalties provided for engaging in the licensed activity without a license or while a license is suspended.
- (g) On receipt of a court order or order from a Title IV-D agency vacating or staying an order suspending a license, the Executive Director shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

- (h) The individual must pay a reinstatement fee in an amount equal to the renewal fee for the license prior to issuance of the license.

*Adopted to be effective: September 1, 2020*

## **Subchapter F. Special Provisions For Persons Licensed To Practice Psychology.**

### **884.50. Competency Evaluations under Chapter 501 of the Occupations Code.**

- (a) In accordance with §501.158 of the Occupations Code, based upon the Council's reasonable belief that an applicant or person licensed under Chapter 501 is not physically or mentally competent to provide psychological services with reasonable skill and safety to patients or has a physical or mental disease or condition that would impair the person's competency to provide psychological services, the Council may request the person submit to:
  - (1) a physical examination by a physician approved by the Council; or
  - (2) a mental examination by a physician or psychologist approved by the Council.
- (b) The Council may carry out its functions under this rule by and through an executive committee of the Council, which may convene as follows:
  - (1) For each competency evaluation proceeding, the Council may appoint a three-member executive committee, called a "competency evaluation panel," to issue requests for physical or mental examinations, conduct show cause hearings, and issue orders determining whether a person's failure to submit to an examination was justified or unjustified. The competency evaluation panel must consist of a majority from TSBEP with at least one member holding the same license as the respondent. The competency evaluation panel shall confer with each other and name a chair for the panel.
  - (2) In the event of the recusal of a competency evaluation panel member or the inability of a panel member to attend a competency evaluation proceeding, the presiding officer for the Council may appoint an alternate council member to serve on the competency evaluation panel.

- (3) The competency evaluation panel may convene in-person or via telephone, video conference, or other electronic means.
- (c) If the person should refuse, ignore, or fail to comply with the Council's request, the Council shall issue an order requiring the person to show cause for the person's refusal at a hearing on the order scheduled for not later than the thirtieth (30) day after the date the notice is served on the person. Notice shall be provided by either personal service or by registered mail, return receipt requested. The meeting at which the Council considers a person's failure to comply with an examination request is a "show cause hearing." At the show cause hearing, agency staff may present evidence and information to the Council that demonstrates the reasonable belief that an examination is necessary and may also present evidence of any additional violations related to the person. The person may appear, at the show cause hearing, in person and by counsel and present evidence to justify the person's refusal to submit to examination as well as respond to any additional violations.
- (d) After the show cause hearing, if a majority of the Council votes that the person's failure to comply with the request was unjustified then the Council shall issue an order requiring the person to submit to the examination. If a majority of the Council votes that the person's failure to comply with the request was justified, then the Council shall issue an order withdrawing the request for the examination.
- (e) If the person fails to comply with the order issued after the show cause hearing requiring the person to submit to a physical or mental examination, the Council may take disciplinary action against the person by docketing the matter at SOAH.
- (f) Following a SOAH hearing, the ALJ shall issue a PFD on whether the person's failure to comply with the Council's order and request was justified. The PFD shall also address any other additional violations related to the person.
- (g) The Council shall review the PFD at a regularly scheduled meeting after the PFD is issued and the Council shall issue a final order in the matter.
- (h) An appeal from the Council's order under this section is governed by Chapter 2001 of the Government Code.

*Adopted to be effective: September 1, 2020*

**884.51. Remedial Plans under Chapter 501 of the Occupations Code.**

- (a) In accordance with §501.411 of the Occupations Code, the Council may issue and establish the terms of a non-

- disciplinary remedial plan to resolve the investigation of a complaint against a person licensed under Chapter 501.
- (b) A remedial plan may not contain a provision that:
    - (1) revokes, suspends, limits, or restricts a person's license or other authorization to practice psychology; or
    - (2) assesses an administrative penalty against a person.
  - (c) A remedial plan may not be imposed to resolve a complaint:
    - (1) concerning significant patient harm; or
    - (2) in which the appropriate resolution may involve a restriction or limitation on the manner in which a license holder practices psychology or the suspension or revocation of a license.
  - (d) The Council may not issue a remedial plan to resolve a complaint against a license holder if the license holder has previously entered into a remedial plan with the Council for the resolution of a different complaint.
  - (e) The Council may issue a remedial plan to resolve a complaint against a license holder in which the appropriate resolution involves a reprimand, administrative penalty, or a combination thereof under the appropriate schedule of sanctions.
  - (f) The Council may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.
  - (g) In accordance with §507.205 of the Occupations Code, a remedial plan is confidential complaint information and not subject to public disclosure.

*Adopted to be effective: September 1, 2020*

## **Subchapter G. Compliance.**

- 884.55. Monitoring Compliance with Disciplinary Orders.** Each member board shall coordinate with agency staff and be responsible for monitoring its applicants and licensees who are ordered by the Council to take or undergo certain corrective, preventative, or rehabilitative steps within a disciplinary or eligibility order. The member boards shall ascertain whether its applicants and licensees are performing the required acts within the designated time period, and make appropriate recommendations to the Council for modification of the terms of an order or for further enforcement proceedings based upon noncompliance.

*Adopted to be effective: September 1, 2020*

## **Subchapter H. Contested Cases.**

**884.60. Witness Fees.**

- (a) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or deposition pursuant to §507.206 of the Occupations Code, in connection with a complaint, shall be entitled to reimbursement of expenses as set forth in §2001.103 of the Government Code.
- (b) The party or agency at whose request a witness appears or the deposition is taken shall be responsible for payment of the expenses required by this rule.

*Adopted to be effective: September 1, 2020*

**884.61. Contested Case Hearing Costs.**

- (a) Costs associated with a contested case hearing before SOAH shall be determined according to the rules in 1 TAC §155.423 unless determined in accordance with subsection (b) of this section.
- (b) On the written request by a party to a case or on request of the ALJ, a written transcript of all or part of the proceedings shall be prepared. The cost of the transcript is borne by the requesting party. This section does not preclude the parties from agreeing to share the costs associated with the preparation of a transcript. If only the ALJ requests a transcript, costs will be assessed to the respondent(s) or applicant(s), as appropriate.

*Adopted to be effective: September 1, 2020*

**884.62. Final Decision and Order.**

- (a) A final decision or order following a contested case at SOAH shall be in writing and shall be signed by the presiding officer for the Council.
- (b) A party who appeals a final agency decision or order must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.

*Adopted to be effective: September 1, 2020*

**884.63. Motion for Rehearing.**

- (a) A motion for rehearing is a prerequisite to appeal from a Council's final decision or order in a contested case. A motion for rehearing shall be filed and handled in accordance with Government Code, Chapter 2001, Subchapter F.
- (b) The Executive Director is authorized to grant or deny requests to extend the deadline for filing a motion for rehearing in

accordance with Government Code, Chapter 2001, Subchapter F.

- (c) In the event of an extension, the motion for rehearing may be overruled by operation of law in accordance with Government Code, Chapter 2001, Subchapter F.

*Adopted to be effective: September 1, 2020*

**884.65. Corrected Final Decision and Order.** The Executive Director may enter a corrected order to correct a clerical mistake in an order of the Council.

*Adopted to be effective: September 1, 2020*

## FEES

**885.1. Executive Council Fees.**

- (a) General provisions.
  - (1) All fees are nonrefundable and cannot be waived except as otherwise permitted by law.
  - (2) Fees required to be submitted online to the Council must be paid by debit or credit card. All other fees paid to the Council must be in the form of a personal check, cashier's check, or money order.
  - (3) For applications and renewals the Council is required to collect fees to fund the Office of Patient Protection (OPP) in accordance with Texas Occupations Code §101.307, relating to the Health Professions Council.
  - (4) For applications, examinations, and renewals the Council is required to collect subscription or convenience fees to recover costs associated with processing through Texas.gov.
  - (5) All examination fees are to be paid to the Council's designee.

(b) The Executive Council adopts the following chart of fees:

<u>Fees</u>	<u>Total Fee</u>	<u>Base</u>	<u>Texas.gov</u>	<u>OPP</u>	<u>eStrategy</u>
<b>APPLICATION FEES</b>					
<b>Social Workers</b>					
LBSW or LMSW Application	\$ 109.00	\$ 100.00	\$ 4.00	\$ 5.00	
LCSW Application (LMSW-AP applications no longer accepted)	\$ 129.00	\$ 120.00	\$ 4.00	\$ 5.00	
Upgrade from LBSW to LMSW	\$ 20.00	\$ 20.00			
Upgrade from LMSW to LMSW-AP/LCSW	\$ 20.00	\$ 20.00			

Independent Practice Recognition	\$ 20.00	\$ 20.00			
Supervisor Status Application	\$ 50.00	\$ 50.00			
Temporary License Application	\$ 30.00	\$ 30.00			
<b>Marriage and Family Therapists</b>					
Initial LMFT Associate Application	\$ 69.00	\$ 60.00	\$ 4.00	\$ 5.00	
Upgrade from LMFT Associate to LMFT	\$ 90.00	\$ 90.00			
LMFT by Endorsement Application	\$ 161.00	\$ 150.00	\$ 6.00	\$ 5.00	
Supervisor Status Application	\$ 50.00	\$ 50.00			
<b>Professional Counselors</b>					
LPC Associate/LPC/Provisional License Application	\$ 221.00	\$ 210.00	\$ 6.00	\$ 5.00	
Supervisor Status Application	\$ 50.00	\$ 50.00			
Art Therapy Designation	\$ 20.00	\$ 20.00			
<b>Psychologists/Psychological Associates/Specialists in School Psychology</b>					
LPA Application	\$ 325.00	\$ 320.00		\$ 5.00	
LP Application	\$ 450.00	\$ 445.00		\$ 5.00	
LP License Issuance Fee	\$ 381.00	\$ 381.00			
LSSP Application	\$ 280.00	\$ 275.00		\$ 5.00	
Temporary License Application	\$ 100.00	\$ 100.00			
<b>RENEWAL FEES</b>					
<b>Social Workers</b>					
LBSW/LMSW Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00	
LMSW-AP/LCSW Renewal	\$ 163.00	\$ 155.00	\$ 6.00	\$ 2.00	
Additional Renewal Fee for Independent Practice Recognition	\$ 20.00	\$ 20.00			
Additional Renewal Fee for Supervisor Status	\$ 50.00	\$ 50.00			
<b>Marriage and Family Therapists</b>					
LMFT/LMFT Associate Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00	
Additional Renewal Fee for Supervisor Status	\$ 50.00	\$ 50.00			
LMFT Associate Extension	\$ 136.00	\$ 135.00	\$ 4.00	\$ 2.00	
<b>Professional Counselors</b>					
LPC Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00	
Additional Renewal Fee for Supervisor Status	\$ 50.00	\$ 50.00			
<b>Psychologists/Psychological Associates/Specialists in School Psychology</b>					
LPA Renewal	\$ 238.00	\$ 230.00	\$ 6.00	\$ 2.00	

LP Renewal	\$ 424.00	\$ 412.00	\$ 10.00	\$ 2.00	
LSSP Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00	
Over 70 Renewal - Applicable only to licensees who turned 70 by 8/31/2020	\$ 26.00	\$ 20.00	\$ 4.00	\$ 2.00	
Additional Renewal Fee for HSP Designation	\$ 40.00	\$ 40.00			
<b>EXAMINATION FEES</b>					
<b>Social Workers</b>					
Jurisprudence Exam	\$ 39.00		\$ 5.00		\$ 34.00
<b>Marriage and Family Therapists</b>					
Jurisprudence Exam	\$ 39.00		\$ 5.00		\$ 34.00
<b>Professional Counselors</b>					
Jurisprudence Exam	\$ 39.00		\$ 5.00		\$ 34.00
<b>Psychologists/Psychological Associates/Specialists in School Psychology</b>					
Jurisprudence Exam	\$ 39.00		\$ 5.00		\$ 34.00
<b>MISCELLANEOUS FEES</b>					
Duplicate Renewal Permit or License	\$ 10.00				
Written Verification of Licensure	\$ 10.00				
Written State to State Verification of Licensure	\$ 50.00				
Mailing List	\$ 10.00				
Returned Check Fee	\$ 25.00				
Criminal History Evaluation	\$ 150.00				
Reinstatement of License	\$ 500.00				
Request for Inactive Status	\$ 106.00	\$ 100.00	\$ 4.00	\$ 2.00	
Inactive Status Renewal (biennial)	\$ 106.00	\$ 100.00	\$ 4.00	\$ 2.00	
Request to Reactivate License from Inactive Status		equal to current renewal fee			
Late fee for license expired 90 days or less		equal to 1.5 times the base renewal fee			
Late fee for license expired more than 90 days, but less than one year		equal to 2 times the base renewal fee			



- (c) Late fees.
  - (1) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the Council a fee in an amount equal to one and one-half times the base renewal fee.
  - (2) If the person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the Council a fee in an amount equal to two times the base renewal fee.
  - (3) If the person's license has been expired for one year or more, the person may not renew the license; however, the person may apply for reinstatement of the license.
- (d) Open Records Fees. In accordance with §552.262 of the Government Code, the Council adopts by reference the rules developed by the Office of the Attorney General in 1 TAC Part 3, Chapter 70 (relating to Cost of Copies of Public Information) for use by each governmental body in determining charges under Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information).
- (e) Military Exemption for Fees. All licensing and examination base rate fees payable to the Council are waived for the following individuals:
  - (1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all licensure requirements; and
  - (2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

*Adopted to be effective: September 1, 2020*

# **TEXAS STATE BOARD OF EXAMINERS** **OF PROFESSIONAL COUNSELORS**

## **Subchapter A. General Provisions.**

**681.1. Purpose.** The purpose of this chapter is to implement the provisions of Texas Occupations Code, Chapter 503 (the Licensed Professional Counselor Act, or the Act), concerning the licensing and regulation of professional counselors..

