

Subchapter A. The Board.

§681.1. General.

This chapter implements the provisions of Texas Occupations Code, Chapter 503 (the Licensed Professional Counselor Act), concerning the licensing and regulation of professional counselors.

§681.2. Definitions.

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

(1) Accredited universities--Universities as reported by the American Association of Collegiate Registrars and Admission Officers.

(2) Act- The Licensed Professional Counselor Act, Texas Occupations Code, Chapter 503.

(3) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(4) Art therapy--The practice of professional counseling through services that use art media to promote perceptive, intuitive, affective, and expressive experiences that alleviate distress and emotional, behavioral, or social impairment.

(5) Board--The Texas State Board of Examiners of Professional Counselors.

(6) Client--A person who requests and receives counseling services from a licensee or who has engaged in a therapeutic relationship with a licensee.

(7) Counseling-related field--A mental health discipline utilizing human development, psychotherapeutic, and mental health principles including, but not limited to, psychology, psychiatry, social work, marriage and family therapy, and counseling and guidance. Non-counseling related fields include, but are not limited to, sociology, education, administration, dance therapy and theology.

(8) Department--Department of State Health Services.

(9) Health care professional--A licensee or any other person licensed, certified, or registered by the state in a health related profession.

(10) License--A regular license, regular license with art therapy specialty designation, provisional license, or temporary license issued by the board.

(11) Licensee--A person who holds a regular license, regular license with art therapy specialty designation, provisional license, or temporary license.

(12) LPC Intern--A person who holds a temporary license to practice counseling.

(13) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, §501(c)(3) and other individuals participating with them in pastoral counseling if:

(A) the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of the legally recognized denomination, church, sect, religious organization or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, §1.6033-2(g)(5)(I) (1982);

(B) the individual providing the service remains accountable to the established authority of that denomination, church, sect, religious organization or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a professional counselor.

(14) Supervisor--A person approved by the board as meeting the requirements set out in §681.93 of this title (relating to Supervisor Requirements), to supervise an LPC Intern.

§681.3. Meetings.

(a) The board will hold at least two regular meetings and additional meetings as necessary during each fiscal year.

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

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

§681.4. Transaction of Official Business.

(a) The board shall transact official business only when in a legally constituted meeting with a quorum present. A quorum of the board necessary to conduct official business is a majority of the members.

(b) The board shall not be bound in any way by any statement or action on the part of any board or staff member except when a statement or action is pursuant to specific instructions of the board.

(c) Robert's Rules of Order Revised shall be the basis of parliamentary decisions except as otherwise provided in this chapter.

§681.5. Agendas.

(a) The executive director is responsible for preparing and submitting an agenda to each member of the board prior to each meeting which includes items requested by members, items required by law, and other matters of board business which have been approved for discussion by the chair.

(b) The official agenda of a meeting shall be filed with the Texas Secretary of State as required by law.

§681.6. Minutes.

(a) The minutes of a board meeting are official only if affixed with the original signatures of the chair and the executive director.

(b) Drafts of the minutes of each meeting shall be forwarded to each member of the board for review and comments or corrections prior to approval by the board.

(c) The official minutes of the board meetings shall be kept in the office of the executive director and shall be available to any person desiring to examine them.

§681.7. Elections.

(a) At the meeting held nearest to August 31 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 regular meeting as required.

§681.8. Officers.

(a) The chair shall preside at all meetings at which he or she is in attendance and perform all duties prescribed by law or this chapter.

(b) The chair is authorized by the board to make day-to-day minor decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board.

(c) The vice-chair shall perform the duties of the chair in case of the absence or disability of the chair.

(d) In case the office of the chair becomes vacant, the vice-chair shall serve until a successor is appointed.

§681.9. Committees.

(a) The board or the chair may establish committees deemed necessary to carry out board responsibilities.

(b) The chair shall appoint members of the board to serve on committees and shall designate a chair for each committee.

(c) Only members of the board may be appointed to a board committee.

(d) Committee chairs shall preside at all committee meetings and shall make regular reports to the board.

(e) Committees may direct all reports or other materials to the executive director for distribution.

(f) Committees shall meet when called by the committee chair or when so directed by the board.

(g) Each committee shall consist of least one public member and one professional member, unless the board authorizes otherwise

§681.10. Executive Director.

(a) The executive director of the board shall be an employee of the department appointed by the Commissioner of the Department of State Health Services, with the advice and consent of the board.

(b) The executive director shall keep the minutes of the meetings and proceedings of the board and shall be the custodian of the files and records of the board.

(c) The executive director shall exercise general supervision over persons employed in the administration of the Act. The executive director may delegate responsibilities to other staff members when appropriate.

(d) The executive director shall be responsible for the initiation of complaint investigations and for the presentation of formal complaints.

(e) The executive director shall be responsible for all correspondence for the board and obtain, assemble, or prepare reports and information that the board may direct, or as authorized or required by the department or other agency with appropriate statutory

authority.

(f) The executive director shall be responsible for assembling and evaluating materials submitted by an applicant for licensure. Determinations made by the executive director that propose denial of licensure are subject to the approval of the appropriate committee of the board which shall make the decision on the eligibility of the applicant.

