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03/09/2022**



*Texas Behavioral Health  
Executive Council and Texas State  
Board of Social Worker Examiners*

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# **TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL NEW, AMENDED, REPEALED RULES**

The following is a list of the rules which have been added, amended, or repealed since the last update to these rules.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 – February 2022**

- 881.33. Family Leave Pool (*new*)
- 882.21. License Statuses (*amended*)
- 882.37. COVID-19 Vaccine Passports Prohibited (*new*)
- 882.60. Special Provisions Applying to Military Service Members, Veterans and Spouses (*amended*)
- 882.61. Special Licensing Provisions for Military Spouses (*amended*)
- 882.70. Emergency Temporary License (*amended*)
- 884.4. Special Requirements for Complaints Alleging Violations Related to Court Ordered Therapy or Parenting Facilitator Services (*new*)
- 885.1. Executive Council Fees (*amended*)

## **Online Act and Rules of the Council – October 2021**

- 883.1. Renewal of a License (*amended*)

## **Online Act and Rules of the Council – August 2021**

- 881.21. Petition for Rulemaking (*amended*)
- 882.11. Applicants with Foreign Degrees (*amended*)
- 885.1. Executive Council Fees (*amended*)

## **Online Act and Rules of the Council – June 2021**

- 882.21. License Statuses (*amended*)
- 882.50. Continuing Education and Audits (*amended*)

## **Online Act and Rules of the Council – February 2021**

- 881.21. Petition for Rulemaking (*amended*)
- 885.1. Executive Council Fees (*amended*)

## **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>

## **TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS 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 Board – February 2022**

- 781.206. Minutes (*repeal*)
- 781.401. Qualifications for Licensure (*amended*)
- 781.404. Recognition as a Council-approved Supervisor and the Supervision Process (*amended*)
- 781.406. Required Documentation of Qualifications of Licensure (*amended*)
- 781.412. Examination Requirement (*amended*)

### **Online Act and Rules of the Board – June 2021**

- 781.312. Licensees and the Council (*amended*)
- 781.803. Severity Levels (*amended*)
- 781.805. Schedule of Sanctions (*amended*)

### **Online Act and Rules of the Board – February 2021**

- 781.102. Definitions (*amended*)
- 781.302. Practice of Social Work (*amended*)
- 781.401. Qualifications for Licensure (*amended*)
- 781.402. Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice recognition (*amended*)
- 781.403. Independent Practice Recognition (Non-Clinical) (*amended*)
- 781.404. Recognition as a Council-approved Supervisor and the Supervision Process (*amended*)
- 781.406. Required Documentation of Qualifications for Licensure (*amended*)
- 781.420. Licensing of Persons with Criminal Convictions (*new*)

### **Online Act and Rules of the Board – November 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 34, Texas State Board of Social Worker Examiners. 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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# **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 economics, if such information can be derived from available sources without undue cost or burden.
- (d) A petition for rulemaking which involves any of those matters set forth in §507.153(a) of the Occupations Code will be submitted by agency staff to the appropriate member board for initial review and consideration.
- (e) 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.
- (f) 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.

*Adopted to be effective: September 1, 2020*

*Amended: February 9, 2021; September 19, 2021*

## **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*

**881.33. Family Leave Pool.**

- (a) The Council hereby establishes a family leave pool to provide eligible employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement, and to care for themselves or family members suffering from serious illness, including pandemic-related illnesses or complications caused by a pandemic.
- (b) The Council's family leave pool shall be administered by the Executive Director in accordance with Chapter 661 of the Government Code 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 family leave pool and include such procedures in the Council's personnel manual.

*Adopted to be effective: February 27, 2022*

## **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) or the Association of International Credential Evaluators, Inc. (AICE). 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*

*Amended: September 19, 2021*

**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 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 applying for active status through the online licensing system. 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*

*Amended: June 1, 2021; February 27, 2022*

## **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.

**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.

*Adopted to be effective: September 1, 2020*

**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*

**882.37. COVID-19 Vaccine Passports Prohibited.**

- (a) In this rule, COVID-19 has the same meaning assigned by §161.0085 of the Health and Safety Code.



- (b) A licensee shall not require an individual to provide any documentation certifying the individual's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the licensee or the licensee's practice.
- (c) Notwithstanding subsection (b) of this section, licensees may implement COVID-19 screening and infection control protocols in accordance with state and federal law to protect public health.
- (d) This rule shall not operate or be construed to interfere with an individual's right to access the individual's personal health information under federal law.

*Adopted to be effective: February 27, 2022*

## **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, 5% 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 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*

*Amended: June 1, 2021*

## **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, including receiving appropriate credit for training, education, and professional experience.
- (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*

*Amended: February 27, 2022*

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

- (a) A military spouse shall be issued a license to practice 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 (e.g. copy of a permanent change of station order) 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 §882.60(d) of this chapter (relating to Special Provisions Applying to Military Service Members, Veterans, and Spouses).
- (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*

*Amended: February 27, 2022*

## **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 upon termination of the suspension or 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 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.
- (g) There is no fee associated with the application or issuance of an emergency temporary license.

*Adopted to be effective: September 1, 2020*

*Amended: February 27, 2022*



# 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) Renewal Conditions:
  - (1) 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. This paragraph is effective for licenses with expiration dates prior to November 30, 2021.
  - (2) Licensees must pay all applicable renewal or late renewal fees, indicate compliance with any continuing education requirements, and comply with any other requests for information or requirements contained within the online renewal systems as a prerequisite for renewals of a license. This paragraph is effective for licenses with expiration dates on or after November 30, 2021.
- (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*

*Amended: November 21, 2021*

**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*

**884.4. Special Requirements for Complaints Alleging Violations Related to Court Ordered Therapy or Parenting Facilitator Services.**

- (a) A person who seeks to file a complaint alleging a statutory or rule violation arising out of or related to court ordered therapy or parenting facilitator services must, in addition to submitting a Council-approved complaint form, comply with the requirements of this rule when filing a complaint.
- (b) A complaint may not be filed while the licensee is under appointment to provide therapy or parenting facilitator services. A complaint received by the Council while the licensee is appointed will be dismissed by staff as premature but may be resubmitted as a new complaint after the appointment is concluded or terminated.
- (c) A complaint 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 appointment being concluded or terminated, whichever is greater.
- (d) A complaint must include each of the following:
  - (1) Documentation reflecting the licensee's appointment in the case. A copy of a court order, docket sheet, or transcript from the proceedings or a letter from an attorney involved in the case will meet the requirements of this rule;
  - (2) a copy of any documents provided by the licensee describing the costs, nature, or limitations of the services to be provided, or a statement that no such documents were provided;
  - (3) an attestation that the licensee's appointment in the case has been concluded or terminated. A letter from an attorney involved in the case will also meet the requirements of this rule.
- (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.

*Adopted to be effective: February 27, 2022*

**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 sanctioned 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	\$ 24.00	\$ 20.00	\$ 4.00		
Upgrade from LMSW to LCSW	\$ 24.00	\$ 20.00	\$ 4.00		
Independent Practice Recognition	\$ 20.00	\$ 20.00			
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		
Temporary License Application	\$ 34.00	\$ 30.00	\$ 4.00		
<b>Marriage and Family Therapists</b>					
Initial LMFT Associate Application	\$ 159.00	\$ 150.00	\$ 4.00	\$ 5.00	
Upgrade from LMFT Associate to LMFT	\$ 90.00	\$ 85.00	\$ 5.00		
LMFT by Endorsement Application	\$ 161.00	\$ 150.00	\$ 6.00	\$ 5.00	
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		
<b>Professional Counselors</b>					
LPC Associate/LPC/Provisional License Application	\$ 221.00	\$ 210.00	\$ 6.00	\$ 5.00	
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		

Art Therapy Designation	\$ 20.00	\$ 20.00			
<b>Psychologists/Psychological Associates/Specialists in School Psychology</b>					
LPA Application	\$ 333.00	\$ 320.00	\$ 8.00	\$ 5.00	
LP Application	\$ 460.00	\$ 445.00	\$ 10.00	\$ 5.00	
LP License Issuance Fee	\$ 391.00	\$ 381.00	\$ 10.00		
LSSP Application	\$ 288.00	\$ 275.00	\$ 8.00	\$ 5.00	
Temporary License Application	\$ 103.00	\$ 100.00	\$ 3.00		
<b><u>RENEWAL FEES</u></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	\$ 141.00	\$ 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><u>EXAMINATION FEES</u></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	\$ 8.00	\$ 2.00		
Written Verification of Licensure	\$ 10.00				
Written State to State Verification of Licensure	\$ 50.00				
Mailing List	\$ 10.00	\$ 8.00	\$ 2.00		
Returned Check Fee	\$ 25.00				
Criminal History Evaluation	\$ 154.00	\$ 150.00	\$ 4.00		
Reinstatement of License	\$ 510.00	\$ 500.00	\$ 10.00		
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 plus applicable Texas.gov and OPP fees				
Late fee for license expired more than 90 days, but less than one year	equal to 2 times the base renewal fee plus applicable Texas.gov and OPP fees				