*Adopted to be effective: September 1, 2003*

*Amended: April 27, 2008; December 12, 2013; February 28, 2019*

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

- (1) Accredited school--An institution of higher education accredited by a regional 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 Licensed Professional Counselor Act, Texas Occupations Code, Chapter 503.
- (3) Art therapy--A human service profession in which clients, facilitated by the art therapist, use art media, the creative process, and the resulting artwork to explore their feelings, reconcile emotional conflicts, foster self-awareness, manage behavior, develop social skills, improve reality orientation, reduce anxiety and increase self-esteem.
- (4) Board--The Texas State Board of Examiners of Professional Counselors.
- (5) Client(s)--A person(s) who requests and receives counseling services from a licensee or who has engaged in a therapeutic relationship with a licensee.
- (6) Consent for services--Process for receiving permission from the legally authorized person who agrees to services.
- (7) Consent Form--A document executed by the legally authorized person to ensure the client is aware of fees and arrangements for payment; counseling purposes, goals, and techniques; restrictions placed on the

license by the Council; limits on confidentiality; intent of the licensee to use another individual to provide counseling treatment intervention to the client; supervision of the licensee by another licensed health care professional including the name, address, contact information, and qualifications of the supervisor; and the name, address, and telephone number of the Council for the purpose of reporting violations of the Act or this chapter.

- (8) Council--The Texas Behavioral Health Executive Council.
- (9) Counseling-related field--A mental health discipline using human development, psychotherapeutic, and mental health principles including, but not limited to, clinical or counseling psychology, psychiatry, social work, marriage and family therapy, and counseling and guidance. Non-counseling related fields include, but are not limited to, sociology, education, administration, dance therapy and theology.
- (10) Executive Director--The executive director for the Texas Behavioral Health Executive Council. The executive director may delegate responsibilities to other staff members.
- (11) Direct client contact--Time spent counseling clients.
- (12) Health care professional--Any person licensed, certified, or registered by the state in a health related profession.
- (13) Indirect hours--Time spent in management, administration or other aspects of counseling service ancillary to direct client contact.
- (14) Jurisprudence exam--The Texas State Board of Examiners of Licensed Professional Counselors Jurisprudence exam. An online exam based upon the statutes and rules relating to the practice of counseling.
- (15) License--An LPC license, LPC license with art therapy specialty designation, or LPC Associate license issued by the Council.
- (16) Licensee---A person who holds an LPC license, LPC license with art therapy specialty designation, or LPC Associate license.
- (17) LPC--Licensed Professional Counselor. A person holding an LPC license as a professional counselor with authority to practice in independent practice.
- (18) LPC Associate--Licensed Professional Counselor Associate. A person who holds an LPC Associate

license to practice counseling only under a board Council-approved supervisor and not as an independent practitioner.

- (19) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, 26 U.S.C. §501(c)(3) and other individuals participating with them in pastoral counseling if:
- (A) the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of the legally recognized denomination, church, sect, religious organization or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, L1.6033-2(g)(i)(2012);
  - (B) the individual providing the service remains accountable to the established authority of that denomination, church, sect, religious organization or integrated auxiliary; and
  - (C) the person does not use the title of or hold himself or herself out as a professional counselor.
- (20) Supervisor--An LPC approved by the Council as meeting the requirements set out in §681.93 of this title (relating to Supervisor Requirements) to supervise an LPC Associate. The following words and terms, when used in this chapter, have the following meanings unless the context indicates otherwise.

*Adopted to be effective: September 1, 2003*

*Amended: November 21, 2004; September 1, 2005; April 27, 2008; May 20, 2012; December 12, 2013; January 12, 2015; July 14, 2016; February 28, 2019; November 19, 2020*

### **681.3. Meetings.**

- (a) The board will hold at least two regular meetings and additional meetings as necessary during each fiscal year.
- (b) The chair may call meetings after consultation with board members or by a majority of members voting at a regular meeting.
- (c) Meetings will be announced and conducted under the provisions of the Texas Open Meetings Act, Texas Government Code, Chapter 551.

*Adopted to be effective: September 1, 2003*

*Amended: April 27, 2008; December 12, 2013, February 28, 2019*

**681.4. Transaction of Official Business.** The board will transact official business only when in a legally constituted meeting with a quorum present.

*Adopted to be effective: September 1, 2003*

*Amended: September 1, 2005; April 27, 2008; December 12, 2013; February 28, 2019; November 19, 2020*

**681.5. Agendas.**

- (a) Prior to each meeting the executive director or designee will prepare and submit an agenda to each member of the board which includes items required by members, items required by law, and other matters of broad business which have been approved for discussion by the chair.
- (b) The official agenda of a meeting will be filed with the Secretary of State as required by law.

*Adopted to be effective: September 1, 2003*

*Amended: April 27, 2008; December 12, 2013; February 28, 2019; November 19, 2020*

**681.6. Minutes.**

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

*Adopted to be effective: September 1, 2003*

*Amended: April 27, 2008; December 12, 2013; February 28, 2019*

**681.7. Elections.**

- (a) At the meeting held nearest to August 31 of each year, the board will elect a vice-chair.
- (b) A vacancy which occurs in the office of vice-chair may be filled at any regular meeting

*Adopted to be effective: September 1, 2003*

*Amended: April 27, 2008; December 12, 2013; February 28, 2019*

**681.8. Officers.**

- (a) The chair will preside at all meetings at which he or she is in attendance and perform all duties prescribed by law or this chapter.
- (b) The chair is authorized by the board to make day-to-day decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board.

- (c) The vice-chair will perform the duties of the chair in case of the absence or disability of the chair.
- (d) In case the office of the chair becomes vacant, the vice-chair will serve until a successor is appointed.

*Adopted to be effective: September 1, 2003*

*Amended: April 27, 2008; December 12, 2013; February 28, 2019*

**681.9. Committees.**

- (a) The board or the chair may establish committees deemed necessary to fulfill board responsibilities.
- (b) The chair may appoint members of the board to serve on committees and will designate a chair for each committee.
- (c) Only members of the board may be appointed to a board committee.
- (d) Committee chairs will preside at all committee meetings and will make regular reports to the board.
- (e) Committees may direct all reports or other materials to the executive director or designee for distribution.
- (f) Committees will meet when called by the committee chair or when so directed by the board.
- (g) Each committee will consist of at least one public member and one professional member, unless the board chair or vice chair authorizes otherwise

*Adopted to be effective: September 1, 2003*

*Amended: May 4, 2006; April 27, 2008; December 12, 2013; July 14, 2016; February 28, 2019; November 19, 2020*

**681.11 Reimbursement for Expenses.** A board member is entitled to receive travel reimbursement as provided by the Texas General Appropriations Act.

*Adopted to be effective: September 1, 2003*

*Amended: April 27, 2008;*

## Subchapter B. Rules of Practice

- 681.31. Counseling Methods and Practices.** The use of specific methods, techniques, or modalities within the practice of professional counseling is limited to professional counselors appropriately trained and competent in the use of such methods, techniques, or modalities. Authorized counseling methods, techniques and modalities may include, but are not restricted to, the following:
- (1) individual counseling, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, social, moral, educational, career, and spiritual development and adjustment through the life span;
  - (2) group counseling, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, social, moral, educational, spiritual, and career development and adjustment through the life span;
  - (3) marriage/couples counseling, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, affective and family systems methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples;
  - (4) family counseling, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, affective and family systems methods and strategies with families to achieve mental, emotional, physical, moral, social, educational, spiritual, and career development and adjustment through the life span;
  - (5) addictions counseling, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, affective methods and strategies, and 12-step methods to achieve abstinence from the addictive substances and behaviors by the client;
  - (6) rehabilitation counseling, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society;
  - (7) education counseling, which uses formal and informal counseling methods and assessments and appraisal

- instruments for the purpose of determining strength, weakness, mental condition, emotional stability, intellectual ability, interest, skill, aptitude, achievement, and other personal characteristics of individuals for the selection of and placement in educational settings, preschool through postdoctoral study;
- (8) career development counseling, which uses formal and informal counseling methods and appraisal instruments for the purpose of determining intellectual ability, interest, skill, aptitude, achievement, mental condition, emotional fitness, and other personal characteristics for occupational, vocational, and career selection and placement throughout the life span;
  - (9) sexual issues counseling, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and strategies in the resolution of sexual disorders;
  - (10) referral counseling, which uses the processes of evaluating and identifying needs of clients to determine the advisability of referral to other specialists, informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources;
  - (11) psychotherapy, which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and/or strategies to assist clients in their efforts to recover from mental or emotional issues;
  - (12) play therapy, which uses play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors and feelings as a part of the therapist's role in helping children overcome their social, emotional, and behavioral issues;
  - (13) hypnotherapy, which uses the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional issues and addictions;
  - (14) expressive modalities used in the treatment of interpersonal, emotional or mental health issues, chemical dependency, or human developmental issues. Modalities include but are not limited to, music, art, dance movement, or the use of techniques employing animals in providing treatment;



- (15) biofeedback, which uses electronic equipment to monitor and provide feedback regarding an individual's physiological responses. The counselor who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the counselor's academic program or the substantial equivalent provided through approved continuing education;
- (16) assessing and appraising, in compliance with §681.43 of this title (relating to Testing), which uses formal and informal instruments and procedures, for which the counselor has received appropriate training and supervision, in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental status, emotional stability, intellectual ability, interests, aptitudes, achievement level and other characteristics for diagnosing mental health disorders; but does not permit the diagnosis of a physical condition or physical disorder;
- (17) consulting, which uses the application of specific principles and procedures in counseling to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations but not considered direct client contact for LPC Associates; and
- (18) crisis counseling, which focuses on short term counseling interventions to address immediate situations including factors such as safety and immediate needs purpose of this subchapter is to set out the application procedures for examination and licensure as an LMFT and LMFT Associate.