§681.11. Reimbursement for Expenses. A board member is entitled to per diem and transportation expenses as provided by the General Appropriations Act.

§681.12. Official Records of the Board.

(a) Records in the possession of the board are public information and may be reviewed by inspection, duplication, or both, unless the records are excepted from public disclosure in accordance with the Public Information Act, Texas Government Code, Chapter 552

(b) When a request would be unreasonably disruptive to the ongoing business of the office or when the safety of any record is at issue, physical access by inspection may be denied and the requester will be provided the option of receiving duplicate copies at the requester's cost.

(c) Costs of duplication shall be paid by the requester at the time of or before the duplicated records are sent or given to the requester. The charge for copies shall be set by the department.

(d) The rules of procedure for inspection and duplication of public records contained in the Public Information Act, Texas Government Code, Chapter 552, shall apply to requests received by the board.

§681.13. Impartiality and non-discrimination.

(a) The board shall make decisions in the discharge of its statutory authority without regard to any person's age, race, religion, ethnicity, sex, disability, national origin, or genetic information.

(b) Any board member who is unable to be impartial in the determination of an applicant's eligibility for licensure or in a disciplinary action against a licensee shall so declare this to the board and shall not participate in any board proceedings involving that applicant or licensee.

(c) Applicants seeking accommodations under the Americans with Disabilities Act shall inform the board in advance and in writing of any special accommodations needed.

§681.14. Licensing Fees.

(a) Licensing fees are as follows:

- (1) Application , intern license and initial license fee--\$190;
- (2) 2 year renewal fee--\$100;
- (3) late renewal fee:
 - (A) 1-90 days after expiration--\$125; and
 - (B) 91-365 days after expiration--\$150.
- (4) 2-year inactive status fee--\$50;
- (5) license certificate or renewal card duplication or replacement fee--\$10;
- (6) returned check fee--\$25;
- (7) art therapy specialty designation application fee--\$30 (in addition to any necessary application fees listed in paragraphs (1) - (6) of this subsection); and
- (8) criminal history evaluation letter fee--\$50.

(b) The board may assess a \$10 processing fee for a license verification.

(c) Remittances submitted to the board in payment of a required fee may be in the form of a personal check, cashier's check, or money order.

(d) For all applications and renewal applications, the board is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through www.texas.gov.

(e) For all applications and renewal applications, the board is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

§681.15. Processing Procedures.

(a) Time periods. The board shall comply with the following procedures in processing applications for a license and renewal of a regular license.

(1) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing, temporary license, or notice that the application is deficient and additional specific information is required. The time periods are as follows:

- (A) issuance of temporary license - 20 working days; or
- (B) letter of application deficiency - 20 working days

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial end on the day notice of the proposed decision is mailed to the applicant. The time periods are as follows:

- (A) letter of approval for examination - 20 working days;

(B) initial letter of approval for a license - 180 working days; and

(C) letter of denial of a license - 180 working days.

(3) The period of time from the receipt of the application for renewal of a regular license until the renewal card is issued or written notice is given that the application is deficient and additional specific information is required shall be 20 working days. The regular license renewal may be issued in lieu of the notice of acceptance. The period of time from the receipt of the last item necessary to complete the application for renewal until issuance of the renewed license or notification of denial of renewal shall be 20 working days.

§681.16. Petition for the Adoption of a Rule.

(a) A person may petition the board to adopt a rule.

(b) The petition shall be in writing; shall state the petitioner's name, address, and phone number; and shall contain the following:

(1) a brief explanation of and justification for the proposed rule;

(2) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(3) a statement of the statutory or other authority under which the rule is to be promulgated; and

(4) the public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(c) The petition shall be filed with the board office.

(d) The board office may determine the petition does not contain the information described in subsection (a) of this section and shall return the petition to the petitioner.

(e) Except as otherwise provided in

subsection (i) of this section, the executive director shall submit a completed petition to the board for consideration.

(f) Within 60 days after receipt of the petition, the board shall deny the petition or institute rule-making procedures in accordance with the Administrative Procedure Act (Texas Government Code, Chapter 2001). The board may deny parts of the petition or institute rule-making procedures on parts of the petition.

(g) If the board denies the petition, the board shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(h) If the board initiates rule-making procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(i) All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of this section. The board may refuse to consider a subsequent petition for the adoption of the same or similar rule submitted within six months after the date of an initial petition.

§681.17. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by

the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this subsection and the requestor's eligibility that the department has to investigate a person applying for a license.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

Subchapter B. Authorized Counseling Methods and Practices.

§681.31. Counseling Methods and Practices.