- (c) Late fees. (Not applicable to Inactive Status)
- (1) If the person's license has been expired (i.e., delinquent) 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 (i.e., delinquent) 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 (i.e., delinquent) 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*

*Amended: February 9, 2021; September 19, 2021; February 27, 2022*

## **OTHER LAWS**

Council §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 STATE BOARD OF SOCIAL WORKER EXAMINERS**

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

### **781.101. Purpose and Scope.**

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

*Adopted to be effective: November 19, 2020*

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

- (1) Accredited colleges or universities--An educational institution that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education.
- (2) Act--The Social Work Practice Act, Texas Occupations Code, Chapter 505, concerning the licensure and regulation of social workers.
- (3) Agency--A public or private employer, contractor or business entity providing social work services.
- (4) Assessment--An ongoing process of gathering information about and reaching an understanding of the client or client group's characteristics, perceived concerns and real problems, strengths and weaknesses, and opportunities and constraints; assessment may involve administering, scoring and interpreting instruments designed to measure factors about the client or client group.
- (5) Association of Social Work Boards (ASWB)--The international organization which represents regulatory

- boards of social work and administers the national examinations utilized in the assessment for licensure.
- (6) Board--Texas State Board of Social Worker Examiners.
  - (7) Case record--Any information related to a client and the services provided to that client, however recorded and stored.
  - (8) Client--An individual, family, couple, group or organization that receives social work services from a person identified as a social worker who is licensed by the Council.
  - (9) Clinical social work--A specialty within the practice of master social work that requires applying social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. Clinical social work practice involves using specialized clinical knowledge and advanced clinical skills to assess, diagnose, and treat mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness and serious emotional disturbances in adults, adolescents and children. Treatment methods may include, but are not limited to, providing individual, marital, couple, family, and group psychotherapy. Clinical social workers are qualified and authorized to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), Current Procedural Terminology (CPT) codes, and other diagnostic classification systems in assessment, diagnosis, and other practice activities. The practice of clinical social work is restricted to either a Licensed Clinical Social Worker, or a Licensed Master Social Worker under clinical supervision in employment or under a clinical supervision plan.
  - (10) Confidential information--Individually identifiable information relating to a client, including the client's identity, demographic information, physical or mental health condition, the services the client received, and payment for past, present, or future services the client received or will receive. Confidentiality is limited in cases where the law requires mandated reporting, where third persons have legal rights to the information, and where clients grant permission to share confidential information.

- (11) Conditions of exchange--Setting reimbursement rates or fee structures, as well as business rules or policies involving issues such as setting and cancelling appointments, maintaining office hours, and managing insurance claims.
- (12) Counseling, clinical--The use of clinical social work to assist individuals, couples, families or groups in learning to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.
- (13) Counseling, supportive--The methods used to help individuals create and maintain adaptive patterns. Such methods may include, but are not limited to, building community resources and networks, linking clients with services and resources, educating clients and informing the public, helping clients identify and build strengths, leading community groups, and providing reassurance and support.
- (14) Council--the Texas Behavioral Health Executive Council.
- (15) Consultation--Providing advice, opinions and conferring with other professionals regarding social work practice.
- (16) Continuing education--Education or training aimed at maintaining, improving, or enhancing social work practice.
- (17) Council on Social Work Education (CSWE)--The national organization that accredits social work education schools and programs.
- (18) Direct practice--Providing social work services through personal contact and immediate influence to help clients achieve goals.
- (19) Dual or multiple relationship--A relationship that occurs when social workers interact with clients in more than one capacity, whether it be before, during, or after the professional, social, or business relationship. Dual or multiple relationships can occur simultaneously or consecutively.
- (20) Electronic practice--Interactive social work practice that is aided by or achieved through technological methods, such as the web, the Internet, social media, electronic chat groups, interactive TV, list serves, cell phones, telephones, faxes, and other emerging technology.



- (21) Examination--A standardized test or examination, approved by the Council, which measures an individual's social work knowledge, skills and abilities.
- (22) Equivalent or substantially equivalent - a licensing standard or requirement for an out-of-state license that is equal to or greater than a Texas licensure requirement shall be deemed equivalent or substantially equivalent.
- (23) Executive Director - the executive director for the Texas Behavioral Health Executive Council. The executive director may delegate responsibilities to other staff members.
- (24) Exploitation--Using a pattern, practice or scheme of conduct that can reasonably be construed as primarily meeting the licensee's needs or benefitting the licensee rather than being in the best interest of the client. Exploitation involves the professional taking advantage of the inherently unequal power differential between client and professional. Exploitation also includes behavior at the expense of another practitioner. Exploitation may involve financial, business, emotional, sexual, verbal, religious and/or relational forms.
- (25) Field placement--A formal, supervised, planned, and evaluated experience in a professional setting under the auspices of a CSWE-accredited social work program and meeting CSWE standards.
- (26) Fraud--A social worker's misrepresentation or omission about qualifications, services, finances, or related activities or information, or as defined by the Texas Penal Code or by other state or federal law.
- (27) Full-time experience--Providing social work services thirty or more hours per week.
- (28) Group supervision for licensure or for specialty recognition--Providing supervision to a minimum of two and a maximum of six supervisees in a designated supervision session.
- (29) Health care professional--A licensee or any other person licensed, certified, or registered by the State of Texas in a health related profession.
- (30) Impaired professional--A licensee whose ability to perform social work services is impaired by the licensee's physical health, mental health, or by medication, drugs or alcohol.
- (31) Independent clinical practice--The practice of clinical social work in which the social worker, after having

- completed all requirements for clinical licensure, assumes responsibility and accountability for the nature and quality of client services, pro bono or in exchange for direct payment or third party reimbursement. Independent clinical social work occurs in independent settings.
- (32) Independent non-clinical practice--The unsupervised practice of non-clinical social work outside of an organizational setting, in which the social worker, after having completed all requirements for independent non-clinical practice recognition, assumes responsibility and accountability for the nature and quality of client services, pro bono or in exchange for direct payment or third party reimbursement.
- (33) Independent Practice Recognition--A specialty recognition related to unsupervised non-clinical social work at the LBSW or LMSW category of licensure, which denotes that the licensee has earned the specialty recognition, commonly called IPR, by successfully completing additional supervision which enhances skills in providing independent non-clinical social work.
- (34) Individual supervision for licensure or specialty recognition--Supervision for professional development provided to one supervisee during the designated supervision session.
- (35) LBSW--Licensed Baccalaureate Social Worker.
- (36) LCSW--Licensed Clinical Social Worker.
- (37) License--A regular or temporary Council-issued license, including LBSW, LMSW, and LCSW. Some licenses may carry an additional specialty recognition, such as LMSW-AP, LBSW-IPR, or LMSW-IPR.
- (38) Licensee--A person licensed by the Council to practice social work.
- (39) LMSW--Licensed Master Social Worker.
- (40) LMSW-AP--Licensed Master Social Worker with the Advanced Practitioner specialty recognition for non-clinical practice. This specialty recognition will no longer be conferred after September 1, 2017. Licensees under a supervision plan for this specialty recognition before September 1, 2017 will be permitted to complete supervision and examination for this specialty recognition.
- (41) Non-clinical social work--Professional social work which incorporates non-clinical work with individuals, families, groups, communities, and social systems

which may involve locating resources, negotiating and advocating on behalf of clients or client groups, administering programs and agencies, community organizing, teaching, researching, providing employment or professional development non-clinical supervision, developing and analyzing policy, fund-raising, and other non-clinical activities.