*Adopted to be effective: November 19, 2020*

**681.41. General Ethical Requirements.**

- (a) A licensee must not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including, but not limited to:
  - (1) the effectiveness of services;
  - (2) the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; or
  - (3) the practice or field of counseling.
- (b) A licensee must not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the services of a mental health organization or agency, including,

- but not limited to, the effectiveness of services, qualifications, or products.
- (c) A licensee must discourage a client from holding exaggerated or false ideas about the licensee's professional services, including, but not limited to, the effectiveness of the services, practice, qualifications, associations, or activities. If a licensee learns of exaggerated or false ideas held by a client or other person, the licensee must take immediate and reasonable action to correct the ideas held.
  - (d) A licensee must make reasonable efforts to discourage others whom the licensee does not control from making misrepresentations; exaggerated or false claims; or false, deceptive, or fraudulent statements about the licensee's practice, services, qualifications, associations, or activities. If a licensee learns of a misrepresentation; exaggerated or false claim; or false, deceptive, or fraudulent statement made by another, the licensee must take immediate and reasonable action to correct the statement.
  - (e) Regardless of setting, a licensee must provide counseling only in the context of a professional relationship. Prior to providing services, a licensee must obtain from an individual a signed informed consent, signed written receipt of information, or in the case of involuntary treatment a copy of the appropriate court order, including the following:
    - (1) fees and arrangements for payment;
    - (2) counseling purposes, goals, and techniques;
    - (3) any restrictions placed on the license by the Council;
    - (4) the limits on confidentiality;
    - (5) any intent of the licensee to use another individual to provide counseling treatment intervention to the client;
    - (6) supervision of the licensee by another licensed health care professional including the name, address, contact information and qualifications of the supervisor;
    - (7) the name, address and telephone number of the Council for the purpose of reporting violations of the Act or this chapter; and
    - (8) the established plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice.
  - (f) A licensee must inform the client in writing of any changes to the items in subsection (e) of this section, prior to initiating the change.
  - (g) Technological means of communication may be used to facilitate the therapeutic counseling process.

- (h) In accordance with §503.401(a)(4) of the Act, a licensee must 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.
- (i) A licensee employed or under contract with a chemical dependency facility or a mental health facility must 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, will not be considered as a violation of state law relating to illegal remuneration.
- (j) A licensee must not engage in activities for the licensee's personal gain at the expense of a client.
- (k) A licensee may promote the licensee's personal or business activities to a client if such activities, services or products are to facilitate the counseling process or help achieve the client's counseling goals. Prior to engaging in any such activities, services or product sales with the client, the licensee must first inform the client of the licensee's personal and/or business interest therein. A licensee must not exert undue influence in promoting such activities, services or products.
- (l) A licensee must set and maintain professional boundaries.
- (m) Except as provided by this subchapter, non-therapeutic relationships with clients are prohibited.
  - (1) A non-therapeutic relationship is any non-counseling activity initiated by either the licensee or client that results in a relationship unrelated to therapy.
  - (2) A licensee may not engage in a non-therapeutic relationship with a client if the relationship begins less than two (2) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.
  - (3) A licensee may not engage in sexual contact with a client if the contact begins less than five (5) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.
  - (4) For purposes of paragraphs (2) and (3) of this subsection, the licensee must be able to demonstrate there has been no exploitation and the non-

therapeutic relationship is not detrimental to the client in light of all relevant factors, including, but not limited to, the factors set forth in §681.42(b)(4)(A) - (G) of this title (relating to Sexual Misconduct).

- (5) The licensee must not provide counseling services to previous or current:
  - (A) family members;
  - (B) personal friends;
  - (C) educational associates; or
  - (D) business associates.
- (6) The licensee must not give or accept a gift from a client or a relative of a client valued at more than \$50, borrow or lend money or items of value to clients or relatives of clients, or accept payment in the form of goods or services rendered by a client or relative of a client.
- (7) The licensee must not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.
- (n) The licensee must not knowingly offer or provide counseling to an individual concurrently receiving counseling treatment intervention from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy, the licensee must request release from the client to inform the other professional and strive to establish positive and collaborative professional relationships.
- (o) A licensee may take reasonable action to inform medical or law enforcement personnel if the licensee determines there is a probability of imminent physical injury by the client to the client or others, or there is a probability of immediate mental or emotional injury to the client.
- (p) The licensee must take reasonable precautions to protect clients from physical or emotional harm resulting from interaction:
  - (1) within a group; or
  - (2) individual counseling.
- (q) For each client, a licensee must keep accurate records of:
  - (1) signed informed consent, signed written receipt of information, or, in the case of involuntary treatment, a copy of the appropriate court order
  - (2) intake assessment;
  - (3) dates of counseling treatment intervention;

- (4) principal treatment methods;
  - (5) progress notes;
  - (6) treatment plan; and
  - (7) billing information.
- (r) In the absence of applicable state and federal laws, rules or regulations, records held by a licensee must be kept for a minimum of seven (7) years from the date of termination of services with the client, or five (5) years after the client reaches the age of majority, whichever is greater.
- (s) Records created by licensees during the scope of their employment by agencies or institutions that maintain client records are not required to comply with (q) and (r) of this section.
- (t) Billing Requirements.
- (1) A licensee must bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual written agreement.
  - (2) Relationships between a licensee and any other person used by the licensee to provide services to a client must be so reflected on billing documents.
  - (3) Pursuant to Texas Health and Safety Code, Chapter 611, on the written request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, a licensee must provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.
  - (4) A licensee may not knowingly overcharge a client.
  - (5) With the exception of an unkept appointment, a licensee may not submit to a client or a third party payor a bill for counseling treatment intervention the licensee knows or should know is improper, unreasonable, or unnecessary.
- (u) A licensee must comply with all requirements of Texas Health and Safety Code Chapters 611 and 181 concerning the release of mental health records and confidential information.
- (v) Prior to the commencement of counseling services to a minor client who is named in a custody agreement or court order, a licensee must obtain and review a current copy of the custody agreement or court order, as well as any applicable part of the divorce decree. A licensee must maintain these

documents in the client's record and abide by the documents at all times. When federal or state statutes provide an exemption to secure consent of a parent or guardian prior to providing services to a minor, a licensee must follow the protocol set forth in such federal or state statutes.

- (w) A licensee must terminate a professional counseling relationship when it is reasonably clear the client is not benefiting from the relationship.
- (x) Upon termination of a relationship if professional counseling is still necessary, the licensee must take reasonable steps to facilitate the transfer to appropriate care.
- (y) A licensee must not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses in the evaluation the licensee has not personally interviewed the individual.
- (z) A licensee must not knowingly overtreat a client.
- (aa) A licensee must not aid or abet the unlicensed practice of professional counseling by a person required to be licensed under the Act.
- (bb) A licensee must report to the Council knowledge of any unlicensed practice of counseling.
- (cc) A licensee or an applicant must not participate in the falsification of any materials submitted to the Council.
- (dd) A licensee must not provide services while impaired by a physical, mental, or medical condition or by medication, drugs or alcohol.

*Adopted to be effective: November 19, 2020*

#### **681.42. Sexual Misconduct.**

- (a) For the purpose of this section, the following terms have the following meanings.
  - (1) "Mental health provider" means a licensee or any other licensed mental health professional, including a licensed social worker, a chemical dependency counselor, a licensed marriage and family therapist, a physician, a psychologist, or a member of the clergy. Mental health provider also includes employees of these individuals or employees of a treatment facility.
  - (2) Sexual contact means:
    - (A) deviate sexual intercourse as defined by the Texas Penal Code, §21.01;
    - (B) sexual contact as defined by the Texas Penal Code, §21.01;
    - (C) sexual intercourse as defined by the Texas Penal Code, §21.01; or

- (D) requests or offers by a licensee for conduct described by subparagraph (A), (B), or (C) of this paragraph.
- (3) "Sexual exploitation" means a pattern, practice, or scheme of conduct, including sexual contact, that can reasonably be construed as being for the purposes of sexual arousal gratification or sexual abuse of any person. The term does not include obtaining information about a client's sexual history within standard accepted practice while treating a sexual or relationship dysfunction.
- (4) "Therapeutic deception" means a representation by a licensee that sexual contact with, or sexual exploitation by, the licensee is consistent with, or a part of, a client's or former client's counseling.
- (b) A licensee must not engage in sexual contact with or sexual exploitation of a person who is:
  - (1) a client;
  - (2) an LPC Associate supervised by the licensee; or
  - (3) a student of a licensee at an educational institution at which the licensee provides professional or educational services.
  - (4) Sexual contact that occurs more than five years after the termination of the client relationship, cessation of supervision of an LPC Associate, or termination of professional or educational services provided to a student of the licensee at a post-secondary educational institution will not be deemed a violation of this section, if the conduct is consensual, not the result of sexual exploitation, and not detrimental to the client. The licensee must demonstrate there has been no exploitation in light of all relevant factors, including, but not limited to:
    - (A) the amount of time that has passed since therapy terminated;
    - (B) the nature and duration of the therapy;
    - (C) the circumstances of termination;
    - (D) the client's, LPC Associate's, or student's personal history;
    - (E) the client's, LPC Associate's, or student's current mental status;
    - (F) the likelihood of adverse impact on the client, LPC Associate, or student and others; and
    - (G) any statements or actions made by the licensee during the course of therapy, supervision, or educational services suggesting or inviting the

- possibility of a post-termination sexual or romantic relationship with the client, LPC Associate, or student.
- (c) A licensee must not practice therapeutic deception of a client.
  - (d) It is not a defense under subsections (b) - (c) of this section, the sexual contact, sexual exploitation, or therapeutic deception with the client, LPC Associate, or student occurred:
    - (1) with the consent of the client, LPC Associate, or student;
    - (2) outside the professional counseling sessions of the client or student; or
    - (3) off the premises regularly used by the licensee for the professional, supervisory, or educational services provided to the client, LPC Associate, or student.
  - (e) The following may constitute sexual exploitation if done for the purpose of sexual arousal or gratification or sexual abuse of any person:
    - (1) sexual harassment, sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, and:
      - (A) is offensive or creates a hostile environment, and the licensee knows, should know, or is told this; or
      - (B) is sufficiently severe or intense to be abusive to a reasonable person in the context;
    - (2) any behavior, gestures, or expressions which may reasonably be interpreted as seductive or sexual;
    - (3) sexual comments about or to a person, including making sexual comments about a person's body;
    - (4) making sexually demeaning comments about an individual's sexual orientation;
    - (5) making comments about potential sexual performance except when the comment is pertinent to the issue of sexual function or dysfunction in counseling;
    - (6) requesting details of sexual history or sexual likes and dislikes when not necessary for counseling of the individual;
    - (7) initiating conversation regarding the sexual problems, preferences, or fantasies of the licensee;
    - (8) kissing or fondling;
    - (9) making a request for a date;
    - (10) any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but of a sexual nature;
    - (11) any bodily exposure of genitals, anus or breasts;



- (12) encouraging another to masturbate in the presence of the licensee; or
  - (13) masturbation by the licensee when another is present.
- (f) A licensee must report sexual misconduct as follows:
- (1) If a licensee has reasonable cause to suspect a client, LPC Associate, or student has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health provider, or if a client, LPC Associate, or student alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee must report the alleged conduct not later than the third business day after the date the licensee became aware of the conduct or the allegations to:
    - (A) the prosecuting attorney in the county in which the alleged sexual exploitation, sexual contact or therapeutic deception occurred; and
    - (B) the Council and any other state licensing agency which licenses the mental health provider if the conduct involves a licensed individual.
  - (2) Before making a report under this subsection, the reporter must inform the alleged victim of the reporter's duty to report and must determine if the alleged victim wants to remain anonymous.
  - (3) A report under this subsection must:
    - (A) identify the reporter;
    - (B) identify the alleged victim, unless the alleged victim has requested anonymity;
    - (C) express suspicion sexual exploitation, sexual contact, or therapeutic deception occurred; and
    - (D) provide the name of the alleged perpetrator.

*Adopted to be effective: November 19, 2020*

**681.43. Testing.**

- (a) Prior to or following the administration of any test, a licensee must make known to clients the purposes and explicit use to be made of the test as a part of a professional counseling relationship.
- (b) A licensee must not appropriate, reproduce, or modify copyrighted tests or any parts thereof without the acknowledgment and permission of the copyright owner.
- (c) A licensee must not administer any test without the appropriate training and experience to administer and interpret the test.

- (d) A licensee must observe the necessary precautions to maintain the security of any test administered by the licensee or under the licensee's supervision.
- (e) In accordance with the §503.003(b)(1) of the Act, the use of standardized projective techniques is prohibited. This prohibition includes, but is not limited to, the Rorschach Inkblot Test, the Holtzman Inkblot Test, the Thematic Apperception Test, the Children's Apperception Test, and the Senior Apperception Test.

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**681.44. Drug and Alcohol Use.** A licensee must not use alcohol or drugs in a manner that adversely affects the licensee's ability to provide counseling.