The use of specific methods, techniques, or modalities within the practice of professional counseling is limited to professional counselors appropriately trained and competent in the use of such methods, techniques, or modalities. Authorized counseling methods techniques and modalities may include, but are not restricted to, the following:

(1) individual counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, social, moral, educational, career, and spiritual development and adjustment through the life span;

(2) group counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, social, moral, educational, spiritual, and career development and adjustment through the life span;

(3) marriage counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, affective and family systems methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples;

(4) family counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, affective and family systems methods and strategies with families to achieve mental, emotional, physical, moral, social, educational, spiritual, and career development and adjustment through the life span;

(5) chemical dependency counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, affective methods and strategies, and 12-step methods to achieve

abstinence from the addictive substances and behaviors by the client;

(6) rehabilitation counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society;

(7) education counseling which utilizes formal and informal counseling methods and assessments and appraisal instruments for the purpose of determining strength, weakness, mental condition, emotional stability, intellectual ability, interest, skill, aptitude, achievement, and other personal characteristics of individuals for the selection of and placement in educational settings, preschool through postdoctoral study;

(8) career development counseling which utilizes formal and informal counseling methods and appraisal instruments for the purpose of determining intellectual ability, interest, skill, aptitude, achievement, mental condition, emotional fitness, and other personal characteristics for occupational, vocational, and career selection and placement throughout the life span;

(9) sexual issues counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and strategies in the resolution of sexual disorders;

(10) referral counseling which utilizes the processes of evaluating and identifying needs of clients to determine the advisability of referral to other specialists, informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources;

(11) psychotherapy which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and strategies to assist clients in their efforts to recover from mental or emotional illness;

(12) play therapy which utilizes play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors as a part of the therapist's role in helping children overcome their social, emotional, and mental problems;

(13) hypnotherapy which utilizes the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional disorders and addictions;

(14) expressive modalities utilized in the treatment of interpersonal, emotional or mental health issues, chemical dependency, or human developmental issues. Modalities include but are not limited to, music, art, dance movement, or the use of techniques employing animals in providing treatment;

(15) biofeedback which utilizes electronic equipment to monitor and provide feedback regarding an individual's physiological responses. The counselor who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the counselor's academic program or the substantial equivalent provided through approved continuing education;

(16) assessing and appraising, in compliance with §681.43 of this title (relating to Testing), which utilizes formal and informal instruments and procedures, for which the counselor has received appropriate training and supervision, in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental problems; but does not permit the diagnosis of a physical condition or disorder; and

(17) consulting which utilizes the application of specific principles and procedures in counseling to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations.

Subchapter C. Code of Ethics.

§681.41. General Ethical Requirements.

(a) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including, but not limited to:

(1) the effectiveness of services;

(2) the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; or

(3) the practice or field of counseling.

(b) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the services of a mental health services organization or agency, including, but not limited to, the effectiveness of services, qualifications, or products.

(c) A licensee shall discourage a client from holding exaggerated or false ideas about the licensee's professional services, including, but not limited to, the effectiveness of the services, practice, qualifications, associations, or activities. If a licensee learns of exaggerated or false ideas held by a client or other person, the licensee shall take immediate and reasonable action to correct the ideas held.

(d) A licensee shall make reasonable efforts to prevent others whom the licensee does not control, from making misrepresentations; exaggerated or false claims; or false, deceptive, or fraudulent statements about the licensee's practice, services, qualifications, associations, or activities. If a licensee learns of a misrepresentation; exaggerated or false claim; or false, deceptive, or fraudulent statement made by another, the licensee shall take immediate and reasonable action to correct the statement.

(e) Regardless of setting, a licensee shall provide counseling treatment intervention only in the context of a professional relationship. A licensee shall inform an individual in writing

before services are provided of the following:

(1) fees and arrangements for payment;

(2) counseling purposes, goals, and techniques;

(3) any restrictions placed on the license by the board;

(4) the limits on confidentiality;

(5) any intent of the licensee to use another individual to provide counseling treatment intervention to the client; and

(6) supervision of the licensee by another licensed health care professional including the name and qualifications of the supervisor. On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the intern's name shall be followed by the name of the supervisor in the same type size and font.

(f) A licensee shall inform the client in writing of any changes to the items in subsection (e) of this section prior to initiating the change.

(g) Where the client is in one location and the counselor is in another, technological means of communication may be used to facilitate the therapeutic counseling process.

(h) In accordance with the provisions of the Act, §503.401(a)(4), 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.

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.

(i) A licensee shall not engage in activities for the licensee's personal gain at the expense of a client.

(j) A licensee may promote the licensee's personal or business activities to a client if such activities, services or products are to facilitate the counseling process or help achieve the client's counseling goals. Prior to engaging in any such activities, services or product sales with the client, the licensee shall first inform the client of the licensee's personal and/or business interest therein. A licensee shall not exert undue influence in promoting such activities, services or products.

(k) A licensee shall set and maintain professional boundaries.

(l) Except as provided by this subchapter, non-therapeutic relationships with clients are prohibited.

(1) A non-therapeutic relationship is any non-counseling activity initiated by either the licensee or client that results in a relationship unrelated to therapy.

(2) A licensee may engage in a non-therapeutic relationship with a client if the relationship begins more than two years after the end of the counseling relationship and the non-therapeutic relationship is consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

(3) A licensee may engage in sexual contact with a client if the contact begins more than five years after the end of the counseling relationship and the non-therapeutic relationship is consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

(4) For purposes of paragraphs (2) and (3) of this subsection, the licensee must be able to demonstrate that there has been no exploitation and that the non-therapeutic relationship is not detrimental to the client in

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

(5) The licensee shall not provide counseling services to previous or current:

(A) family members;

(B) personal friends;

(C) educational associates; or

(D) business associates.