- (42) Person--An individual, corporation, partnership, or other legal entity.
- (43) Psychotherapy--Treatment in which a qualified social worker uses a specialized, formal interaction with an individual, couple, family, or group by establishing and maintaining a therapeutic relationship to understand and intervene in intrapersonal, interpersonal and psychosocial dynamics; and to diagnose and treat mental, emotional, and behavioral disorders and addictions.
- (44) Recognition--Authorization from the Council to engage in the independent or specialty practice of social work services.
- (45) Rules--Provisions of this chapter specifying how the Council implements the Act-as well as Title 22, Chapters 881-885 of the Texas Administrative Code.
- (46) Social work case management--Using a bio-psychosocial perspective to assess, evaluate, implement, monitor and advocate for services on behalf of and in collaboration with the identified client or client group.
- (47) Social worker--A person licensed under the Act.
- (48) Social work practice--Services which an employee, independent practitioner, consultant, or volunteer provides for compensation or pro bono to effect changes in human behavior, a person's emotional responses, interpersonal relationships, and the social conditions of individuals, families, groups, organizations, and communities. Social work practice is guided by specialized knowledge, acquired through formal social work education. Social workers specialize in understanding how humans develop and behave within social environments, and in using methods to enhance the functioning of individuals, families, groups, communities, and organizations. Social work practice involves the disciplined application of social work values, principles, and methods including, but not limited to, psychotherapy; marriage, family, and couples intervention; group therapy and group work;

mediation; case management; supervision and administration of social work services and programs; counseling; assessment, diagnosis, treatment; policy analysis and development; research; advocacy for vulnerable groups; social work education; and evaluation.

- (49) Supervisor, Council-approved--A person meeting the requirements set out in §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition), to supervise a licensee towards the LCSW, Independent Practice Recognition, or as a result of a Council order. A Council-approved supervisor will denote having this specialty recognition by placing a "-S" after their credential initials, e.g., LBSW-S, LMSW-S or LCSW-S.
- (50) Supervision--Supervision includes:
- (A) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;
  - (B) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;
  - (C) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;
  - (D) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor; and

- (E) Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.
- (51) Supervision hour--A supervision hour is a minimum of 60 minutes in length.
- (52) Termination--Ending social work services with a client.
- (53) Waiver--The suspension of educational, professional, and/or examination requirements for Council.

*Adopted to be effective: November 19, 2020*

*Amended: February 4, 2021*

**781.202. Board Meetings.**

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

*Adopted to be effective: November 19, 2020*

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

*Adopted to be effective: November 19, 2020*

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

*Adopted to be effective: November 19, 2020*

**781.207. Elections.**

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

*Adopted to be effective: November 19, 2020*

**781.208. Officers of the Board.**

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

*Adopted to be effective: November 19, 2020*

**781.209. Committees of the Board.**

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

*Adopted to be effective: November 19, 2020*

## **Subchapter B. Rules of Practice**

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

- (1) A social worker shall not refuse to perform any act or service for which the person is licensed solely on the basis of a client's age; gender; race; color; religion; national origin; disability; sexual orientation; gender identity and expression; or political affiliation.
- (2) A social worker shall truthfully report her or his services, professional credentials and qualifications to clients or potential clients.
- (3) A social worker shall only offer those services that are within his or her professional competency, and shall provide services within accepted professional standards of practice, appropriate to the client's needs.
- (4) A social worker shall strive to maintain and improve her or his professional knowledge, skills and abilities.
- (5) A social worker shall base all services on an assessment, evaluation or diagnosis of the client.
- (6) A social worker shall provide the client with a clear description of services, schedules, fees and billing at the initiation of services.
- (7) A social worker shall safeguard the client's rights to confidentiality within the limits of the law.
- (8) A social worker shall be responsible for setting and maintaining professional boundaries.
- (9) A social worker shall not have sexual contact with a client or a person who has been a client.
- (10) A social worker shall refrain from providing services while impaired by physical health, mental health, medical condition, or by medication, drugs or alcohol.
- (11) A social worker shall not exploit his or her position of trust with a client or former client.
- (12) A social worker shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.
- (13) A social worker shall refer a client for those services that the social worker is unable to meet, and shall terminate services to a client when continuing to provide services is no longer in the client's best interest.

*Adopted to be effective: November 19, 2020*

**781.302. The Practice of Social Work.**

- (a) Practice of Baccalaureate Social Work--Applying social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families,

groups, organizations and communities. Baccalaureate Social Work is generalist practice and may include interviewing, assessment, planning, intervention, evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, problem solving, supervision, consultation, education, advocacy, community organization, and policy and program development, implementation, and administration.

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



practice setting. This licensee is designated as LMSW-IPR. An LMSW-IPR may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LMSW-IPR must restrict his or her independent practice to providing non-clinical social work services.

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

licensure unless one holds the appropriate license or independent practice recognition.

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

*Adopted to be effective: November 19, 2020*

*Amended: February 4, 2021*

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

- (1) shall not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee shall take immediate and reasonable action to inform the other mental health services provider;
- (2) shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the relationship. If continued professional services are indicated, the licensee shall take reasonable steps to facilitate transferring the client by providing the client with the name and contact information of three sources of service;
- (3) shall not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the evaluation that the licensee has not personally interviewed the individual;
- (4) shall not persistently or flagrantly over treat a client;
- (5) shall not aid and abet the unlicensed practice of social work by a person required to be licensed under the Act;

- (6) shall not participate in any way in falsifying licensure applications or any other documents submitted to the Council;
- (7) shall ensure that, both before services commence and as services progress, the client knows the licensee's qualifications and any intent to delegate service provision; any restrictions the Council has placed on the licensee's license; the limits on confidentiality and privacy; and applicable fees and payment arrangements;
- (8) if the client must barter for services, it is the professional's responsibility to ensure that the client is in no way harmed. The value of the barter shall be agreed upon in advance and shall not exceed customary charges for the service or goods; and
- (9) shall ensure that the client or a legally authorized person representing the client has signed a consent for services, when appropriate. Prior to commencement of social work services with a minor client who is named in a Suit Affecting Parent Child Relationship (SAPCR), the licensee shall ensure that all legally authorized persons representing the client have signed a consent for services, if applicable. A licensee shall maintain these documents in the client's record.

*Adopted to be effective: November 19, 2020*

**781.304. Relationships with Clients.**

- (a) A social worker shall inform in writing a prospective client about the nature of the professional relationship, which can include but is not limited to office procedures, after-hours coverage, services provided, fees, and arrangements for payment.
- (b) The social worker shall not give or receive a commission, rebate, or any other form of remuneration for referring clients. A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional. In accordance with the provisions of the Act, §505.451, a licensee is subject to disciplinary action if the licensee directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a client or patronage. Payment of credentialing or other fees to insurance companies or other third party payers to be

part of an approved provider list shall not be considered as a violation of this chapter.

- (c) A social worker shall not enter into a business relationship with a client. This rule does not prohibit a professional social work relationship with a client, as described in this subchapter.
- (d) A social worker shall not engage in activities that seek to primarily meet the social worker's personal needs or personal gain instead of the needs of the client.
- (e) A social worker shall be responsible for setting and maintaining professional boundaries.
- (f) A social worker shall keep accurate records of services to include, but not be limited to, dates of services, types of services, progress or case notes and billing information for a minimum of seven years after the date of termination of services for an adult client or five years beyond the age of 18 years of age for a minor, whichever is greater.
- (g) A social worker shall bill clients or third parties for only those services actually rendered or as agreed to by mutual written understanding.
- (h) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the effectiveness of the licensee's services; the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; the type, effectiveness, qualifications, and products or services offered by an organization or agency; or the practice or field of social work.
- (i) If the licensee learns that false, misleading, deceptive, fraudulent or exaggerated statements about the services, qualifications, or products have been made, the licensee shall take reasonable steps to correct the inappropriate claims, prevent their reoccurrence, and report the incident to the Council.
- (j) A licensee shall provide social work intervention only in the context of a professional relationship.
- (k) Electronic practice may be used judiciously as part of the social work process and the supervision process. Social workers engaging in electronic practice, providing services to clients located in the State of Texas, must be licensed in Texas and adhere to provisions of this chapter.
- (l) The licensee shall not provide social work services or intervention to previous or current family members; personal friends; educational or business associates; or individuals whose welfare might be jeopardized by a dual or multiple relationship.