*Adopted to be effective: November 19, 2020*

**681.45. Confidentiality and Required Reporting.**

- (a) Communication between a licensee and client and the client's records, however created or stored, are confidential under the provisions of the Texas Health and Safety Code Chapter 611 and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice.
- (b) A licensee must not disclose any communication, record, or identity of a client except as provided in Texas Health and Safety Code Chapter 611 or other state or federal statutes or rules.
- (c) A licensee must comply with Texas Health and Safety Code, Chapters 181 and 611, concerning access to mental health records and confidential information.
- (d) A licensee must report information as required by Council §§882.36 (relating to Compliance with State and Federal Law) and 884.32 (relating to Reportable Legal Action and Discipline) and the following statutes:
  - (1) Texas Family Code Chapter 261, Subchapter B, concerning report of abuse or neglect of minors;
  - (2) Texas Human Resources Code Chapter 48, Subchapter B, concerning reports of abuse, neglect, or exploitation of elderly or disabled persons;
  - (3) Texas Health and Safety Code Chapter 161, Subchapter L, concerning abuse, neglect, and unprofessional or unethical conduct in health care facilities;
  - (4) Texas Civil Practice and Remedies Code, §81.006, concerning duty to report sexual exploitation by a mental health provider; and

- (5) A licensee must comply with Texas Occupations Code §109.051 relating to the release of treatment information concerning the treatment of a sex offender.

*Adopted to be effective: November 19, 2020*

**681.46. Licensees and the Council.**

- (a) Licensees are bound by the provisions of the Act and this chapter as well as the Council's rules and statutes.
- (b) A licensee has the responsibility of reporting alleged violations of the Act or this chapter to the Council.

*Adopted to be effective: November 19, 2020*

**681.47. Assumed Names.**

- (a) An individual practice by a licensee may be established as a corporation, a limited liability partnership, a limited liability company, or other business entity in accordance with state or federal law.
- (b) An assumed or trade name used by a licensee must not be false, deceptive, or misleading as those terms are described in §681.49(b) of this title (relating to Advertising and Announcements).

*Adopted to be effective: November 19, 2020*

**681.49. Advertising and Announcements.**

- (a) Information used by a licensee in any advertisement or announcement must not contain information which is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements.
- (b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:
  - (1) makes any misrepresentation of fact or omits a fact necessary to make the statement misleading;
  - (2) makes any representation likely to create an unjustified expectation about the results of a mental health care service or procedure;
  - (3) compares a mental health care professional's services with another health care professional's services unless the comparison can be factually substantiated;
  - (4) contains a testimonial that includes false, deceptive, or misleading statements, or fails to include disclaimers or warnings as to the credentials of the person making the testimonial;

- (5) causes confusion or misunderstanding as to the credentials, education, or licensure of a mental health care professional;
  - (6) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;
  - (7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required;
  - (8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or
  - (9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved for or used by another profession or professional.
- (c) A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations.
  - (d) The highest academic degree in counseling or a counseling-related field earned from an accredited school may be used when advertising or announcing counseling treatment intervention to the public or in counseling-related professional representations. A degree in counseling or a counseling-related field received at a foreign university may be used if the degree would be accepted as a transfer degree by an accredited school.
  - (e) Notwithstanding the foregoing, a licensee may advertise or announce his or her other degrees from an accredited school if the subject of the degree is specified.
  - (f) The Council imposes no restrictions on advertising by a licensee with regard to the use of any medium, the licensee's personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a licensee, or the use of a trade name.
  - (g) All advertisements or announcements of counseling including telephone directory listings by a person licensed by the Council must clearly state the licensee's licensure status by the use of a title such as "Licensed Counselor", or "Licensed Professional Counselor", or "LPC", or a statement such as "licensed by the Texas Behavioral Executive Council" with reference to the "Texas State Board of Examiners of Professional Counselors."
  - (h) An LPC Associate must indicate Associate status on all advertisements, billing, and announcements of counseling

treatment by the use of the term "LPC Associate. "On all advertisements, billings and announcements of counseling treatment by an LPC Associate, the Associate's name must be followed by the name of the supervisor.

- (i) A licensee is required to hold the art therapy specialty designation in order to use the title "art therapist" or the initials "AT." A licensee who does not hold the designation may use art therapy as a counseling method but may not use the title or initials.
- (j) A licensed professional counselor who is a Council-approved supervisor may use the designation "LPC-S" when advertising their supervisory status.

*Adopted to be effective: November 19, 2020*

**681.50. Research and Publications.**

- (a) In research with a human participant, a licensee must take reasonable precautions to ensure that the participant does not suffer emotional or physical harm.
- (b) A licensee must ensure the full protection of a client's identity when using data obtained from a professional counseling relationship for the purposes of education or research.
- (c) When conducting or reporting research, a licensee must give recognition to previous work on the topic as well as observe all copyright laws.
- (d) A licensee must give due credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to the person/persons who have contributed significantly to the licensee's research or publication.

*Adopted to be effective: November 19, 2020*

**681.51. Parenting Coordination.**

- (a) In accordance with Texas 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 Texas Family Code, §153.606, in a suit; and
  - (2) who:
    - (A) is appointed under Texas 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 has a duty to provide the following information in writing to the parties of the suit about the responsibility of the licensee and the role of the appointed court.
  - (1) 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 professional counseling. 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.
  - (2) Records of a licensee serving as a parenting coordinator are confidential under Texas Civil Practice and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator must comply with the Texas Civil Practice and Remedies Code, Chapter 154.
  - (3) A licensee must not provide professional counseling services to any person while simultaneously providing parenting coordination services. This section does not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

*Adopted to be effective: November 19, 2020*

**681.52. Parenting Facilitation.**

- (a) In accordance with Texas House Bill 1012, 81st Legislature, 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 Texas 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 Texas Family Code, §153.6061, in a suit; and
  - (2) who:
    - (A) is appointed under Texas 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 must comply with all applicable requirements of the Texas Family Code, Chapter 153, and this section. Licensees must also comply with all requirements of this chapter unless a provision is clearly inconsistent with the Texas Family Code, Chapter 153, or this section.
- (d) In accordance with Texas Family Code, §153.6102(e), a licensee serving as a parenting facilitator must not provide other professional counseling services to any person while simultaneously providing parent facilitation services. This section does not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.
- (e) In accordance with Texas Family Code, §153.6101(b)(1), a licensed professional counselor associate must not serve as a parenting facilitator.
- (f) 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 Texas Family Code, Chapter 153.
- (g) A licensee serving as a parent facilitator must assist the parties involved in reducing harmful conflict and in promoting the best interests of the children.
- (h) 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 must 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 must 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 must 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.
- (i) A licensee, serving as a parenting facilitator, must be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parenting facilitator must 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.
- (j) In order to protect the parties and children in domestic violence cases involving power, control and coercion, a parenting facilitator must tailor the techniques used so as to avoid offering the opportunity for further coercion.
- (k) A licensee serving as a parent facilitator must be alert to the reasonable suspicion of substance abuse by parents or children, as well as mental health impairment of a parent or child.
- (l) A licensee serving as a parenting facilitator must not provide legal advice.
- (m) A licensee serving as a parenting facilitator must serve by written agreement of the parties and/or formal order of the court.
- (n) A licensee serving as a parenting facilitator must 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.
- (o) A licensee serving as a parenting facilitator must 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.
- (p) A licensee serving as a parenting facilitator:
  - (1) must terminate or withdraw services if the licensee determines the licensee cannot act in an impartial or objective manner;
  - (2) must 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) must not coerce or improperly influence any party to make a decision;
  - (4) must not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting facilitator process; and
  - (5) must 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.
- (q) A licensee serving as a parenting facilitator may make referrals to other professionals to work with the family, but must avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration must be given or received by a licensee for parenting facilitation or other professional referrals.
- (r) 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.
- (s) A licensee serving as a parenting facilitator must 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.
- (t) 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.
- (u) A licensee serving as a parenting facilitator must, 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.
- (v) Information obtained during the parenting facilitation process must 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.
  - (w) In the initial session with each party, a licensee serving as a parenting facilitator must review the nature of the parenting facilitator's role with the parents to ensure that they understand the parenting facilitation process.
  - (x) A licensee serving as a parenting facilitator:
    - (1) must comply with all mandatory reporting requirements, including but not limited to Texas Family Code Chapter 261, concerning abuse or neglect of minors;
    - (2) must 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) must maintain records necessary to support charges for services and expenses and must make a detailed accounting of those charges to the parties and their counsel if requested to do so;
    - (4) must maintain notes regarding all communications with the parties, the children, and other persons with whom they speak about the case; and
    - (5) must 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.
  - (y) Records of a licensee serving as a parenting facilitator, are not mental health records and are not subject to the disclosure requirements of Texas Health and Safety Code, Chapter 611. At a minimum, records must be maintained for the period of time described in §681.41(r) of this title (relating to General Ethical Requirements), or as otherwise directed by the court.
  - (z) Records of a licensee serving as a parenting facilitator must be released on the request of either parent, as directed by the court, or as directed by the Council.
  - (aa) Charges for parenting facilitation services must 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.

- (bb) All fees and costs must 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.
- (cc) 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.
- (dd) 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.
- (ee) The minimum training for a licensee serving as a parent facilitator that is required by Texas Family Code, §153.6101(b)(2) 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 parent coordination and facilitation, and the multiple styles and procedures used in different models of service.
- (ff) A licensee serving as a parent facilitator must 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 (ee) of this section, is based on functional skills taught during the training rather than the use of specific titles or names.

*Adopted to be effective: November 19, 2020*

**681.53. Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.**

- (a) Licensees must 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 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 qualifications 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 reported to the court that ordered the evaluation, see Council §884.3.
- (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 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, Subchapter D, Chapter 107.
- (h) Licensees providing child custody evaluations or adoption evaluations must, 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, 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.

- (i) A Licensed Professional Counselor Associate (LPC Associate) must not conduct child custody evaluations or adoption evaluations unless qualified by another professional license to provide such services.

*Adopted to be effective: November 19, 2020*

## **Subchapter C. Application and Licensing.**

### **681.71. General Application Procedures.**

- (a) An applicant must submit for review an official complete application with all supporting documentation, all applicable fees, and information required by law to the Council. Complete applications will consist of the required application materials described in Council rules §882.1 (relating to Application Process), §882.2 (relating to General Application File Requirements), and §681.72 of this title (relating to Required Application Materials).
- (b) To upgrade from LPC Associate status to LPC, an LPC Associate must submit the supervised experience documentation form, proof of passing the jurisprudence exam within six months prior to upgrade, and the applicable fee.

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### **681.72. Required Application Materials.**

- (a) To apply for LPC Associate, the applicant must submit:
  - (1) the Council's application form;
  - (2) all applicable fees;
  - (3) official examination results from the National Board of Certified Counselors verifying a passing score on the National Counselor Exam (NCE) or National Clinical Mental Health Counselor Exam (NCMHCE) issued no more than five (5) years before the date the application was received;
  - (4) completion certificate for the Texas jurisprudence exam dated no more than six months before the date the application was received;
  - (5) an official graduate transcript(s);
  - (6) a practicum/graduate intern documentation form;
  - (7) a supervisory agreement form; and
  - (8) The holder of a current license in good standing issued by another jurisdiction equivalent to the Texas LPC Associate license must submit official verification of his or her license, including official verification of any supervised experience recognized by the issuing jurisdiction. If supervised experience cannot be verified by the issuing jurisdiction, the Council may consider a supervised experience documentation form with verification of the supervisor's credentials.

- (b) To apply for LPC as the holder of a current Texas LPC Associate license, the applicant must submit:
  - (1) the Council's application form;
  - (2) all applicable fees;
  - (3) completion certificate for the jurisprudence exam dated no more than six months before the date the application for LPC was received;
  - (4) the Council's supervised experience documentation form; and
  - (5) other information or forms as requested by the Council.
- (c) To apply for LPC as the holder of a current license equivalent to a Texas LPC license issued by another jurisdiction, the applicant's license must be in good standing and must submit:
  - (1) all of the items listed in subsection (a)(1)-(5) of this section;
  - (2) official verification of the license, including official verification of any supervised experience recognized by the issuing jurisdiction; and
  - (3) other information or forms as requested by the Council.
  - (4) The five-year expiration of the NCE or NCMHCE score does not apply to an applicant who has held a license issued by a United States jurisdiction in good standing for at least two (2) years before the date the application for LPC was received.
- (d) To apply for supervisor status, an LPC must:
  - (1) have held the LPC license in good standing for at least 60 months;
  - (2) submit an application and all applicable fees; and
  - (3) submit a completion certificate for an acceptable supervisor training. An acceptable supervisor training is:
    - (A) a doctoral level course in the supervision of professional counseling or mental health services which was taken for credit at an accredited school and documented on an official transcript; the qualifying doctoral level course may have been completed no more than five (5) years before the date the application for supervisor status was received; or
    - (B) a 40-clock-hour supervision course as set forth in §681.147 of this title (relating to 40-Clock-Hour Supervisor Training Course); the qualifying 40-clock-hour supervision course may have

been completed no more than two (2) years before the date the application for supervisor status was received.