(6) The licensee shall not give or accept a gift from a client or a relative of a client valued at more than \$50, or borrow or lend money or items of value to clients or relatives of clients or accept payment in the form of goods or services rendered by a client or relative of a client.

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

(m) The licensee shall not knowingly offer or provide counseling treatment intervention to an individual concurrently receiving counseling treatment intervention from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy, the licensee shall request release from the client to inform the other professional and strive to establish positive and collaborative professional relationships

(n) A licensee may take reasonable action to inform medical or law enforcement personnel if the licensee determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional

injury to the client.

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

(p) For each client, a licensee shall keep accurate records of the intake assessment, the dates of counseling treatment intervention, principal treatment methods, progress or case notes, treatment plan, and billing information.

(q) Records held by a licensee shall be kept for a minimum of five years from the date of the last contact with the client.

(r) Records created by licensees during the scope of their employment by educational institutions; by federal, state, or local governmental agencies; or their political subdivisions or programs are not required to comply with subsections(p) and (q) of this section.

(s) A licensee shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual written agreement.

(1) Relationships between a licensee and any other person used by the licensee to provide services to a client shall be so reflected on billing documents.

(2) On the written request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, a licensee shall provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(3) A licensee may not knowingly overcharge a client.

(4) With the exception of an unkept appointment, a licensee may not submit to a

client or a third party payor a bill for counseling treatment intervention that the licensee knows was not provided or knows was improper, unreasonable, or unnecessary.

(t) A licensee shall terminate a professional counseling relationship when it is reasonably clear that the client is not benefiting from the relationship.

(u) Upon termination of a relationship if professional counseling is still necessary, the licensee shall take reasonable steps to facilitate the transfer to appropriate care.

(v) A licensee 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.

(w) A licensee shall not knowingly over treat a client.

(x) A licensee shall not aid or abet the unlicensed practice of professional counseling by a person required to be licensed under the Act. A licensee shall report to the board knowledge of any unlicensed practice of counseling.

(y) A licensee or an applicant for licensure shall not participate in any way in the falsification of applications for licensure or renewal of license.

(z) A licensee shall comply with the requirements of Texas Health and Safety Code, Chapter 611, concerning the release of mental health records and confidential information.

(aa) Prior to the commencement of counseling services to a minor client who is named in a custody agreement or court order, a licensee shall obtain and review a current copy of the custody agreement or court order, as well as any applicable divorce decree. A licensee shall maintain these documents in the client's record.

(bb) A licensee shall establish a plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice. A licensee shall inform each new client of the plan.

§681.42. Sexual Misconduct.

(a) For the purpose of this section the following terms shall have the following meanings.

(1) "Mental health services provider" means a licensee or any other licensed mental health professional, including a licensed social worker, a chemical dependency counselor, a licensed marriage and family therapist, a physician, a psychologist, or a member of the clergy. Mental health services provider also includes employees of the above or employees of a treatment facility

(2) Sexual contact means:

(A) deviate sexual intercourse as defined by the Texas Penal Code, §21.01;

(B) sexual contact as defined by the Texas Penal Code, §21.01;

(C) sexual intercourse as defined by the Texas Penal Code, §21.01; or

(D) requests or offers by a licensee for conduct described by subparagraph (A), (B), or (C) of this paragraph.

(3) "Sexual exploitation" means a pattern, practice, or scheme of conduct, which may include sexual contact that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a client's sexual history within standard accepted practice while treating a sexual or marital dysfunction.

(4) "Therapeutic deception" means a representation by a licensee that sexual contact with, or sexual exploitation by, the licensee is

consistent with, or a part of, a client's or former client's counseling.

(b) A licensee shall not engage in sexual contact with or sexual exploitation of a person who is:

(1) a client as defined in §681.2(7) of this title (relating to Definitions)

(2) an LPC Intern supervised by the licensee; or

(3) a student at an educational institution at which the licensee provides professional or educational services

(4) Sexual contact that occurs more than five years after the termination of the client relationship will not be deemed a violation of this section if the conduct is consensual, not the result of sexual exploitation, and not detrimental to the client. The licensee must demonstrate that there has been no exploitation in light of all relevant factors, including, but not limited to:

(A) the amount of time that has passed since therapy terminated;

(B) the nature and duration of the therapy;

(C) the circumstances of termination;

(D) the client's personal history;

(E) the client's current mental status;

(F) the likelihood of adverse impact on the client and others; and

(G) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post - termination sexual or romantic relationship with the client.

(c) A licensee shall not practice therapeutic deception of a person who is a client as defined in §681.2(7) of this title (relating to definitions).

(d) It is not a defense under subsections (b) - (c) of this section if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred:

(1) with the consent of the client;

(2) outside the professional counseling sessions of the client; or

(3) off the premises regularly used by the licensee for the professional counseling sessions of the client.