- (m) The licensee shall not accept from or give to a client any gift with a value in excess of \$25. If the licensee's employer prohibits giving or receiving gifts, the licensee shall comply with the employer's policy.
- (n) The licensee or relatives to the fourth degree of consanguinity or affinity of the licensee may not intentionally borrow or lend money or items of value to clients or relatives to the fourth degree of consanguinity or affinity of clients.
- (o) The licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within individual and group settings.
- (p) A licensee shall not promote the licensee's personal or business activities that are unrelated to the current professional relationship.
- (q) A licensee shall set and maintain professional boundaries, avoiding dual or multiple relationships with clients. If a dual or multiple relationship develops, the social worker is responsible for ensuring the client is safe.
- (r) A licensee may not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with the client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

*Adopted to be effective: November 19, 2020*

**781.305. Sexual Misconduct.**

- (a) Definitions.
  - (1) Sexual contact--Any touching or behavior that can be construed as sexual in nature or as defined by the Texas Penal Code, §21.01, relating to assault.
  - (2) Therapeutic deception--A licensee's act or statement representing that sexual contact or sexual exploitation between the licensee and a client or client group is a valid part of the treatment process.
  - (3) Sexual exploitation--A pattern, practice or scheme of exploitation, which may include, but is not limited to, sexual contact with a client.
- (b) A licensee shall not engage in sexual contact or sexual exploitation with a client or former client; a supervisee of the licensee; or a student at an educational institution at which the licensee provides professional or educational services.
- (c) A licensee shall not practice therapeutic deception of a client or former client.
- (d) It is not a defense to a disciplinary action under subsections (a) - (c) of this section, if the person was no longer emotionally dependent on the licensee when the sexual

exploitation began, the sexual contact occurred, or the therapeutic deception occurred. It is also not a defense that the licensee terminated services with the person before the date the sexual exploitation began, the sexual contact occurred or the therapeutic deception occurred.

- (e) It is not a defense to a disciplinary action under subsections (a) - (c) of this section, if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred with the client's consent; outside appointments with the client; or off the premises the licensee used for appointments with the client.
- (f) A licensee shall report sexual misconduct in accordance with Texas Civil Practice and Remedies Code, Chapter 81, relating to sexual exploitation by a mental health services provider. If a licensee has reasonable cause to suspect that a client has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee shall report the alleged conduct not later than the 30th day after the date the licensee became aware of the conduct or the allegations to:
  - (1) the prosecuting attorney in the county in which the alleged sexual exploitation, sexual contact or therapeutic deception occurred; and
  - (2) the Council if the conduct involves a licensee and any other state licensing agency which licenses the mental health services provider.
  - (3) Before making a report under this subsection, the licensee shall inform the alleged victim of the licensee's duty to report and shall determine if the alleged victim wants to remain anonymous.
  - (4) A report under this subsection shall contain information necessary to identify the licensee; identify the alleged victim, unless the alleged victim has requested anonymity; express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and provide the alleged perpetrator's name.
- (g) The following may constitute sexual exploitation if done for sexual arousal, sexual gratification, or sexual abuse of either the social worker or a person who is receiving or has received the licensee's professional services as a social worker:
  - (1) sexual harassment, sexual solicitation, physical advances, verbal or nonverbal conduct that is sexual in nature;

- (2) any behavior, gestures, comments, or expressions which may reasonably be interpreted as inappropriately seductive or sexual, including making sexual comments about a person's body or making sexually demeaning comments about an individual's sexual orientation, or making comments about potential sexual performance except when the comment is pertinent to issues of sexual function or dysfunction in counseling;
- (3) initiating conversation about the licensee's sexual problems, preferences, or fantasies; or requesting details of sexual history or sexual likes and dislikes when those details are not necessary for counseling;
- (4) kissing or fondling, or making any other deliberate or repeated comments, gestures, or physical acts of a sexual nature, even if they are not sexually intimate;
- (5) making a request to date;
- (6) exposing genitals, anus or breasts; or
- (7) encouraging another person to masturbate in the licensee's presence; or the licensee masturbating in front of another.

*Adopted to be effective: November 19, 2020*

**781.306. Professional Representation.**

- (a) A social worker shall not misrepresent any professional qualifications or associations.
- (b) A social worker shall not misrepresent the attributes of any agency or organization, or make unreasonable, misleading, deceptive, fraudulent, exaggerated, or unsubstantiated claims about the effectiveness of any services.
- (c) A social worker shall not encourage, or within the social worker's power, allow a client to hold exaggerated ideas about the effectiveness of the social worker's services.

*Adopted to be effective: November 19, 2020*

**781.307. Testing.**

- (a) A social worker shall inform clients about the purposes and explicit uses of any testing done as part of a professional relationship.
- (b) A social worker shall not appropriate, reproduce, or modify published tests or parts thereof without the publisher's permission.
- (c) A social worker shall not administer any test without the appropriate training and experience to administer the test.

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

*Adopted to be effective: November 19, 2020*

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

*Adopted to be effective: November 19, 2020*

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

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

*Adopted to be effective: November 19, 2020*

**781.310. Billing and Financial Relationships.**

- (a) A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional. In accordance with the provisions of the Act, §505.451, a licensee is subject to disciplinary action if the licensee directly or indirectly offers to pay or agrees to accept remuneration to or from any



person for securing or soliciting a client or patronage. Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter.

- (b) A licensee employed or under contract with a chemical dependency facility or a mental health facility, shall comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code, Chapter 164, shall not be considered as a violation of state law relating to illegal remuneration.
- (c) A licensee shall not knowingly or flagrantly overcharge a client, and shall bill clients and/or third parties for only those services that the licensee actually renders.
- (d) Billing documents shall accurately reflect any collateral service the licensee uses to help serve the client.
- (e) A licensee may not submit to a client and/or a third party payer a bill for services that the licensee knows were not provided, with the exception of a missed appointment, or knows were improper, unreasonable or unnecessary.

*Adopted to be effective: November 19, 2020*

**781.311. Client Confidentiality.**

- (a) Communication between a licensee and client, as well as the client's records, however created or stored, are confidential under the provisions of the Texas Health and Safety Code, Chapter 181, Texas Health and Safety Code, Chapter 611, and other state or federal statutes or rules, including rules of evidence, where such statutes or rules apply to a licensee's practice.
- (b) A licensee shall not disclose any communication, record, or client identity except as provided in the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act (HIPAA), and/or other applicable state or federal statutes or rules.
- (c) A licensee shall comply with Texas Health and Safety Code, Chapter 611, concerning access to mental health records.
- (d) To release information for or about clients, a licensee shall have written permission signed by the client or the client guardian. That permission, which must be dated, shall include the client's name and identifying information; the purpose for releasing the information; the individual or entity to which the information is released; the length of time

- the release is authorized; the signature of the client or guardian representative; and date of signature.
- (e) The social worker shall maintain the written release of information in the permanent client record and shall review and update it at least every twelve months.
  - (f) A licensee shall report information if required by any of the following statutes:
    - (1) Texas Family Code, Chapter 261, concerning abuse or neglect of minors;
    - (2) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons;
    - (3) Texas Health and Safety Code, §161.131 et seq., concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an in-patient mental health facility, a chemical dependency treatment facility or a hospital providing comprehensive medical rehabilitation services; and
    - (4) Texas Civil Practice and Remedies Code, §81.006, concerning sexual exploitation by a mental health services provider.
  - (g) A licensee may take reasonable action to inform only medical or law enforcement personnel if the professional determines that a client or others are at imminent risk of physical injury, or a client is in immediate risk of mental or emotional injury, in accordance with the Texas Health and Safety Code, Chapter 611, concerning mental health records.

*Adopted to be effective: November 19, 2020*

**781.312. Licensees and the Council.**

- (a) Any person licensed as a social worker is bound by the provisions of the Act and this chapter and Council rules and statutes.
- (b) A social worker shall report alleged misrepresentations or violations of this chapter to the Council.

*Adopted to be effective: November 19, 2020*

*Amended: June 1, 2021*

**781.313. Corporations and Business Names.**

- (a) An independent clinical practice or an independent non-clinical practice by a social worker may be incorporated in accordance with the Professional Corporation Act, or other applicable law.
- (b) When a licensee uses an assumed name in any social work practice, the social worker's name must be listed in conjunction with the assumed name. An assumed name or

credential that the social worker uses shall not be false, deceptive, or misleading.

*Adopted to be effective: November 19, 2020*

**781.316. Advertising and Announcements.**

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

*Adopted to be effective: November 19, 2020*

**781.317. Research and Publications.**

- (a) In research with a human subject, a social worker is responsible for the subject's welfare throughout a project, shall obtain informed consent and take reasonable precautions so that the subject shall suffer no injurious emotional, physical or social effect.
- (b) A social worker shall disguise data obtained from a professional relationship for the purposes of education or research to ensure full protection of the identity of the subject client.
- (c) When conducting and reporting research, a social worker must recognize previous work on the topic, as well as observe all copyright laws.
- (d) A social worker must give due credit through joint authorship, acknowledgment, footnote statements, Internet

sources, or other appropriate means to those who have contributed significantly to the social worker's research or publication.