- (e) An applicant who holds a current LPC license in good standing issued by another jurisdiction must be substantially equivalent to Texas licensure requirements.
- (f) Licensure requirements that either match or exceed Texas requirements are considered to be substantially equivalent.

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**681.73. Application for Art Therapy Specialty Designation.**

- (a) A person applying for licensure with an art therapy specialty designation must:
  - (1) meet the requirements for an LPC license set out in this chapter;
  - (2) hold either:
    - (A) a master's or doctoral degree in art therapy that includes 700 hours of supervised practicum from an accredited school; or
    - (B) all of the following:
      - (i) a master's degree in a counseling-related field;
      - (ii) a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy;
      - (iii) 700 hours of supervised practicum from an accredited school;
  - (3) have the experience requirements set out in subsection (c) of this section; and
  - (4) submit documentation of successful completion of the Certification Examination in Art Therapy of the Art Therapy Credentials Board.
- (b) The Council will accept an individual course from an art therapy program accredited through the American Art Therapy Association as satisfying the education requirements set out in §681.82 of this title (relating to Academic Requirements) if not less than 75% of the course content is substantially equivalent to the content of a course required in §681.83 of this title (relating to Academic Course Content).
- (c) As part of the supervised experience requirements for art therapy specialty designation under the Act, §503.303, an applicant must fulfill the requirements of §§681.91-681.93 of this title and must have the following:



- (1) 1,500 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's or doctoral degree in art therapy that includes 700 hours of practicum; or
- (2) 2,000 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's degree in counseling or a counseling related field and has a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy with 700 hours practicum.

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**681.81. General Academic Requirements.**

- (a) The Council will accept as meeting academic requirements graduate degrees from accredited schools that meet the requirements of §681.82 of this title (relating to Academic Requirements) and §681.83 of this title (relating to Academic Course Content).
- (b) Degrees and course work received at foreign universities will be acceptable only if such course work would be counted as transfer credit by an accredited school. The applicant must provide the Council with documents and evidence to establish his or her formal education is equivalent to at least a master's degree granted by an accredited school. In order to meet this requirement the applicant must comply with Council §882.11 of this title (relating to Applicants with Foreign Degrees).
- (c) Applicants must provide upon request a course description from an official school catalog or bulletin or a course syllabus to substantiate the relevance of the course to the academic requirements of §681.83 of this title.
- (d) The Council will not consider undergraduate level courses as meeting any academic requirements for licensure unless the applicant's official transcript clearly shows the course was awarded graduate credit by the school.
- (e) The Council will consider courses for which an applicant's official transcript indicates a passing grade or credit was earned.
- (f) In evaluating transcripts, the Council will consider a quarter hour of academic credit as two-thirds of a semester hour.

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**681.82. Academic Requirements.**

- (a) Persons applying for licensure must have a graduate degree in counseling or a counseling-related field of:
  - (1) at least 48 semester hours of coursework in a counseling-related field for applicants who began the qualifying program before August 1, 2017; and
  - (2) at least 60 semester hours of coursework in a counseling-related field for applicants who began the qualifying program on or after August 1, 2017.
- (b) An applicant who holds a graduate degree in a counseling-related field must have an official transcript documenting satisfaction of the requirements described in §681.83 of this title (relating to Academic Course Content).
- (c) An applicant who has held a full LPC in good standing issued by a United States jurisdiction for at least two (2) years immediately preceding the date the application was received is deemed to have met all academic requirements, including the practicum.
- (d) The 48/60 semester hours must be designed to train a person to provide direct services to assist clients in a professional counseling relationship using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life. The 48/60 semester hours may be course work that was part of the graduate degree in a counseling-related field, may be in addition to course work taken for the qualifying program, or a combination of both.

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**681.83. Academic Course Content.**

- (a) An applicant who holds a graduate degree in counseling from an accredited school is presumed to have satisfied the academic course content requirements described in this section.
- (b) An applicant who holds a graduate degree in a counseling-related field must complete at least one course in each of the following areas:
  - (1) normal human growth and development - the process and stages of human intellectual, physical, social, and emotional development from prenatal origins through adulthood;
  - (2) abnormal human behavior - the principles of understanding dysfunction in human behavior or social disorganization;

- (3) appraisal or assessment techniques - the principles, concepts, and procedures of systematic appraisal or assessment of an individual's attitudes, aptitudes, achievements, interests, and personal characteristics, which may include the use of both non-testing approaches and test instruments;
  - (4) counseling theories - the major theories of professional counseling;
  - (5) counseling methods or techniques - the methods or techniques used to provide counseling treatment intervention including:
    - (A) counseling individuals; and
    - (B) the theory and types of groups, including dynamics and the methods of practice with groups;
  - (6) research - the methods of research which may include the study of statistics or a thesis project;
  - (7) life style and career development - the theories of vocational choice, career choice and life style, sources of occupational and educational information, and career decision-making processes;
  - (8) social, cultural, and family issues - the studies of change, ethnic groups, gender studies, family systems, urban and rural societies, population patterns, cultural patterns, and differing life styles;
  - (9) professional orientation - the objectives of professional organizations, codes of ethics, legal aspects of practice, standards of preparation, and the role identity of persons providing direct counseling treatment intervention; and
  - (10) practicum (internship) - supervised practicum experience primarily counseling in nature which includes:
    - (A) At least 300 clock-hours, of which at least 100 hours must be direct client counseling.
    - (B) Academic credit or other acknowledgment of the practicum/internship must appear on the applicant's official graduate transcript.
- (c) The remaining courses needed to meet the 48/60 graduate semester hour requirement must be counseling-related course work in areas directly supporting the development of an applicant's professional counseling skills and must be courses related primarily to professional counseling.
- (d) As of August 1, 2017, the following courses must be taken in addition to those outlined in subsection (b) of this section, to meet the 60 semester hour requirement:

- (1) addictions counseling; to include, but not limited to, gambling, sexual, eating, alcohol, or drug;
  - (2) an additional course in counselor ethics; to include records management, an overview of business/family law and professional practice, and the study of current Council rules;
  - (3) couples, marriage, or family counseling; and
  - (4) a course in psychopathology to include such content as criteria of psychiatric diagnosis, use of the current Diagnostic and Statistical Manual of Mental Disorders and the theories of psychopathology. The course should also include the basic knowledge of types of psychopharmacological medications.
- (e) Passing the National Counselor Exam or National Clinical Mental Health Counselor Exam does not guarantee that Texas state licensure requirements have been satisfied.

*Adopted to be effective: November 19, 2020*

**681.91. LPC Associate License.**

- (a) The Council may issue an LPC Associate license to an applicant who has:
  - (1) filed all application forms and paid all applicable fees;
  - (2) met all of the academic requirements for licensure;
  - (3) completed the required examinations with the requisite score as described in §681.72(a)(3) and (a)(4) of this title (relating to Required Application Materials);
  - (4) entered into a supervisory agreement with a Licensed Professional Counselor Supervisor (LPC-S); and
  - (5) not completed the supervised experience described in §681.92 of this title (relating to Experience Requirements (Internship)).
- (b) An LPC Associate must comply with all provisions of the Act and Council rules.
- (c) To practice counseling in Texas, a person must obtain an LPC Associate license before the person begins an internship or continues an internship. Hours obtained by an unlicensed person in any setting will not count toward the supervised experience requirements.
- (d) An LPC Associate may practice counseling only as part of his or her internship and only under the supervision of a Licensed Professional Counselor Supervisor (LPC-S). The LPC Associate may not own an independent professional counseling practice.
- (e) An LPC Associate may have no more than two (2) Council-approved LPC supervisors at any given time.

- (f) An LPC Associate must maintain their LPC Associate license during his or her supervised experience.
- (g) An LPC Associate license will expire 60 months from the date of issuance.
- (h) An LPC Associate who does not complete the required supervised experience hours during the 60-month time period must reapply for licensure.
- (i) An LPC Associate must continue to be supervised after completion of the 3,000 hours of supervised experience and until the LPC Associate receives his or her LPC license. Supervision is complete upon the LPC Associate receiving the LPC license.
- (j) An LPC Associate does not own client records; they are the property of the agency, organization, or LPC-S.
- (k) An LPC Associate must not employ a supervisor but may compensate the supervisor for time spent in supervision if the supervision is not a part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.
- (l) An LPC Associate must not accept direct payment for services from a client.
- (m) All billing documents for services provided by an LPC Associate must reflect the LPC Associate holds an LPC Associate license and is under supervision.
- (n) The LPC Associate must not represent himself or herself as an independent practitioner. The LPC Associate's name must be followed by the name of the supervisor on all advertisements, billings, and announcements, including but not limited to websites and intake documents.

*Adopted to be effective: November 19, 2020*

**681.92. Experience Requirements (Internship).**

- (a) All applicants for LPC licensure must complete supervised experience acceptable to the board of 3,000 clock-hours under a board-approved supervisor.
  - (1) All internships physically occurring in Texas must be completed under the supervision of a board-approved supervisor.
  - (2) For all internships physically completed in a jurisdiction other than Texas, the supervisor must be a person licensed or certified by that jurisdiction in a profession that provides counseling and who has the academic training and experience to supervise the counseling services offered by the intern. The applicant must provide documentation acceptable to the board regarding the supervisor's qualifications.

- (b) The supervised experience must include at least 1,500 clock-hours of direct client counseling contact. Only actual time spent counseling may be counted.
- (c) An LPC Intern may not complete the required 3,000 clock-hours of supervised experience in less than 18 months.
- (d) The experience must consist primarily of the provision of direct counseling services within a professional relationship to clients by using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.
- (e) The LPC Intern must receive direct supervision consisting of a minimum of four (4) hours per month of supervision in individual (up to two Interns) or group (three or more) settings while the intern is engaged in counseling unless an extended leave of one month or more is approved in writing by the board approved supervisor. No more than 50% of the total hours of supervision may be received in group supervision.
- (f) An LPC Intern may have up to two (2) supervisors at one time

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**681.93. Supervisor Requirements.**

- (a) A supervisor must keep a written record of each supervisory session in the file for the LPC Associate.
  - (1) The supervisory written record must contain:
    - (A) a signed and dated copy of the Council's supervisory agreement form for each of the LPC Associate's supervisors;
    - (B) a copy of the LPC Associate's wall certificate noting the dates of issuance and expiration;
    - (C) fees and record of payment;
    - (D) the date of each supervisory session;
    - (E) a record of an LPC Associate's leave of one month or more, documenting the supervisor's approval and signed by both the LPC Associate and the supervisor; and
    - (F) a record of any concerns the supervisor discussed with the LPC Associate, including a written remediation plan as prescribed in subsection (e) of this section.
  - (2) The supervisor must provide a copy of all records to the LPC Associate upon request.