(e) The following may constitute sexual exploitation if done for the purpose of sexual arousal or gratification or sexual abuse of any person:

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

(A) is offensive or creates a hostile environment, and the licensee knows or is told this; or

(B) is sufficiently severe or intense to be abusive to a reasonable person in the context;

(2) any behavior, gestures, or expressions which may reasonably be interpreted as seductive or sexual;

(3) sexual comments about or to a person, including making sexual comments about a person's body;

(4) making sexually demeaning comments about an individual's sexual orientation;

(5) making comments about potential sexual performance except when the comment is pertinent to the issue of sexual function or dysfunction in counseling;

(6) requesting details of sexual history or sexual likes and dislikes when not necessary for counseling of the individual;

(7) initiating conversation regarding the sexual problems, preferences, or fantasies of the licensee;

(8) kissing or fondling;

(9) making a request to date;

(10) any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but of a sexual nature;

(11) any bodily exposure of genitals, anus or breasts;

(12) encouraging another to masturbate in the presence of the licensee; or

(13) masturbation by the licensee when another is present.

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

(g) A licensee shall report sexual misconduct as follows.

(1) 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 third business day after the date the licensee became aware of the conduct or the allegations to:

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

(B) the board if the conduct involves a licensee and any other state licensing agency which licenses the mental health services provider and;

(C) to the appropriate

agency listed in §681.45 of this title (relating to Confidentiality and Required Reporting).

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

(3) A report under this subsection need contain only the information needed to:

(A) identify the reporter;

(B) identify the alleged victim, unless the alleged victim has requested anonymity;

(C) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and

(D) provide the name of the alleged perpetrator.

§681.43. Testing.

(a) Prior to or following the administration of any test, a licensee shall make known to clients the purposes and explicit use to be made of the test as a part of a professional counseling relationship.

(b) A licensee shall not appropriate, reproduce, or modify copyrighted tests or parts thereof without the acknowledgment and permission of the copyright owner.

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

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

(e) In accordance with the Act, the use of standardized projective techniques is prohibited. This prohibition includes, but is not limited to, the Rorschach Inkblot Test, the Holtzman Inkblot Test, the Thematic

Apperception Test, the Children's Apperception Test, and the Senior Apperception Test.

§681.44. Drug and Alcohol Use.

A licensee shall not:

(1) use alcohol or drugs in a manner that adversely affects the licensee's ability to provide counseling treatment intervention services;

(2) use illegal drugs of any kind; or

(3) promote, encourage, or concur in the illegal use or possession of alcohol or drugs.

§681.45. Confidentiality and Required Reporting.

(a) Communication between a licensee and client and the client's records, however created or stored, are confidential under the provisions of the Texas Health and Safety Code, Chapter 611 and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice.

(b) A licensee shall not disclose any communication, record, or identity of a client except as provided in Texas Health and Safety Code, Chapter 611 or other state or federal statutes or rules.

(c) A licensee shall comply with Texas Health and Safety Code, Chapter 611, concerning access to mental health records and confidential information.

(d) 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, Chapter 161, Subchapter K, §161.131 et

seq., concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an inpatient 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.

(5) A licensee shall comply with Occupations Code, Chapter 109, relating to the release and exchange of information concerning the treatment of a sex offender.

(e) A licensee shall make written reports to the board office within 30 days of the following:

(1) an arrest of the licensee, other than for a Class C misdemeanor traffic offense;

(2) the filing of a criminal case against the licensee;

(3) a criminal conviction of the licensee other than for a Class C misdemeanor traffic offense; or

(4) the filing of a disciplinary action or the taking of a disciplinary action against the licensee by another state licensing board, in either Texas or another state, or by a professional organization.

(f) Failure to make a report as required by subsection (a) of this section is grounds for disciplinary action by the board.

§681.46. Licensees and the Board.

(a) Licensees are bound by the provisions of the Act and this chapter.

(b) A licensee shall have the responsibility of reporting alleged violations of the Act or this chapter to the board's executive director.

(c) The licensee shall report name changes, any changes in home or business

address or phone number, employment setting, or other relevant changes to the board in writing within 30 days of the change.

(d) A licensee shall cooperate with the board by furnishing documents or information and by responding to a request for information from or a subpoena issued by the board or its authorized representative.

(e) A licensee shall comply with any order issued by the board relating to the licensee.

(f) A licensee shall not interfere with a board investigation by the willful misrepresentation of facts to the board or its authorized representative or by the use of threats or harassment against any person.

(g) A licensee who files a complaint with the board in bad faith may be subject to disciplinary action.

§681.47. Assumed Names.

(a) An individual practice by a licensee may be established as a corporation, a limited liability partnership, a limited liability company, or other business entity in accordance with state or federal law.

(b) An assumed or trade name used by a licensee must not be false, deceptive, or misleading, as those terms are described in §681.49(b) of this title (relating to Advertising and Announcements.)

§681.48. Consumer Information.

(a) A licensee shall inform each client of the name, address, and telephone number of the board for the purpose of reporting violations of the Act or this chapter. On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the intern's name shall be followed by the name of the supervisor in the same type size and font.

(1) on each application or written contract for services; or

(2) on a sign prominently

displayed in the primary place of business; or

(3) on a bill for counseling treatment intervention provided to a client

(b) A licensee shall display the license certificate and current renewal card issued by the board in a prominent place in the primary location of practice.

(c) A licensee shall not display a license certificate or current renewal card issued by the board which has been reproduced or is expired, suspended, or revoked.