*Adopted to be effective: November 19, 2020*

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

*Adopted to be effective: November 19, 2020*

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

*Adopted to be effective: November 19, 2020*

**781.320. Parent Coordination.**

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

- (c) A licensee who serves as a parenting coordinator has a duty to provide the information in subsection (b) of this section to the parties to the suit.
- (d) Records of a licensee serving as a parenting coordinator are confidential under the Civil Practices and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator shall comply with the Civil Practices and Remedies Code, Chapter 154, relating to the release of information.
- (e) A licensee shall not provide social work services to any person while simultaneously providing parenting coordination services. This section shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

*Adopted to be effective: November 19, 2020*

**781.321. Parenting Facilitation.**

- (a) In accordance with House Bill 1012, 81<sup>st</sup> Legislature, Regular Session, 2009, and Family Code, Chapter 153, this section establishes the practice standards for licensees who desire to serve as parenting facilitators.
- (b) In accordance with the Family Code, §153.601(3-a), a “parenting facilitator” means an impartial third party:
  - (1) who, regardless of the title by which the person is designated by the court, performs any function described by the Family Code, §153.6061, in a suit; and
  - (2) who:
    - (A) is appointed under Family Code, Chapter 153, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through procedures that are not confidential; and
    - (B) is not appointed under another statute or a rule of civil procedure.
- (c) Notwithstanding any other provision of this chapter, licensees who desire to serve as parenting facilitators shall comply with all applicable requirements of the Family Code, Chapter 153, and this section. Licensees shall also comply with all requirements of this chapter unless a provision is clearly inconsistent with the Family Code, Chapter 153, or this section.
- (d) In accordance with the Family Code, §153.6102I, a licensee serving as a parenting facilitator shall not provide other

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

- (e) A licensee serving as a parenting facilitator utilizes child-focused alternative dispute resolution processes, assists parents in implementing their parenting plan by facilitating the resolution of disputes in a timely manner, educates parents about children's needs, and engages in other activities as referenced in the Family Code, Chapter 153.
- (f) A licensee serving as a parenting facilitator shall assist the parties involved in reducing harmful conflict and in promoting the best interests of the children.
- (g) A licensee serving as a parenting facilitator functions in four primary areas in providing services.
  - (1) Conflict management function. The primary role of the parenting facilitator is to assist the parties to work out disagreements regarding the children to minimize conflict. To assist the parents in reducing conflict, the parenting facilitator may monitor the electronic or written exchanges of parent communications and suggest productive forms of communication that limit conflict between the parents.
  - (2) Assessment function. A parenting facilitator shall review applicable court orders, including protective orders, social studies, and other relevant records to analyze the impasses and issues as brought forth by the parties.
  - (3) Educational function. A parenting facilitator shall educate the parties about child development, divorce, the impact of parental behavior on children, parenting skills, and communication and conflict resolution skills.
  - (4) Coordination/case management function. A parenting facilitator shall work with the professionals and systems involved with the family (for example, mental health, health care, social services, education, or legal) as well as with extended family, stepparents, and significant others as necessary.
- (h) A licensee serving as a parenting facilitator shall be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parenting facilitator shall adhere to protection orders, if any, and take reasonable measures to ensure the safety of the participants, the children and the parenting facilitator, while

understanding that even with appropriate precautions a guarantee that no harm will occur can be neither stated nor implied.

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

shall be given or received by a licensee for parenting facilitation or other professional referrals.

- (q) A licensee serving as a parenting facilitator should attempt to bring about resolution of issues by agreement of the parties; however, the parenting facilitator is not acting in a formal mediation role. An effort towards resolving an issue, which may include therapeutic, mediation, education, and negotiation skills, does not disqualify a licensee from making recommendations regarding any issue that remains unresolved after efforts of facilitation.
- (r) A licensee serving as a parenting facilitator shall communicate with all parties, attorneys, children, and the court in a manner which preserves the integrity of the parenting facilitation process and considers the safety of the parents and children.
- (s) A licensee serving as a parenting facilitator:
  - (1) may meet individually or jointly with the parties, as deemed appropriate by the parenting facilitator, and may interview the children;
  - (2) may interview any individuals who provide services to the children to assess the children's needs and wishes; and
  - (3) may communicate with the parties through face-to-face meetings or electronic communication.
- (t) A licensee serving as a parenting facilitator shall, prior to the beginning of the parenting facilitation process and in writing, inform the parties of:
  - (1) the limitations on confidentiality in the parenting facilitation process; and
  - (2) the basis of fees and costs and the method of payment, including any fees associated with postponement, cancellation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.
- (u) Information obtained during the parenting facilitation process shall not be shared outside the parenting facilitation process except for professional purposes, as provided by court order, by written agreement of the parties, or as directed by the Council.
- (v) In the initial session with each party, a licensee serving as a parenting facilitator shall review the nature of the parenting facilitator's role with the parents to ensure that they understand the parenting facilitation process.
- (w) A licensee serving as a parenting facilitator:
  - (1) shall comply with all mandatory reporting requirements, including but not limited to Family



- Code, Chapter 261, concerning abuse or neglect of minors;
- (2) shall report to law enforcement or other authorities if they have reason to believe that any participant appears to be at serious risk to harm themselves or a third party;
  - (3) shall maintain records necessary to support charges for services and expenses, and shall make a detailed accounting of those charges to the parties and their counsel, if requested to do so;
  - (4) shall maintain notes regarding all communications with the parties, the children, and other persons with whom they speak about the case; and
  - (5) shall maintain records in a manner that is professional, legible, comprehensive, and inclusive of information and documents that relate to the parenting facilitation process and that support any recommendations made by the licensee.
- (x) Records of a licensee serving as a parenting facilitator are not mental health records and are not subject to the disclosure requirements of Health and Safety Code, Chapter 611. At a minimum, records shall be maintained for the period of time described in §781.209(4) of this title (relating to Client Records and Record Keeping), or as otherwise directed by the court.
  - (y) Records of a licensee serving as a parenting facilitator shall be released on the request of either parent, as directed by the court, or as directed by the Council.
  - (z) Charges for parenting facilitation services shall be based upon the actual time expended by the parenting facilitator, or as directed by the written agreement of the parties, and/or formal order of the court.
  - (aa) All fees and costs shall be appropriately divided between the parties as directed by the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.
  - (bb) Fees may be disproportionately divided fees if one parent is disproportionately creating a need for services and if such a division is outlined in the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.
  - (cc) Services and activities for which a licensee serving as a parenting facilitator may charge include time spent interviewing parents, children and collateral sources of information; preparation of agreements, correspondence, and reports; review of records and correspondence; telephone

- and electronic communication; travel; court preparation; and appearances at hearings, depositions and meetings.
- (dd) The minimum training for a licensee serving as a parenting facilitator that is required by the Family Code, §153.6101(b), and is determined by the court is:
    - (1) eight hours of family violence dynamics training provided by a family violence service provider;
    - (2) 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court;
    - (3) 24 classroom hours of training in the fields of family dynamics, child development, family law; and
    - (4) 16 hours of training in the laws and Council rules governing parenting coordination and facilitation, and the multiple styles and procedures used in different models of service.
  - (ee) A licensee serving as a parenting facilitator:
    - (1) shall complete minimum training as required by the Family Code, §153.6101, as determined by the appointing court;
    - (2) shall have extensive practical experience with high conflict or litigating parents;
    - (3) shall complete and document upon request advanced training in family dynamics, child maltreatment, co-parenting, and high conflict separation and divorce; and
    - (4) shall regularly complete continuing education related to co-parenting issues, high-conflict families and the parenting coordination and facilitation process.
  - (ff) A licensee serving as a parenting facilitator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the licensee's skill or expertise.
  - (gg) Since parenting facilitation services are addressed under multiple titles in different jurisdictions nationally, acceptability of training to meet the requirements of subsection (dd) of this section is based on functional skills taught during the training rather than the use of specific titles or names.

*Adopted to be effective: November 19, 2020*

**781.322. Child Custody Evaluations.**

- (a) Licensees shall comply with Texas Family Code, Chapter 107, Subchapters D, E, and F, concerning Child Custody

Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.