- (b) The full professional responsibility for the counseling activities of the LPC Associate rests with the LPC Associate's approved supervisor(s). If the LPC Associate receives disciplinary action by the Council, the supervisor may also be subject to disciplinary action.
  - (1) Supervisors must review all provisions of the Act and Council rules in this chapter during supervision.
  - (2) The supervisor must ensure the LPC Associate is aware of and adheres to all provisions of the Act and Council rules.
- (c) The supervisor must avoid any relationship that impairs the supervisor's objective, professional judgment.
  - (1) The supervisor may not be related to the LPC Associate within the second degree of affinity or within the third degree of consanguinity.
  - (2) The supervisor may not be an employee of his or her LPC Associate.
- (d) The supervisor must submit to the Council accurate documentation of the LPC Associate's supervised experience within 30 days of the end of supervision or the completion of the LPC Associate's required hours, whichever comes first.
- (e) If a supervisor determines the LPC Associate may not have the counseling skills or competence to practice professional counseling under an LPC license, the supervisor will develop and implement a written plan for remediation of the LPC Associate, which must be reviewed and signed by the LPC Associate and maintained as part of the LPC Associate's file.
- (f) The supervisor must ensure the supervised counseling experience of the LPC Associate were earned:
  - (1) after the LPC Associate license was issued; and
  - (2) in not less than 18 months of supervised counseling experience.
- (g) A supervisor whose license has expired is no longer an approved supervisor and:
  - (1) must immediately inform all LPC Associates under his or her supervision and assist the LPC Associates in finding alternate supervisors; and
  - (2) must refund all supervisory fees for supervision after the expiration of the supervisor status.
  - (3) Hours accumulated under the person's supervision after the date of license expiration may not count as acceptable hours.
- (h) Upon execution of a Council order for probated suspension, suspension, or revocation of the LPC license with supervisor status, the supervisor status is revoked. A licensee whose supervisor status is revoked:

- (1) must immediately inform all LPC Associates under his or her supervision and assist the LPC Associates in finding alternate supervisors; and
  - (2) must refund all supervisory fees for supervision after the date the supervisor status is revoked; and
  - (3) hours accumulated under the person's supervision after the date of license expiration may not count as acceptable hours.
- (i) Supervision of an LPC Associate without having Council approved supervisor status is grounds for disciplinary action.

*Adopted to be effective: November 19, 2020*

**681.101. Examinations.**

- (a) Each applicant for licensure is required to take and pass the National Counselor Exam or the National Clinical Mental Health Counselor Exam and complete the jurisprudence exam prior to application.
- (b) The development or administration of the examination may be contracted to a national testing company.
- (c) The National Counselor Examination and the National Clinical Mental Health Counselor Exam are administered at testing centers located in various cities throughout the state. The jurisprudence exam is available online at the Council's website.

*Adopted to be effective: November 19, 2020*

**681.114. 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 of this title (relating to Special Provisions Applying to Military Service Members, Veterans, and Spouses).
- (b) Licensing requirements that either match or exceed Texas requirements are considered substantially equivalent.
- (c) For an application submitted by a verified military service member or military veteran, the applicant must receive credit towards any licensing requirements, except an examination requirement, for verified military service, training, or education that the Council determines is relevant to the licensing requirements, unless he or she holds a restricted license issued by another jurisdiction or has a criminal history for which adverse licensure action is authorized by law.

*Adopted to be effective: November 19, 2020*



**681.141. General Continuing Education Requirements.**

- (a) The purpose of Council rules §§681.141-681.147 is to establish the continuing education requirements for the renewal of an LPC license. These requirements are intended to maintain and improve the quality of professional counseling services provided to the public and maintain licensee knowledge of current research, techniques, and practice; and provide resources which will improve skill and competence in professional counseling.
- (b) A licensee must complete 24 clock-hours of continuing education acceptable to the Council during each 24-month period. A clock-hour is 60 minutes of attendance and participation in an acceptable continuing education experience. A licensee must complete at least four hours of continuing education in ethics, two of which must be directly related to Texas LPC ethics, each renewal period. Completion of the jurisprudence examination will count as one hour of continuing education in Texas LPC ethics.
- (c) A licensee holding the supervisor status must complete 6 additional hours of continuing education in supervision every 2 years.

*Adopted to be effective: November 19, 2020*

**681.142. Acceptable Continuing Education.** The continuing education must be related to counseling.

- (1) The licensee must ensure the education provided is related to the practice of professional counseling.
- (2) The licensee must ensure the individual(s) presenting the information have the necessary experience and knowledge in the topic(s) presented.
- (3) The presenter must verify attendance of participants and provides participants with a letter or certificate of attendance displaying the licensee's name, topic covered, date course was taken, and hours of credit earned.
- (4) The presenter must provide participants a mechanism for evaluation of each continuing education activity.

*Adopted to be effective: November 19, 2020*

**681.143. Activities Unacceptable as Continuing Education.** The Council will not give continuing education credit to a licensee for:

- (1) education incidental to the regular professional activities of a counselor 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 not related to the practice of professional counseling that are required as a part of one's job;
- (4) teaching or consultation that is part of one's employment; and
- (5) an experience that does not fit the types of acceptable continuing education in §681.141 of this title (relating to Acceptable Continuing Education).

*Adopted to be effective: November 19, 2020*

**681.145. Determination of Clock-hour Credits.**

- (a) Programs which meet the criteria of §681.142 of this title (relating to Acceptable Continuing Education) shall be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education activity.
- (b) Teaching in programs not part of the licensee's employment which meet the Council's criteria as set out in §681.142 of this title will be credited on the basis of one clock-hour of credit for one clock-hour taught plus two clock-hours credit for preparation for each hour taught. No more than 9 hours of the 24 clock-hour continuing education requirement can be credited under this option. Credit may be granted for the same presentation only once during a two-year period.
- (c) Completion of academic work with a passing grade in subject areas supporting the development of skills and competence in professional counseling at an accredited school will be credited on the basis of 15 clock-hours of credit for each semester hour or 10 clock-hours of credit for each quarter hour completed.

*Adopted to be effective: November 19, 2020*

**681.147. 40-Clock-Hour Supervisor Training Course.** The 40-clock-hour supervision training must comply with §681.142 of this title (relating to Acceptable Continuing Education) and:

- (1) the course must be taught by a full LPC with supervisor status;
- (2) all related coursework and assignments must be completed over a time period not to exceed 90 days; and
- (3) the 40-clock-hour supervision training must include at least:

- (A) three (3) clock-hours for defining and conceptualizing supervision and models of supervision;
- (B) three (3) clock-hours for supervisory relationship and counselor development;
- (C) twelve (12) clock-hours for supervision methods and techniques, covering roles (teacher, counselor, and consultant), focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (racial, ethnic, and gender issues), and evaluation methods;
- (D) twelve (12) clock-hours covering roles for supervision and standards of practice; Subchapter B (relating to Rules of Practice); Subchapter C (relating to Application and Licensing); §681.91 of this title (relating to LPC Associate License); §681.92 of this title (relating to Experience Requirements); §681.93 of this title (relating to Supervisor Requirements); other codes of ethics; and legal and professional issues; and
- (E) three (3) clock-hours for executive and administrative tasks, covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

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## **Subchapter D. Schedule of Sanctions.**

**681.201. Purpose of this Subchapter.** This schedule of sanctions as adopted by the Act §503.2015(2).

*Adopted to be effective: November 19, 2020*

**681.203. Severity Levels for the Schedule of Sanctions.**

- (a) The following are the severity levels for the schedule of sanctions:
  - (1) Level One--revocation of license. These violations evidence intentional or gross misconduct on the part of the licensee and/or cause or pose a high degree of harm to the public and/or require severe punishment as a deterrent to the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure.
  - (2) Level Two--extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but may require termination of licensure for a period of not less than one year.
  - (3) Level Three--moderate suspension of license. These violations are less serious than Level Two violations, but may require termination of licensure for a period of time less than a year.
  - (4) Level Four--probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate.
  - (5) Level Five--reprimand. These violations involve inadvertent or relatively minor misconduct and/or rule violations.
- (b) Licensees who are in violation of a Council rule in this chapter may be subject to an administrative penalty of up to \$5,000 per violation, per day of occurrence, and/or be required to refund all or a portion of the fees received from a consumer.
- (c) Supervisors who are in violation of a Council rule in this chapter may be subject to an administrative penalty of up to \$5,000 per violation, per day of occurrence, and/or be required to refund all or a portion of the fees received by the supervisor to his or her LPC Associate(s).

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**681.204. Other Actions.** Complaints may be resolved by issuance of a warning letter or a conditional letter of agreement, which does not involve a formal disciplinary action.

- (1) Warning letters inform licensees of their duties under the Act, the Council Act, or council rules, and whether the council has a concern about the circumstances surrounding the complaint.
- (2) A conditional letter of agreement informs the licensee of the licensee's duties under the Act, the Council Act, or Council rules, whether the conduct or omission complained of appears to violate such duties, and creating Council ordered conditions for the long-term resolution of the issues in the complaint. This conditional letter of agreement specifies the immediate disposition of the complaint. The licensee is issued the conditional letter of agreement by staff; and a signature of agreement by the licensee is required. 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 or the underlying conduct.

*Adopted to be effective: November 19, 2020*

**681.205. Schedule of Sanctions.** The following standard sanctions shall apply to violations of the Act and these rules.

<u>Rule</u>		<u>Action</u>
§681.41(a)	A licensee must not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including, but not limited to:	L5
	1 the effectiveness of services;	L5
	2 the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; or	L5
	3 the practice or field of counseling.	L5
§681.41(b)	A licensee must not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the services of a mental health organization or agency, including, but not limited to, the effectiveness of services, qualifications, or products.	L5

§681.41(c)	A licensee must discourage a client from holding exaggerated or false ideas about the licensee's professional services, including, but not limited to, the effectiveness of the services, practice, qualifications, associations, or activities. If a licensee learns of exaggerated or false ideas held by a client or other person, the licensee must take immediate and reasonable action to correct the ideas held.	L5
§681.41(d)	A licensee must make reasonable efforts to discourage others whom the licensee does not control from making misrepresentations; exaggerated or false claims; or false, deceptive, or fraudulent statements about the licensee's practice, services, qualifications, associations, or activities. If a licensee learns of a misrepresentation; exaggerated or false claim; or false, deceptive, or fraudulent statement made by another, the licensee must take immediate and reasonable action to correct the statement.	L5
§681.41(e)	Regardless of setting, a licensee must provide counseling only in the context of a professional relationship. Prior to providing services, a licensee must obtain from an individual a signed informed consent, signed written receipt of information, or in the case of involuntary treatment a copy of the appropriate court order, including the following:	L4
	1 fees and arrangements for payment;	L4
	2 counseling purposes, goals, and techniques;	L4
	3 any restrictions placed on the license by the Council;	L4
	4 the limits on confidentiality;	L4
	5 any intent of the licensee to use another individual to provide counseling treatment intervention to the client; and	L4
	6 supervision of the licensee by another licensed health care professional including the name, address, contact information and qualifications of the supervisor;	L4
	7 the name, address and telephone number of the Council for the purpose of reporting violations of the Act or this chapter; and	L4
	8 the established plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice.	L4
§681.41(f)	A licensee must inform the client in writing of any changes to the items in subsection (e) of this section, prior to initiating the change.	L4
§681.41(g)	Technological means of communication may be used to facilitate the therapeutic counseling process.	L5
§681.41(h)	In accordance with the provisions of the Act, §503.401(a)(4), a licensee must 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.	L3
§681.41(i)	A licensee employed or under contract with a chemical dependency facility or a mental health facility must 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, must not be considered as a violation of state law relating to illegal remuneration.	L3
§681.41(j)	A licensee must not engage in activities for the licensee's personal gain at the expense of a client.	L4

§681.41(k)		A licensee may promote the licensee's personal or business activities to a client if such activities, services or products are to facilitate the counseling process or help achieve the client's counseling goals. Prior to engaging in any such activities, services or product sales with the client, the licensee must first inform the client of the licensee's personal and/or business interest therein. A licensee must not exert undue influence in promoting such activities, services or products.	L4
§681.41(l)		A licensee must set and maintain professional boundaries.	L4
§681.41(m)		Except as provided by this subchapter, non-therapeutic relationships with clients are prohibited.	L4
	2	A licensee may not engage in a non-therapeutic relationship with a client if the relationship begins less than two (2) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.	L4
	3	A licensee may not engage in sexual contact with a client if the contact begins less than five (5) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.	L1
	5	The licensee must not provide counseling services to previous or current: (A) family members; (B) personal friends; (C) educational associates; or (D) business associates.	L5
	6	The licensee must not give or accept a gift from a client or a relative of a client valued at more than \$50, borrow or lend money or items of value to clients or relatives of clients, or accept payment in the form of goods or services rendered by a client or relative of a client.	L5
	7	The licensee must not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.	L4
§681.41(n)		The licensee must not knowingly offer or provide counseling to an individual concurrently receiving counseling treatment intervention from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy, the licensee must request release from the client to inform the other professional and strive to establish positive and collaborative professional relationships.	L5
§681.41(p)		The licensee must take reasonable precautions to protect clients from physical or emotional harm resulting from interaction:	L5
§681.41(q)		For each client, a licensee must keep accurate records of:	L5
	1	signed informed consent, signed written receipt of information, or in the case of involuntary treatment a copy of the appropriate court order	L4
	2	intake assessment;	L5
	3	dates of counseling treatment intervention;	L5
	4	principal treatment methods;	L5
	5	progress notes;	L5
	6	treatment plan; and	L5
	7	billing information.	L5