(d) A licensee shall not make any alteration on a license certificate or renewal card issued by the board.

§681.49. Advertising and Announcements.

(a) Information used by a licensee in any advertisement or announcement shall not contain information which is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements.

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes any material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes any representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial that includes false, deceptive, or misleading statements, or fails to include disclaimers or warnings as to the credentials of the person

making the testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(c) A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

(d) The highest academic degree earned from an accredited college or university in counseling or a counseling-related field as reported by the American Association of Collegiate Registrars and Admissions Officers may be used when advertising or announcing counseling treatment intervention to the public or in counseling-related professional representations. A degree received at a foreign university may be used if the degree could be accepted as a transfer degree by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. Notwithstanding the foregoing, a licensee may advertise or announce his or her other degrees from accredited colleges or universities if the subject of the degree is specified.

(e) The board imposes no restrictions on advertising by a licensee with regard to the use of any medium, the licensee's personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a licensee, or the use of a trade name.

(f) All advertisements or announcements of counseling treatment intervention including telephone directory listings by a person licensed by the board shall clearly state the licensee's licensure status by the use of a title such as "Licensed Counselor", or "Licensed Professional Counselor", or "L.P.C.", or a statement such as "licensed by the Texas State Board of Examiners of Professional Counselors."

(g) Counselors holding a temporary license shall indicate intern status on all advertisements, billing, and announcements of counseling treatment by the use of the term "LPC Intern." On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the intern's name shall be followed by the name of the supervisor, along with the address and phone number in the same type size and font.

(h) A licensee is required to hold the art therapy specialty designation in order to use the title "art therapist" or the initials "A.T." A licensee who does not hold the designation may engage in the practice of counseling by using art therapy as a counseling method but may not use the title or initials.

(i) A licensed professional counselor who is a board approved supervisor may use the designation "LPC-S" when advertising their supervisory status.

§681.50. Research and Publications.

(a) In research with a human participant, a licensee shall take reasonable precautions to ensure that the participant does not suffer emotional or physical harm.

(b) A licensee shall ensure the full protection of a client's identity when using data obtained from a professional counseling

relationship for the purposes of education or research.

(c) When conducting or reporting research, a licensee must give recognition to previous work on the topic as well as observe all copyright laws.

(d) A licensee must give due credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to those persons who have contributed significantly to the licensee's research or publication.

§681.51. Finding of Misconduct Occurring before Licensure.

(a) The board may take disciplinary action based upon information received after issuance of a license, if such information would have been the basis for denial of licensure had it been received prior to the issuance of the license.

(b) The board may consider conduct prior to licensure in determining whether an applicant or licensee is fit to practice counseling, including conduct that would have been a violation of the code of ethics if the person was licensed.

§681.52. LPC Interns.

(a) An LPC Intern may not practice within the Intern's own private independent practice of professional counseling.

(b) An LPC Intern may be employed on a salary basis or be a consultant or volunteer.

(c) No payment for services will be made directly by a client to the intern.

(d) Client records are not the property of the counseling intern.

(e) All billing documents for services provided by an LPC Intern shall reflect that the LPC Intern holds a temporary license and is under supervision. On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the intern's name

shall be followed by the name of the supervisor in the same type size and font.

(f) A supervisor may not be an employee of an LPC Intern.

(g) The LPC Intern may compensate the supervisor for time spent in supervision if the supervision is not a part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

Subchapter D. Application Procedures.

§681.71. General.

(a) An applicant must submit a complete application and fee to the board. Complete applications will consist of the required application materials described in §681.72 of this title (relating to Required Application Materials).

(b) Incomplete application packets received by the board will be returned to the applicant without review. Fees associated with the application process are not refundable. Applicants may resubmit a complete application packet without additional fee within 45 days of the date of notice of non-acceptance of the original application

(c) Applicants submitting complete application packets, but which contain incomplete or unacceptable information will be notified of the specific deficiency in writing. A copy of each unacceptable document will be returned with the notice. Applicants will have 45 days from the date of the notice to resubmit corrected or replacement documents. Applications not corrected or completed within 45 days of notice of deficiencies will be void and application materials will be returned to the applicant.

(d) After an application is voided, an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§681.72. Required Application Materials.

(a) A general application form shall include, but not be limited to:

(1) specific information regarding personal data, employment and type of practice, other state licenses and certifications held, felony or misdemeanor convictions, and educational background;

(2) a statement that the applicant has read the Act and board rules, and agrees to abide by them;

(3) the applicant's permission to the board to seek any information it deems fit to determine the applicant's qualifications;

(4) a statement that the applicant, if issued a license certificate, shall return the license to the board upon the revocation or suspension of the license;

(5) a statement that the applicant understands that fees submitted in the licensing process are non-refundable;

(6) the applicant's signature and the date of signing

(b) The practicum documentation form shall contain:

(1) the applicant's name;

(2) the name and address of the agency or organization where the practicum was done;

(3) the name, address, degree, position, and licensure status of the supervisor of the practicum;

(4) inclusive dates of the practicum, the number of clock-hours of practice, the number of academic semester hours awarded, and the name of the school at which the practicum was taken;

(5) the type of setting, the kinds of clients seen, and the counseling methods employed;

(6) any evaluation of the counseling skills of the applicant; and

(7) the signature of the supervisor or agency or school official who can formally attest to the applicant's practicum experience.