- (b) A licensee who has completed a doctoral degree and at least 10 court-ordered child custody evaluations under the supervision of an individual qualified by the Texas Family Code, Chapter 107 to perform child custody evaluations is qualified to conduct child custody evaluations under Texas Family Code, Chapter 107. All other licensees must comply with the qualification requirements stipulated in Texas Family Code, Chapter 107.
- (c) Any complaint relating to the outcome of a child custody evaluation or adoption evaluation conducted by a licensee must be re-reported to the court that ordered the evaluation.
- (d) Disclosure of confidential information in violation of Texas Family Code, §107.111 or §107.163 is grounds for disciplinary action, up to and including revocation of license, by the Council.
- (e) A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal proceeding, such as a divorce, child custody determination, disability claim, or criminal prosecution, must comply with all applicable Council rules in this chapter regardless of whether the licensee is acting as a factual witness or an expert.
- (f) A licensee may not provide therapy and any other type of service, including but not limited to a child custody evaluation or parenting facilitation, in the same case, whether such services are delivered sequentially or simultaneously.
- (g) Licensees may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child unless the licensee has conducted a child custody evaluation relating to the child under Texas Family Code, Chapter 107, Subchapter D.
- (h) Licensees providing child custody evaluations or adoption evaluations shall, prior to beginning the evaluation, in writing inform the parties of:
  - (1) the limitations on confidentiality in the evaluation process; and
  - (2) the basis of fees and costs and the method of payment, including any fees associated with postponement, cancelation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.
- (i) A Licensed Baccalaureate Social Worker shall not conduct child custody evaluations or adoption evaluations unless

qualified to provide such services by another professional license or otherwise by Texas Family Code, Chapter 107.

*Adopted to be effective: November 19, 2020*

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

*Adopted to be effective: November 19, 2020*

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

### **781.401. Qualifications for Licensure.**

- (a) Licensure. The following education and experience is required for licensure as designated. If an applicant for a license has held a substantially equivalent license in good standing in another jurisdiction for one year immediately preceding the date of application, the applicant will be deemed to have met the experience requirement under this chapter.
  - (1) Licensed Clinical Social Worker (LCSW).
    - (A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited institution of higher learning acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.
    - (B) Has had 3000 hours of supervised professional clinical experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Hours accrued in non-clinical settings may be used to satisfy the requirements of this rule if the applicant works at least 4 hours per week providing clinical social work as defined in §781.102 of this title (relating to Definitions).
    - (C) Has had a minimum of 100 hours of supervision, over the course of the 3000 hours of supervised experience, with a Council-approved supervisor. If the social worker completed supervision in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.
    - (D) Has passed the Clinical examination administered nationally by ASWB.
  - (2) Licensed Master Social Worker (LMSW).
    - (A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited university acceptable to the

- Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.
- (B) Has passed the Master's examination administered nationally by ASWB.
  - (3) Licensed Baccalaureate Social Worker (LBSW).
    - (A) Has been conferred a baccalaureate degree in social work from a CSWE accredited social work program.
    - (B) Has passed the Bachelors examination administered nationally by ASWB.
  - (b) Specialty Recognition. The following education and experience is required for Independent Non-clinical Practice specialty recognitions.
    - (1) Is currently licensed in the State of Texas as an LBSW or LMSW.
    - (2) While fully licensed as a social worker has had 3000 hours of supervised full-time social work experience over a minimum two-year period, but within a maximum five-year period or its equivalent if the experience was completed in another state. Supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.
    - (3) Has had a minimum of 100 hours of supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the 5 calendar years immediately preceding the date of application for IPR specialty recognition. If supervision was completed in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification.
  - (c) Applicants for a license must complete the Council's jurisprudence examination and submit proof of completion at the time of application.

*Adopted to be effective: November 19, 2020*  
*Amended: February 4, 2021; February 27, 2022*

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

- (a) A person who has obtained a temporary license may not begin the supervision process toward independent non-clinical practice or independent clinical practice until the regular license is issued.
- (b) To accrue supervised clinical experience required for the issuance of a LCSW:
  - (1) an LMSW shall complete a supervision plan form prescribed by the Council, or a form with substantially equivalent information, and signed by both the LMSW and the Council-approved clinical supervisor;
  - (2) the Council-approved clinical supervisor shall keep a supervision file on the LMSW that includes the supervision plan, list of locations where the LMSW provides supervised clinical services, and a log of clinical experience and supervision earned by the LMSW;
  - (3) the Council-approved clinical supervisor shall submit a completed and signed supervision verification form prescribed by the Council when the LMSW submits an application for re-categorization; and
  - (4) the LMSW shall submit an application for re-categorization of his or her licensure to LCSW upon fulfillment of the supervision requirements.
- (c) An LMSW who plans to apply for the LCSW may not open an independent social work practice to provide clinical social work to clients.
- (d) To accrue supervised experience required for an LBSW or an LMSW to apply for Independent Practice Recognition the LBSW or LMSW shall:
  - (1) complete a supervision plan form prescribed by the Council, or a form with substantially equivalent information, and signed by both the LBSW or LMSW and the Council-approved supervisor;
  - (2) the Council-approved supervisor shall keep a supervision file on the LBSW or LMSW that includes the supervision plan, list of locations where the LBSW or LMSW provides supervised services, and a log of experience and supervision earned by the LBSW or LMSW;
  - (3) the Council-approved supervisor shall submit a completed and signed supervision verification form prescribed by the Council when the LBSW or LMSW

- submits an application for Independent Practice Recognition; and
- (4) submit an application for Independent Practice Recognition upon fulfillment of the supervision requirements.
- (e) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:
- (1) submit one supervisory plan for each practice location to the Council for approval by the Council or its designee within 30 days of initiating supervision;
  - (2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;
  - (3) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and
  - (4) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.
- (f) This rule shall apply to all pending applications, supervision plans awaiting review or previously approved, as well as all future applications filed with the Council.

*Adopted to be effective: November 19, 2020*

*Amended: February 4, 2021*

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



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

his or her services available to other potential clients, while an employee does not.

- (3) Relationship of the parties. The intent of the relationship is significant. The relationship is usually outlined in the written contract and gives one party more control than the other. If a company gives a worker employee benefits, the worker is an employee. The ability to terminate the relationship is another evidence of control in the relationship. If the employer-employee relationship appears to be permanent, it denotes an employee, not contractor, relationship. If a worker performs activities that are a key aspect of the company's regular business, that denotes an employee status.
- (f) An LBSW or LMSW who plans to apply for the specialty recognition of non-clinical independent practice shall follow procedures set out in §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition).
- (g) An LBSW or LMSW may practice independently when the LMSW or LBSW holds the independent practice specialty recognition, or when under a supervision plan for independent practice but the Council-approved supervisor is still responsible for the acts or omissions of the supervisee while providing services under the supervision plan.

*Adopted to be effective: November 19, 2020*

*Amended: February 4, 2021*

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

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

- (3) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;
  - (4) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor; or
  - (5) Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.
- (b) A person who wishes to be a Council-approved supervisor must file an application and pay the applicable fee.
- (1) A Council-approved supervisor must be actively licensed in good standing by the Council as an LBSW, an LMSW, an LCSW, or be recognized as an Advanced Practitioner (LMSW-AP), or hold the equivalent social work license in another jurisdiction. The person applying for Council-approved status must have practiced at his/her category of licensure for two years. The Council-approved supervisor shall supervise only those supervisees who provide services that fall within the supervisor's own competency.
  - (2) The Council-approved supervisor is responsible for the social work services provided within the supervisory plan.
  - (3) The Council-approved supervisor must have completed a supervisor's training program acceptable to the Council.
  - (4) The Council-approved supervisor must complete three hours of continuing education every biennium in supervision theory, skills, strategies, and/or evaluation.
  - (5) The Council-approved supervisor must designate at each license renewal that he/she wishes to continue Council-approved supervisor status.
  - (6) The Council-approved supervisor must submit required documentation and fees to the Council.
  - (7) When a licensee is designated Council-approved supervisor, he or she may perform the following supervisory functions.

- (A) An LCSW may supervise clinical experience toward the LCSW license, non-clinical experience toward the Independent Practice Recognition (non-clinical), and Council-ordered probated suspension;
  - (B) An LMSW-AP may supervise non-clinical experience toward the non-clinical Independent Practice Recognition; and Council-ordered probated suspension for non-clinical practitioners;
  - (C) An LMSW with the Independent Practice Recognition (non-clinical) who is a Council-approved supervisor may supervise an LBSW's or LMSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW or LMSW (non-clinical) under Council-ordered probated suspension;
  - (D) An LBSW with the non-clinical Independent Practice Recognition who is a Council-approved supervisor may supervise an LBSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW under Council-ordered probated suspension.
- (8) The approved supervisor must renew the approved supervisor status in conjunction with the biennial license renewal. The approved supervisor may surrender supervisory status by documenting the choice on the appropriate Council renewal form and subtracting the supervisory renewal fee from the renewal payment. If a licensee who has surrendered supervisory status desires to regain supervisory status, the licensee must reapply and meet the current requirements for approved supervisor status.
- (9) A supervisor must maintain the qualifications described in this section while he or she is providing supervision.
- (10) A Council-approved supervisor who wishes to provide any form of supervision or Council-ordered supervision must comply with the following:
- (A) The supervisor is obligated to keep legible, accurate, complete, signed supervision notes and must be able to produce such documentation for the Council if requested. The notes shall document the content, duration, and date of each supervision session.