§681.41(r)		Records held by a licensee must be kept for a minimum of seven (7) years from the date of termination of services with the client or five (5) years after the client reaches age of majority, whichever is greater.	L5
§681.41(t)		Billing Requirements.	
	1	A licensee must bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual written agreement.	L5
	2	Relationships between a licensee and any other person used by the licensee to provide services to a client must be so reflected on billing documents.	L5
	3	Pursuant to Texas Health and Safety Code, Chapter 611 on the written request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, a licensee must provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.	L5
	4	A licensee may not knowingly overcharge a client.	L4
	5	With the exception of an unkept appointment, a licensee may not submit to a client or a third party payor a bill for counseling treatment intervention the licensee knows or should know is improper, unreasonable, or unnecessary.	L4
§681.41(u)		A licensee must comply with all requirements of Texas Health and Safety Code Chapters 611 and 181 concerning the release of mental health records and confidential information.	L4
§681.41(v)		Prior to the commencement of counseling services to a minor client who is named in a custody agreement or court order, a licensee must obtain and review a current copy of the custody agreement or court order as well as any applicable part of the divorce decree. A licensee must maintain these documents in the client's record and abide by the documents at all times. When federal or state statutes provide an exemption to secure	L5
		consent of a parent or guardian prior to providing services to a minor, a licensee must follow the protocol set forth in such federal or state statutes.	
§681.41(w)		A licensee must terminate a professional counseling relationship when it is reasonably clear the client is not benefiting from the relationship.	L4
§681.41(x)		Upon termination of a relationship if professional counseling is still necessary, the licensee must take reasonable steps to facilitate the transfer to appropriate care.	L5
§681.41(y)		A licensee must not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses in the evaluation the licensee has not personally interviewed the individual.	L4
§681.41(z)		A licensee must not knowingly overtreat a client.	L4



§681.41(aa)		A licensee must not aid or abet the unlicensed practice of professional counseling by a person required to be licensed under the Act.	L1
§681.41(cc)		A licensee or an applicant for licensure must not participate in any way in the falsification of applications for licensure or renewal of license.	L1
§681.42(b)		A licensee must not engage in sexual contact with or sexual exploitation of a person who is:	
	1	a client	L1
	2	an LPC Associate supervised by the licensee; or	L1
	3	a student of a licensee at an educational institution at which the licensee provides professional or educational services.	L1
§681.42(c)		A licensee must not practice therapeutic deception of a client.	L1
§681.42(f)		A licensee must report sexual misconduct as follows:	
	1	If a licensee has reasonable cause to suspect a client, LPC Associate, or student has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health provider, or if a client, LPC Associate, or student alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee must report the alleged conduct not later than the third business day after the date the licensee became aware of the conduct or the allegations to:	L5
		(A) the prosecuting attorney in the county in which the alleged sexual exploitation, sexual contact or therapeutic deception occurred;	L5
		(B) the Council if the conduct involves a licensee and any other state licensing agency which licenses the mental health provider; and	L5
		(C) to the appropriate agency listed in §681.45 of this title (relating to Confidentiality and Required Reporting).	L5
	2	Before making a report under this subsection, the reporter must inform the alleged victim of the reporter's duty to report and must determine if the alleged victim wants to remain anonymous.	L5
§681.43(a)		Prior to or following the administration of any test, a licensee must make known to clients the purposes and explicit use to be made of the test as a part of a professional counseling relationship.	L5
§681.43(b)		A licensee must not appropriate, reproduce, or modify copyrighted tests or any parts thereof without the acknowledgment and permission of the copyright owner.	L5
§681.43(c)		A licensee must not administer any test without the appropriate training and experience to administer and interpret the test.	L4
§681.43(d)		A licensee must observe the necessary precautions to maintain the security of any test administered by the licensee or under the licensee's supervision.	L5
§681.43(e)		In accordance with the §503.003(b)(1) of the Act, the use of standardized projective techniques is prohibited. This prohibition includes, but is not limited to, the Rorschach Inkblot Test, the Holtzman Inkblot Test, the Thematic Apperception Test, the Children's Apperception Test, and the Senior Apperception Test.	L5
§681.44		A licensee must not:	
	1	use alcohol or drugs in a manner that adversely affects the licensee's ability to provide counseling;	L3

§681.45(b)		A licensee must not disclose any communication, record, or identity of a client except as provided in Texas Health and Safety Code Chapter 611 or other state or federal statutes or rules.	L4
§681.45(c)		A licensee must comply with Texas Health and Safety Code, Chapters 181 and 611, concerning access to mental health records and confidential information.	L4
§681.45(d)		A licensee must report information as required by the following statutes:	
	1	Texas Family Code Chapter 261, Subchapter B, concerning report of abuse or neglect of minors;	L4
	2	Texas Human Resources Code Chapter 48, Subchapter B, concerning reports of abuse, neglect, or exploitation of elderly or disabled persons;	L4
	3	Texas Health and Safety Code Chapter 161, Subchapter L, concerning abuse, neglect, and unprofessional or unethical conduct in health care facilities; and	L4
	4	Texas Civil Practice and Remedies Code, §81.006, concerning duty to report sexual exploitation by a mental health provider.	L4
	5	A licensee must comply with Texas Occupations Code §109.051 relating to the release of treatment information concerning the treatment of a sex offender.	L4
§681.46(b)		A licensee has the responsibility of reporting alleged violations of the Act or this chapter to the Council.	L5
§681.47(b)		An assumed or trade name used by a licensee must not be false, deceptive, or misleading as those terms are described in §681.49(b) of this title (relating to Advertising and Announcements).	L5
§681.49(a)		Information used by a licensee in any advertisement or announcement must not contain information which is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements.	L5
§681.49(d)		The highest academic degree in counseling or a counseling-related field earned from an accredited school may be used when advertising or announcing counseling treatment intervention to the public or in counseling-related professional representations. A degree in counseling or a counseling-related field received at a foreign university may be used if	L5
		the degree would be accepted as a transfer degree by an accredited school.	
§681.49(e)		Notwithstanding the foregoing, a licensee may advertise or announce his or her other degrees from an accredited school if the subject of the degree is specified.	L5
§681.49(g)		All advertisements or announcements of counseling including telephone directory listings by a person licensed by the Council must clearly state the licensee's licensure status by the use of a title such as "Licensed Counselor", or "Licensed Professional Counselor", or "LPC", or a statement such as "licensed by the Texas Behavioral Health Executive Council" with reference to the "Texas State Board of Examiners of Professional Counselors."	L5

§681.49(h)	An LPC Associate must indicate intern status on all advertisements, billing, and announcements of counseling treatment by the use of the term "LPC Associate." On all advertisements, billings and announcements of counseling treatment by an LPC Associate, the associate's name must be followed by the name of the supervisor.	L5
§681.49(i)	A licensee is required to hold the art therapy specialty designation in order to use the title "art therapist" or the initials "AT." A licensee who does not hold the designation may use art therapy as a counseling method but may not use the title or initials.	L5
§681.50(a)	In research with a human participant, a licensee must take reasonable precautions to ensure that the participant does not suffer emotional or physical harm.	L5
§681.50(b)	A licensee must ensure the full protection of a client's identity when using data obtained from a professional counseling relationship for the purposes of education or research.	L5
§681.50(c)	When conducting or reporting research, a licensee must give recognition to previous work on the topic as well as observe all copyright laws.	L5
§681.50(d)	A licensee must give due credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to the person/persons who have contributed significantly to the licensee's research or publication.	L5
§681.91(d)	An LPC Associate may practice counseling only as part of his or her internship and only under the supervision of a Licensed Professional Counselor Supervisor (LPC-S). The LPC Associate may not own an independent professional counseling practice.	L1
§681.91(l)	An LPC Associate must not accept direct payment for services from a client.	L4
§681.93(c)(2)	The supervisor may not be an employee of his or her LPC Associate.	L5
§681.93(a)	A supervisor must keep a written record of each supervisory session in the file for the LPC Associate.	
	1 The supervisory written record must contain:	
	(A) a signed and dated copy of the Council's supervisory agreement form for each of the LPC Associate's supervisors;	L5
	(B) a copy of the LPC Associate's wall certificate noting the dates of issuance and expiration;	L5
	(C) fees and record of payment;	L5
	(D) the date of each supervisory session;	L5
	(E) a record of an LPC Associate's leave of one month or more, documenting the supervisor's approval and signed by both the LPC Associate and the supervisor; and	L5
	(F) a record of any concerns the supervisor discussed with the LPC Associate, including a written remediation plan as prescribed in subsection (e) of this section.	L5
	2 The supervisor must provide a copy of all records to the LPC Associate upon request.	L5
§681.93(c)	The supervisor must avoid any relationship that impairs the supervisor's objective, professional judgment.	L5
	1 The supervisor may not be related to the LPC Associate within the second degree of affinity or within the third degree of consanguinity.	L5
	2 The supervisor may not be an employee of his or her LPC Associate.	L5

§681.93(d)		The supervisor must submit to the Council accurate documentation of the LPC Associate's supervised experience within 30 days of the end of supervision or the completion of the LPC Associate's required hours, whichever comes first.	L5
§681.93(e)		If a supervisor determines the LPC Associate may not have the counseling skills or competence to practice professional counseling under an LPC license, the supervisor will develop and implement a written plan for remediation of the LPC Associate, which must be reviewed and signed by the LPC Associate and maintained as part of the LPC Associate's file.	L5
§681.93(f)		The supervisor must ensure the supervised counseling experience of the LPC Associate were earned:	
	1	after the LPC Associate license was issued; and	L5
	2	in not less than 18 months of supervised counseling experience.	L5
§681.93(h)		Upon execution of a Council order for probated suspension, suspension, or revocation of the LPC license with supervisor status, the supervisor status is revoked. A licensee whose supervisor status is revoked:	
	2	must refund all supervisory fees for supervision after the date the supervisor status is revoked; and	L4
§681.51(b)		A licensee who serves as a parenting coordinator has a duty to provide the following information in writing to the parties of the suit about the responsibility of the licensee and the role of the appointed court.	
	3	A licensee must not provide professional counseling services to any person while simultaneously providing parenting coordination services. This section does not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.	L4
§681.52(d)		In accordance with Texas Family Code, §153.6102(e), a licensee serving as a parenting facilitator must not provide other professional counseling services to any person while simultaneously providing parent facilitation services. This section does not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.	L4
§681.52(e)		In accordance with Texas Family Code, §153.6101(b)(1), a licensed professional counselor associate must not serve as a parenting facilitator.	L5
§681.52(i)		A licensee, serving as a parenting facilitator, must be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parenting facilitator must 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.	L5
§681.52(j)		In order to protect the parties and children in domestic violence cases involving power, control and coercion, a parenting facilitator must tailor the techniques used so as to avoid offering the opportunity for further coercion.	L5
§681.52(k)		A licensee serving as a parent facilitator must be alert to the reasonable suspicion of substance abuse by parents or children, as well as mental health impairment of a parent or child.	L5
§681.52(l)		A licensee serving as a parenting facilitator must not provide legal advice.	L5