(c) The supervised experience documentation form must be completed by the applicant's supervisor and contain:

(1) the name of the applicant;

(2) the name, address, degree, licensure status, and credentials of the applicant's supervisor;

(3) the name and address of the agency or organization where the experience was gained;

(4) the inclusive dates of the supervised experience and the total number of hours of practice;

(5) the number of hours of weekly face-to-face supervision given to the applicant, the total number of supervisory hours received by the applicant in the experience, and the types of supervision used;

(6) the applicant's employment status during supervised experience;

(7) the types of clients seen and counseling methods used;

(8) the supervisor's evaluation of the applicant's counseling skills and competence for independent or private practice; and

(9) a statement that the supervised experience complies with the rules set out in Subchapter F of this chapter (relating to Experience Requirements for Examination and Licensure) and §681.73 of this title (relating to Application for Art Therapy Specialty Designation).

(d) The supervisor shall submit a supervisory agreement form completed, signed and dated by both the supervisor and the applicant. A current copy of the supervisor's renewal card shall be attached to the agreement form

(e) A supervisory agreement form must be submitted for subsequent supervisors and settings, before the supervision begins under the new supervisor or in the new setting. Supervised hours earned without an approved supervisor agreement on file with the board may not be counted toward licensure.

(f) Graduate transcripts. An applicant must have the official transcript(s) showing all relevant graduate work sent directly to the board from the school(s) where the applicant obtained the course work or an official transcript may be attached to the application in a sealed envelope from the college or university.

(g) An applicant must submit examination results from the National Board of Certified Counselors verifying a passing score on the National Counselor Exam along with proof of completion of the Texas Jurisprudence Exam. The National Counselor Exam must have been taken no more than five years prior to the date of application. The Texas Jurisprudence Exam must have been taken no more than two years prior to the date of application.

§681.73. Application for Art Therapy Specialty Designation.

(a) A person applying for licensure with an art therapy specialty designation must:

(1) meet the requirements for a regular license set out in this Subchapter, Subchapter E (relating to Academic Requirements For Licensure) and Subchapter F of this chapter (relating to Experience Requirements For Licensure);

(2) hold either:

(A) a master's or doctoral degree in art therapy that includes 700 hours of supervised practicum from an accredited institution; or

(B) all of the following:

(i) a master's degree in a counseling-related field;

(ii) a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy;

(iii) 700 hours of supervised practicum from an accredited institution;

(3) have the experience requirements set out in subsection (c) of this section; and

(4) submit documentation of successful completion of the Certification Examination in Art Therapy of the Art Therapy Credentials Board.

(b) The board shall accept an individual course from an art therapy program accredited through the American Art Therapy Association as satisfying the education requirements set out in §681.82 of this title (relating to Academic Requirements) if not less than 75% of the course content is substantially equivalent to the content of a course required in §681.83 of this title (relating to Academic Course Content).

(c) As part of the supervised experience requirements for art therapy specialty designation under the Act, §503.303, an applicant must fulfill the requirements of Subchapter F of this chapter (relating to Experience Requirements for Examination and Licensure) and must have the following:

(1) 1,000 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's or doctoral degree in art therapy that includes 700 hours of practicum; or

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

(d) An applicant for a regular license with art therapy specialty designation must pass the National Counselor Exam and complete the Texas Jurisprudence Exam.

Subchapter E. Academic Requirements For Licensure.

§681.81. General.

(a) The board shall accept as meeting academic requirements, graduate work done at American universities which hold accreditation from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

(b) Degrees and course work received at foreign universities shall be acceptable only if such course work would be counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. If degrees or course work cannot be documented because the foreign university refuses to issue a transcript or other evidence of the degrees or course work, the board may consider, on a case-by-case basis, accepting degrees or course work based on other evidence presented by the foreign graduate applicant.

(c) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means.

(d) The board shall count no undergraduate level courses taken by an applicant as meeting any academic requirements unless the applicant's official transcript clearly shows that the course was awarded graduate credit by the school.

(e) The board shall accept no course work which an applicant's transcript indicates was not completed with a passing grade or for credit.

(f) In evaluating transcripts, the board shall consider a quarter hour of academic credit as two thirds of a semester hour.

§681.82. Academic Requirements.

(a) Persons applying for licensure must

have:

(1) a graduate degree in counseling or related field on at least the master's level; and

(2) a planned graduate program in counseling or related field of at least 48 semester hours.

(b) The 48 semester hours must be designed to train a person to provide direct services to assist individuals or groups in a professional counseling relationship using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(1) The 48 semester hours may be course work that was part of the required graduate degree, or may be in addition to course work taken for the degree, or a combination of both.

(2) The 48 hours must cover the course content described in §681.83 of this title (relating to Academic Course Content)

(c) Applicants must also have a supervised practicum experience that is primarily counseling in nature of at least 300 clock-hours which were a part of the required planned graduate program.

(1) At least 100 hours of direct client counseling contact must be shown.