- (B) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the Council.
- (C) A Council-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.
- (D) Before entering into a supervisory plan, the supervisor shall be aware of all conditions of exchange with the clients served by her or his supervisee. The supervisor shall not provide supervision if the supervisee is practicing outside the authorized scope of the license. If the supervisor believes that a social worker is practicing outside the scope of the license, the supervisor shall make a report to the Council.
- (E) A supervisor shall not be employed by or under the employment supervision of the person who he or she is supervising.
- (F) A supervisor shall not be a family member of the person being supervised.
- (G) A supervisee must have a clearly defined job description and responsibilities.
- (H) A supervisee who provides client services for payment or reimbursement shall submit billing to the client or third-party payers which clearly indicates the services provided and who provided the services, and specifying the supervisee's licensure category and the fact that the licensee is under supervision.
- (I) If either the supervisor or supervisee has an expired license or a license that is revoked or suspended during supervision, supervision hours accumulated during that time will be accepted only if the licensee appeals to and receives approval from the Council.
- (J) A licensee must be a current Council-approved supervisor in order to provide professional development supervision toward licensure or specialty recognition, or to provide Council-ordered supervision to a licensee. Providing supervision without having met all requirements for current, valid Council-approved supervisor

- status may be grounds for disciplinary action against the supervisor.
- (K) The supervisor shall ensure that the supervisee knows and adheres to Subchapter B, Rules of Practice, of this Chapter.
  - (L) The supervisor and supervisee shall avoid forming any relationship with each other that impairs the objective, professional judgment and prudent, ethical behavior of either.
  - (M) Should a supervisor become subject to a Council disciplinary order, that person is no longer a Council-approved supervisor and must so inform all supervisees, helping them to find alternate supervision. The person may reapply for Council-approved supervisor status by meeting the terms of the disciplinary order and having their license in good standing, in addition to submitting an application for Council-approved supervisor, and proof of completion of a 40-hour Council-approved supervisor training course, taken no earlier than the date of execution of the Council order.
  - (N) The Council may deny, revoke, or suspend Council- approved supervisory status for violation of the Act or rules. Continuing to supervise after the Council has denied, revoked, or suspended Council-approved supervisor status, or after the supervisor's supervisory status expires, may be grounds for disciplinary action against the supervisor.
  - (O) If a supervisor's Council-approved status is expired, suspended, or revoked, the supervisor shall refund all supervisory fees the supervisee paid after the date the supervisor ceased to be Council-approved.
  - (P) A supervisor is responsible for developing a well-conceptualized supervision plan with the supervisee, and for updating that plan whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided.
  - (Q) All Council-approved supervisors shall have taken a Council-approved supervision training course by January 1, 2014 in order to renew Council-approved supervisor status. The Council recognizes that many licensees have had little, if

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

- (11) A Council-approved supervisor who wishes to provide supervision towards licensure as an LCSW or towards specialty recognition in Independent Practice (IPR) or Advanced Practitioner (LMSW-AP), which is supervision for professional growth, must comply with the following:
  - (A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions, in group sessions, or in a combination of one-on-one and group sessions. Session may transpire in the same geographic location, or via audio, web technology or other electronic supervision techniques that comply with HIPAA and Texas Health and Safety Code, Chapter 611, and/or other applicable state or federal statutes or rules.
  - (B) Supervision groups shall have no fewer than two members and no more than six.
  - (C) Supervision shall occur in proportion to the number of actual hours worked for the 3,000 hours of supervised experience. No more than 10 hours of supervision may be counted in any one month, or 30-day period, as appropriate, towards satisfying minimum requirements for licensure or specialty recognition.
  - (D) The Council considers supervision toward licensure or specialty recognition to be supervision which promotes professional growth. Therefore, all supervision formats must

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

- (E) Supervision toward licensure or specialty recognition must extend over a full 3000 hours over a period of not less than 24 full months and a period of not more than 48 full months for LCSW or not more than 60 full months for Independent Practice Recognition (IPR). Even if the individual completes the minimum of 3000 hours of supervised experience and minimum of 100 hours of supervision prior to 24 months from the start date of supervision, supervision which meets the Council's minimum requirements shall extend to a minimum of 24 full months.
- (F) The supervisor and the supervisee bear professional responsibility for the supervisee's professional activities.
- (G) If the supervisor determines that the supervisee lacks the professional skills and competence to practice social work under a regular license, the supervisor shall develop and implement a written remediation plan for the supervisee.
- (H) Supervised professional experience required for licensure must comply with §781.401 of this title (relating to Qualifications for Licensure) and §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice



Recognition) of this title and all other applicable laws and rules.

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

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

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

- a new supervisory plan within 30 days of the break or change in practice location.
- (B) The supervisor who agrees to provide Council-ordered supervision of a licensee who is under Council disciplinary action must understand the Council order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to Council discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.
  - (C) Council-ordered and mandated supervision timeframes are specified in the Council order.

*Adopted to be effective: November 19, 2020*

*Amended: February 4, 2021*

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

*Adopted to be effective: November 19, 2020*

**781.406. Required Documentation of Qualifications for Licensure.**

- (a) Application form. An applicant for licensure must submit a completed official application form with all requested information.
- (b) Education verification.
  - (1) The applicant's education must be documented by official college transcripts from social work educational units accredited by CSWE.
  - (2) Degrees for licensure as an LBSW or LMSW must be from programs accredited or in candidacy for accreditation by CSWE.
- (c) Experience verification.
  - (1) An applicant's experience for licensure or for specialty recognition must meet the requirements of §781.401 of this title (relating to Qualifications for Licensure), §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition), and §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process). The applicant must document the names and addresses of supervisors; beginning and ending dates of

supervision; job description; and average number of hours of social work activity per week. The applicant must further document the appropriate supervision plan and verification form for each practice location.

- (2) The applicant's experience must have been in a position providing social work services, under the supervision of a qualified supervisor, with written evaluations to demonstrate satisfactory performance.
- (3) Supervised experience must have occurred within the five calendar years immediately preceding the date of an initial or upgrade application.
- (4) The applicant must maintain and upon request, provide to the Council documentation of employment status, pay vouchers, or supervisory evaluations.

*Adopted to be effective: November 19, 2020*

*Amended: February 4, 2021; February 27, 2022*

#### **781.411. Temporary License.**

- (a) Prior to examination, a licensure applicant may obtain a temporary social work license as long as the applicant meets all the requirements, except the licensing examination, for the license category the applicant seeks.
- (b) A person holding a temporary license must take the designated examination within six months of issuance of the temporary license.
- (c) The temporary license is valid until the licensee attempts the appropriate examination or the end of the six-month issuance of the temporary license.
- (d) A person holding a temporary license must display the license at the licensee's place of business and must use the appropriate licensed title or initials followed by the word "Temporary" in all professional use of the licensee's name.
- (e) Should the applicant take and fail the examination, the temporary license is no longer valid. The applicant must immediately cease and desist from using the temporary license and title, and return the license certificate and certificate card to the Council.
- (f) Should the applicant pass the examination, the Council will issue the license or specialty recognition. A temporary license holder who has passed the licensing examination continues to be temporarily licensed until the Council issues a regular license or the temporary license expires.
- (g) A person who failed the examination and is without a valid temporary license may retake the examination under §781.412 of this title (relating to Examination Requirement).

- (h) A temporary license will not be granted to an applicant who has held a temporary license for the same license category previously within his/her lifetime.
- (i) An applicant for LCSW or specialty recognition is not eligible for a temporary or provisional license.
- (j) Applicants requesting a temporary license must submit the application form and fee required by the Council.

*Adopted to be effective: November 19, 2020*

**781.412. Examination Requirement.**

- (a) An applicant for licensure or specialty recognition must pass an examination designated by the Council.
- (b) Applicants must have received a passing score on the ASWB national examination within the two-year period preceding the date of the initial or upgrade application. The Council will not accept an exam score received more than two years prior to the date of the initial or upgrade application.
- (c) The Council may waive the examination for an applicant with a valid certificate or license from another state if the certificate or license was issued before January 1, 1986, if petitioned in writing.
- (d) On the basis of a verified report from ASWB that an applicant has cheated on the examination, the application shall be denied.

*Adopted to be effective: November 19, 2020*

*Amended: February 27, 2022*

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

*Adopted to be effective: November 19, 2020*

**781.418. Issuance of Licenses to Certain Out-of-State Applications.**

- (a) Notwithstanding any other licensing requirement of this chapter or the Act:
  - (1) The Council may not require an applicant who is licensed in good standing in another state to retake a licensing examination conducted by the Council under

the Act if the applicant has passed the same examination in another jurisdiction.