§681.52(m)		A licensee serving as a parenting facilitator must serve by written agreement of the parties and/or formal order of the court.	L5
§681.52(n)		A licensee serving as a parenting facilitator must 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.	L5
§681.52(o)		A licensee serving as a parenting facilitator must 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.	L5
§681.52(p)		A licensee serving as a parenting facilitator:	
	1	must terminate or withdraw services if the licensee determines the licensee cannot act in an impartial or objective manner;	L5
	2	must not give or accept a gift, favor, loan or other item of value from any party having an interest in the parenting facilitation process;	L5
	3	must not coerce or improperly influence any party to make a decision;	L5
	4	must not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting facilitator process; and	L5
	5	must 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.	L5
§681.52(q)		A licensee serving as a parenting facilitator may make referrals to other professionals to work with the family, but must avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration must be given or received by a licensee for parenting facilitation or other professional referrals.	L5
§681.52(s)		A licensee serving as a parenting facilitator must 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.	L5
§681.52(u)		A licensee serving as a parenting facilitator must, prior to the beginning of the parenting facilitation process and in writing, inform the parties of:	L5
	1	the limitations on confidentiality in the parenting facilitation process; and	L5
	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.	L5
§681.52(v)		Information obtained during the parenting facilitation process must 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.	L5
§681.52(w)		In the initial session with each party, a licensee serving as a parenting facilitator must review the nature of the parenting facilitator's role with the parents to ensure that they understand the parenting facilitation process.	L5
§681.52(x)		(x) A licensee serving as a parenting facilitator:	L5
	1	must comply with all mandatory reporting requirements, including but not limited to Texas Family Code Chapter 261, concerning abuse or neglect of minors;	L5

	2	must 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;	L5
	3	must maintain records necessary to support charges for services and expenses and must make a detailed accounting of those charges to the parties and their counsel if requested to do so;	L5
	4	must maintain notes regarding all communications with the parties, the children, and other persons with whom they speak about the case; and	L5
	5	must 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.	L5
§681.52(y)		Records of a licensee serving as a parenting facilitator, are not mental health records and are not subject to the disclosure requirements of Texas Health and Safety Code, Chapter 611. At a minimum, records must be maintained for the period of time described in §681.41(r) of this title (relating to General Ethical Requirements), or as otherwise directed by the court.	L5
§681.52(z)		Records of a licensee serving as a parenting facilitator must be released on the request of either parent, as directed by the court, or as directed by the Council.	L5
§681.52(aa)		Charges for parenting facilitation services must 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.	L5
§681.52(bb)		All fees and costs must 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.	L5
§681.52(dd)		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.	L5

§681.52(ff)		A licensee serving as a parent facilitator must decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the licensee's skill or expertise.	L5
§681.53(a)		Licensees must comply with Texas Family Code, Chapter 107, Subchapters D, E, and F concerning Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.	L5
§681.53(c)		Any complaint relating to the outcome of a child custody evaluation or adoption evaluation conducted by a licensee must be reported to the court that ordered the evaluation.	L5
§681.53(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.	L5
§681.53(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 regardless of whether the licensee is acting as a factual witness or an expert.	L5
§681.53(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.	L4
§681.53(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, Subchapter D, Chapter 107.	L3
§681.53(h)		Licensees providing child custody evaluations or adoption evaluations must, prior to beginning the evaluation, in writing inform the parties of:	L5
	1	The limitations on confidentiality in the evaluation process; and	L4
	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.	L4
§681.53(i)		A Licensed Professional Counselor Associate (LPC Associate) must not conduct child custody evaluations or adoption evaluations unless qualified by another professional license to provide such services.	L4

*Adopted to be effective: November 19, 2020*

## **OTHER LAWS**

Council rule 882.36 requires that licensees comply with all applicable state and federal statutes. Please note, this is not an all-inclusive list of state statutes which are pertinent to the practice of behavioral health in Texas. Additionally, the text of Texas Health and Safety Code, Chapter 611, Mental Health Records, is provided.

# **TEXAS HEALTH AND SAFETY CODE**

## **Chapter 611. Mental Health Records**

**§611.001. Definitions.** In this chapter:

- (1) "Patient" means a person who consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction.
- (2) "Professional" means:
  - (A) a person authorized to practice medicine in any state or nation;
  - (B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or
  - (C) a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

**§611.002. Confidentiality of Information and Prohibition Against Disclosure.**

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.
- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.



- (c) This section applies regardless of when the patient received services from a professional.

**§611.003. Persons Who May Claim Privilege of Confidentiality.**

- (a) The privilege of confidentiality may be claimed by:
  - (1) the patient;
  - (2) a person listed in Section 611.004(a)(4) or (a)(5) who is acting on the patient's behalf; or
  - (3) the professional, but only on behalf of the patient.
- (b) The authority of a professional to claim the privilege of confidentiality on behalf of the patient is presumed in the absence of evidence to the contrary.

**§611.004. Authorized Disclosure on Confidential Information Other Than in Judicial or Administrative Proceeding.**

- (a) A professional may disclose confidential information only:
  - (1) to a governmental agency if the disclosure is required or authorized by law;
  - (2) to medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient;
  - (3) to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);
  - (4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;
  - (5) to the patient's personal representative if the patient is deceased;
  - (6) to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;
  - (7) to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;
  - (8) in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c);
  - (9) to designated persons or personnel of a correctional facility in which a person is detained if the disclosure

- is for the sole purpose of providing treatment and health care to the person in custody;
- (10) to an employee or agent of the professional who requires mental health care information to provide mental health care services or in complying with statutory, licensing, or accreditation requirements, if the professional has taken appropriate action to ensure that the employee or agent:
    - (A) will not use or disclose the information for any other purposes; and
    - (B) will take appropriate steps to protect the information; or
  - (11) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code.
- (b) Personnel who receive confidential information under Subsection (a)(3) may not directly or indirectly identify or otherwise disclose the identity of a patient in a report or in any other manner.
  - (c) The exception in Subsection (a)(8) applies only to records created by the state hospital or state school or by the employees of the hospital or school. Information or records that identify a patient may be released only with the patient's proper consent.
  - (d) A person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information. This subsection does not apply to a person listed in Subsection (a)(4) or (a)(5) who is acting on the patient's behalf.

**611.0041. Required Disclosure of Confidential Information Other Than in Judicial or Administrative Proceeding.**

- (a) In this Section:
  - (1) "Patient" has the meaning assigned by §552.0011.
  - (2) "State hospital" has the meaning assigned by §552.0011.
- (b) To the extent permitted by federal law, a professional shall disclose confidential information to the descendant of a patient of a state hospital if:
  - (1) the patient has been deceased for at least 50 years; and
  - (2) the professional does not have information indicating that releasing the medical record is inconsistent with any prior expressed preference of the deceased patient

or personal representatives of the deceased patient's estate.

- (c) A person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information.

**§611.0045. Right to Mental Health Record.**

- (a) Except as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient.
- (b) The professional may deny access to any portion of a record if the professional determines that release of that portion would be harmful to the patient's physical, mental, or emotional health.
- (c) If the professional denies access to any portion of a record, the professional shall give the patient a signed and dated written statement that having access to the record would be harmful to the patient's physical, mental, or emotional health and shall include a copy of the written statement in the patient's records. The statement must specify the portion of the record to which access is denied, the reason for denial, and the duration of the denial.
- (d) The professional who denies access to a portion of a record under this section shall redetermine the necessity for the denial at each time a request for the denied portion is made. If the professional again denies access, the professional shall notify the patient of the denial and document the denial as prescribed by Subsection (c).
- (e) If a professional denies access to a portion of a confidential record, the professional shall allow examination and copying of the record by another professional if the patient selects the professional to treat the patient for the same or a related condition as the professional denying access.
- (f) The content of a confidential record shall be made available to a person listed by Section 611.004(a)(4) or (5) who is acting on the patient's behalf.
- (g) A professional shall delete confidential information about another person who has not consented to the release, but may not delete information relating to the patient that another person has provided, the identity of the person responsible for that information, or the identity of any

person who provided information that resulted in the patient's commitment.

- (h) If a summary or narrative of a confidential record is requested by the patient or other person requesting release under this section, the professional shall prepare the summary or narrative.
- (i) The professional or other entity that has possession or control of the record shall grant access to any portion of the record to which access is not specifically denied under this section within a reasonable time and may charge a reasonable fee.
- (j) Notwithstanding Section 159.002, Occupations Code, this section applies to the release of a confidential record created or maintained by a professional, including a physician, that relates to the diagnosis, evaluation, or treatment of a mental or emotional condition or disorder, including alcoholism or drug addiction.
- (k) The denial of a patient's access to any portion of a record by the professional or other entity that has possession or control of the record suspends, until the release of that portion of the record, the running of an applicable statute of limitations on a cause of action in which evidence relevant to the cause of action is in that portion of the record.

**§611.005. Legal Remedies for Improper Disclosure or Failure to Disclose.**

- (a) A person aggrieved by the improper disclosure of or failure to disclose confidential communications or records in violation of this chapter may petition the district court of the county in which the person resides for appropriate relief, including injunctive relief. The person may petition a district court of Travis County if the person is not a resident of this state.
- (b) In a suit contesting the denial of access under Section 611.0045, the burden of proving that the denial was proper is on the professional who denied the access.
- (c) The aggrieved person also has a civil cause of action for damages.

**§611.006. Authorized Disclosure of Confidential Information in Judicial or Administrative Proceeding.**

- (a) A professional may disclose confidential information in:
  - (1) a judicial or administrative proceeding brought by the patient or the patient's legally authorized representative against a professional, including malpractice proceedings;

- (2) a license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;
  - (3) a judicial or administrative proceeding in which the patient waives the patient's right in writing to the privilege of confidentiality of information or when a representative of the patient acting on the patient's behalf submits a written waiver to the confidentiality privilege;
  - (4) a judicial or administrative proceeding to substantiate and collect on a claim for mental or emotional health services rendered to the patient;
  - (5) a judicial proceeding if the judge finds that the patient, after having been informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's mental or emotional condition or disorder, except that those communications may be disclosed only with respect to issues involving the patient's mental or emotional health;
  - (6) a judicial proceeding affecting the parent-child relationship;
  - (7) any criminal proceeding, as otherwise provided by law;
  - (8) a judicial or administrative proceeding regarding the abuse or neglect, or the cause of abuse or neglect, of a resident of an institution, as that term is defined by Chapter 242;
  - (9) a judicial proceeding relating to a will if the patient's physical or mental condition is relevant to the execution of the will;
  - (10) an involuntary commitment proceeding for court-ordered treatment or for a probable cause hearing under:
    - (A) Chapter 462;
    - (B) Chapter 574; or
    - (C) Chapter 593; or
  - (11) a judicial or administrative proceeding where the court or agency has issued an order or subpoena.
- (b) On granting an order under Subsection (a)(5), the court, in determining the extent to which disclosure of all or any part of a communication is necessary, shall impose appropriate safeguards against unauthorized disclosure.

**§611.007. Revocation of Consent.**

- (a) Except as provided by Subsection (b), a patient or a patient's legally authorized representative may revoke a disclosure consent to a professional at any time. A revocation is valid only if it is written, dated, and signed by the patient or legally authorized representative.
- (b) A patient may not revoke a disclosure that is required for purposes of making payment to the professional for mental health care services provided to the patient.
- (c) A patient may not maintain an action against a professional for a disclosure made by the professional in good faith reliance on an authorization if the professional did not have notice of the revocation of the consent.

**§611.008. Request by Patient.**

- (a) On receipt of a written request from a patient to examine or copy all or part of the patient's recorded mental health care information, a professional, as promptly as required under the circumstances but not later than the 15th day after the date of receiving the request, shall:
  - (1) make the information available for examination during regular business hours and provide a copy to the patient, if requested; or
  - (2) inform the patient if the information does not exist or cannot be found.
- (b) Unless provided for by other state law, the professional may charge a reasonable fee for retrieving or copying mental health care information and is not required to permit examination or copying until the fee is paid unless there is a medical emergency.
- (c) A professional may not charge a fee for copying mental health care information under Subsection (b) to the extent the fee is prohibited under Subchapter M, Chapter 161.

**Texas Family Code:**

Chapter 32, Consent to Medical, Dental, Psychological and Surgical Treatment

Chapter 153, Rights of Parents and Other Conservators to Consent to Treatment of Child and Access to Child's Records

Chapter 107, Special Appointments, Child Custody Evaluations and Adoption Evaluations

Chapter 261, Duty to Report Child Abuse and Neglect

**Texas Human Resource Code:**

Chapter 48, Duty to Report Abuse of Elderly or Disabled Person

**Texas Civil Practice and Remedies Code:**

Chapter 81, Duty to Report Sexual Exploitation of a Patient by a Mental Health Services Provider

**Texas Occupations Code:**

Chapter 116, Training Course on Human Trafficking Prevention