- (2) The Council may issue a license to an applicant who is currently licensed in another jurisdiction to independently practice social work if the Council determines that the applicant demonstrates sufficient experience and competence; has passed the licensing examination appropriate to the category of licensure the applicant seeks; has passed the jurisprudence examination conducted by the Council under the Texas Occupations Code, §505.3545; and is in good standing with the regulatory body of the licensing jurisdiction at the time the applicant applied in Texas.
- (b) When assessing the applicant's experience and competence, the Council may consider any supervision the applicant received in another jurisdiction if the Council determines that the supervision would be considered for licensing or certification in the jurisdiction in which the applicant received the supervision.

*Adopted to be effective: November 19, 2020*

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

- (a) An applicant applying for licensure under this section must comply with Council §882.60 (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 for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

*Adopted to be effective: November 19, 2020*

**781.420. Licensing of Persons with Criminal Convictions.** The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensee:

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

- (2) a sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure;
- (3) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;
- (4) any criminal violation of Chapter 505 (Social Work Practice Act) of the Occupations Code;
- (5) any criminal violation of Chapter 35 (Insurance Fraud) or Chapter 35A (Medicaid Fraud) of the Penal Code;
- (6) any criminal violation involving a federal health care program, including 42 USC Section 1320a-7b (Criminal penalties for acts involving Federal health care programs);
- (7) any offense involving the failure to report abuse or neglect;
- (8) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of social work;
- (9) any criminal violation of Section 22.041 (abandoning or endangering a child) of the Penal Code;
- (10) any criminal violation of Section 21.15 (invasive visual recording) of the Penal Code;
- (11) any criminal violation of Section 43.26 (possession of child pornography) of the Penal Code;
- (12) any criminal violation of Section 22.04 (injury to a child, elderly individual, or disabled individual) of the Penal Code;
- (13) three or more drug or alcohol related convictions within the last 10 years, evidencing possible addiction that will have an effect on the licensee's ability to provide competent services; and
- (14) any attempt, solicitation, or conspiracy to commit an offense listed herein.

*Adopted to be effective: February 4, 2021*

**781.508. Hour Requirements for Continuing Education.**

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

*Adopted to be effective: November 19, 2020*

**781.509. Types of Acceptable Continuing Education.** To be acceptable for the purposes of license renewal or satisfaction of disciplinary stipulations the education must be received from a continuing education provider that:

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

*Adopted to be effective: November 19, 2020*

**781.510. Activities Unacceptable as Continuing Education.** The Council will not give credit hours for:

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

*Adopted to be effective: November 19, 2020*

**781.514. Credit Hours Granted.** The Council will grant the following credit hours toward the continuing education requirements for license renewal.

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

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

*Adopted to be effective: November 19, 2020*

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

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

*Adopted to be effective: November 19, 2020*



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

- (1) Level One--Revocation of license. These violations evidence the licensee's intentional or gross misconduct, cause or pose a high degree of harm to the public, and/or require severe punishment to deter the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure. The Council may also impose an administrative penalty of not less than \$250 or more than \$5,000 for each Level One violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a financial penalty.
- (2) Level Two--Extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require suspension of licensure for a period of not less than one year. The Council may also impose an administrative penalty of not less than \$250 or more than \$4,000 for each Level Two violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.
- (3) Level Three--Moderate suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level Two violations, but require suspension of licensure for some period of time. The Council may also impose an administrative penalty of not less than \$250 or more than \$3,000 for each Level Three violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.
- (4) Level Four--Probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant suspension of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. The Council may also impose an administrative penalty of not less than \$250 or more than \$2,000 for each Level Four violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.
- (5) Level Five--Reprimand. These violations involve minor misconduct not directly involving the health, safety or welfare of the particular member of the public at issue.

The Council may also impose an administrative penalty of not less than \$250 or more than \$1,000 for each Level Five violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

*Adopted to be effective: November 19, 2020*

*Amended: June 1, 2021*

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

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

*Adopted to be effective: November 19, 2020*

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

**DISCIPLINARY ACTIONS (reported to the National Practitioner Databank)  
Level 5: Reprimand (Administrative Penalty: not less than \$250; no more than \$1,000 per day)**

- \_\_\_ Failure to inform consumer of all required items, provide a written explanation of treatment and charges (§§781.301(6); 781.303(7); 781.304(a); 781.309(5); and 781.313(b))
- \_\_\_ Failure to discourage others from making exaggerated or false claims (§781.304(i))
- \_\_\_ Failure to protect individual from harm resulting from individual or group setting (§781.304(o))
- \_\_\_ Failure to inform client about testing as part of treatment (§781.307(a))

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

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

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

- \_\_\_ Refusing to serve a client based solely on basis of prohibited discrimination (§781.301(1))
- \_\_\_ Failure to practice within scope of competency and accepted professional standards as appropriate to client's needs (§§781.301(3), 781.302(d), (e), and (g)-(i); 781.303(4); 781.321(ff); 781.322(i))
- \_\_\_ Exploiting a position of trust with client or former client (§781.301(11))
- \_\_\_ Failure to assume responsibility for clients during bartering of services (§781.303(8))
- \_\_\_ Entering into a business relationship with a client (§781.304(c))
- \_\_\_ Failure to provide services in the context of a professional relationship (§781.304(j))
- \_\_\_ Borrowing or lending money or items of value to clients or relatives of clients (§781.304(n))
- \_\_\_ Failure to report alleged sexual misconduct to the Council (§781.305(g)(1)-(4))
- \_\_\_ Failure to administer or interpret test only with training and experience (§781.307(c))
- \_\_\_ Failure to retain and dispose of client records in ways that maintain confidentiality (§781.309(2))
- \_\_\_ Knowingly or flagrantly overcharging; bill for improper, unreasonable or unnecessary services (§781.310(c) and (e))
- \_\_\_ Failure to report information concerning abuse or neglect of minors, elderly, or disabled; report exploitation by a mental health services provider (§781.311(f)(1-4))
- \_\_\_ Failure to ensure subject's identity and confidentiality when obtaining data from a professional relationship for purposes of research (§781.317(b))
- \_\_\_ Providing therapy or any other type of service, including but not limited to a child custody evaluation or parenting facilitation, in the same case (§§781.320(e); 781.321(d); 781.322(f))
- \_\_\_ Failure to supervise only supervisees within scope of competency (§781.404(b)(1))

\_\_\_ Failure to clearly indicating services, licensure category, and that supervisee is under supervision on billing documentation (§781.404(b)(10)(H))

\_\_\_ Failure to address issues outlined in Council ordered supervision (§781.404(b)(12)(B))

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

\_\_\_ Practice while impaired by alcohol or drugs or use any illegal drug; promote, encourage, or concur in the illegal use or possession of alcohol or drugs (§§781.301(10) and 781.308)

\_\_\_ Offer to pay or agree to accept any remuneration for securing or soliciting clients or patronage (§§781.304(b); 781.310(a) and (b))

\_\_\_ Provide expert opinion or recommendation without conducting appropriate child custody evaluation (§781.322(g))

\_\_\_ Failure to maintain qualifications of supervisory status while providing supervision (§781.404(b)(9))

\_\_\_ Provide supervision without having met all requirements for current, valid Council approved supervisor status (§781.404(b)(10)(J))

\_\_\_ Failure to inform all supervisees of termination of supervisor status and help them to find alternate supervision (§781.404(b)(10)(M))

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

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

\_\_\_ Engage in sexual misconduct; therapeutic deception (§§781.301(9); 781.305(b) and (c))

\_\_\_ Aid or abet unlicensed practice (§781.303(5))

\_\_\_ Participate in falsifying documents submitted to the Council (§781.303(6))

\_\_\_ Continue to supervise or fail to refund all supervisory fees paid after termination or expiration of supervisor status (§781.404(b)(10)(N) and (O))

*Adopted to be effective: November 19, 2020*

*Amended: June 1, 2021*

## **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, 611.0041 or 611.0045.
- (b-1) No exception to the privilege of confidentiality under Section 611.004 may be construed to create an independent duty or requirement to disclose the confidential information to which the exception applies.
- (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, mental health, 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.
- (a-1) No civil, criminal, or administrative cause of action exists against a person described by Section 611.001(2)(A) or (B) for the disclosure of confidential information in accordance with Subsection (a)(2). A cause of action brought against the person for the disclosure of the confidential information must be dismissed with prejudice.
- (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