(2) Academic credit or other acknowledgment of the practicum must appear on the applicant's official graduate transcript.

(3) No practicum course intended primarily for practice in the administration and grading of appraisal or assessment instruments shall count toward the 300 clock-hour requirement.

§681.83. Academic Course Content.

(a) An applicant must complete at least

one course in each of the following areas:

(1) normal human growth and development - the process and stages of human intellectual, physical, social, and emotional development from prenatal origins through old age;

(2) abnormal human behavior - the principles of understanding dysfunction in human behavior or social disorganization;

(3) appraisal or assessment techniques - the principles, concepts, and procedures of systematic appraisal or assessment of an individual's attitudes, aptitudes, achievements, interests, and personal characteristics, which may include the use of both non-testing approaches and test instruments;

(4) counseling theories - the major theories of professional counseling;

(5) counseling methods or techniques - the methods or techniques used to provide counseling treatment intervention including:

(A) counseling individuals; and

(B) the theory and types of groups, including dynamics and the methods of practice with groups;

(6) research - the methods of research which may include the study of statistics or a thesis project in an area relevant to the practice of professional counseling;

(7) life style and career development - the theories of vocational choice, career choice and life style, sources of occupational and educational information, and career decision-making processes;

(8) social, cultural, and family issues - the studies of change, ethnic groups, gender studies, family systems, urban and rural societies, population patterns, cultural patterns, and differing life styles;

(9) professional orientation - the objectives of professional organizations, codes of ethics, legal aspects of practice, standards of preparation, and the role identity of persons providing direct counseling treatment intervention; and

(10) practicum (internship) -as described in §681.82(c) of this title (relating to Academic Requirements).

(b) The remaining courses needed to meet the 48 graduate-hour requirement shall be in areas directly supporting the development of an applicant's professional counseling skills and shall be courses related primarily to professional counseling.

Subchapter F. Experience Requirements For Licensure.

§681.91. Temporary License.

(a) The board may issue a temporary license to an applicant who:

(1) has filed all application forms and paid all applicable fees;

(2) has met all of the academic requirements for licensure;

(3) has entered into a supervisory agreement with a supervisor meeting the requirements of §681.93 of this title (relating to Supervisor Requirements);

(4) has not completed the supervised experience described in §681.92 of this title (relating to Experience Requirements (Internship)); and

(5) has completed the required examinations as described in §681.72(f) of this title (relating to Required Application Materials).

(b) To practice counseling in Texas, a person must obtain a temporary license before the person begins an internship or continues an internship. Hours obtained by an unlicensed person in any setting shall not count toward the supervised experience requirements.

(c) An LPC Intern may practice counseling only as part of his or her internship.

(d) An LPC Intern must maintain a temporary license during his or her supervised experience.

(e) A temporary license will expire 60 months from the date of issuance.

(f) An intern who does not complete the required supervised experience hours during the 60-month time period must reapply for licensure. The person may obtain a new license by complying with the requirements and

procedures for obtaining an original license, including examination requirements.

(g) Applicants who previously held licensure under the 2,000 hour rule and who need to complete the remaining 1,000 hours will be allowed to apply for a one year temporary license in order to accrue the hours. No extension of this license will be approved.

(h) An LPC Intern who holds a temporary license issued before September 1, 2005, may obtain a regular license by:

(1) submitting a supervised experience documentation form documenting successful completion of the required hours of supervised experience in accordance with §681.72(c) of this title (relating to Required Application Materials) and §681.92 of this title; and

(2) passing the National Counselor Exam (NCE)

(i) Applicants who have completed the supervised experience and who have not passed the NCE at the time of application are not eligible for an initial or an additional temporary license. Such applicants may obtain a regular license by taking and passing the NCE.

(j) A person holding a temporary license will provide no direct counseling services unless acting under a supervisor agreement as stated in §681.93 of this title (relating to Supervisor Requirements.)

(k) The supervisor must submit a supervisory agreement form, signed and dated by both the supervisor and the applicant. A current copy of the supervisor's renewal card shall be attached to the agreement form.

(l) A supervisory agreement form must be submitted for subsequent supervisors and settings before the supervision begins under the new supervisor or in the new setting. Supervised hours earned without an approved supervisor

agreement on file with the board may not be counted toward licensure.

(m) An applicant coming from another state, who has earned post graduate supervised experience in another state, may submit either their application file from the other state showing their post graduate experience or have their experience documented on this states board forms.

§681.92. Experience Requirements (Internship).

(a) Applicants for licensure must complete a supervised experience acceptable to the board of 3,000 clock-hours.

(b) The supervised experience must include at least 1,500 clock-hours of direct client counseling contact. Experience hours earned via counseling by technological means of communication may count for no more than 10% of the total supervised experience hours. Only actual time spent counseling may be counted.

(c) An Intern must complete the required 3,000 clock-hours of supervised experience in a time period of no fewer than 18 months.

(d) The 18 month time period shall not be decreased by excess practicum hours that are applied toward the supervised experience hours.

(e) The internship must commence after:

(1) the completion of a graduate degree in counseling or a related field;

(2) the completion of a planned graduate program in counseling of at least 48 semester hours; and

(3) the completion of the examinations if required

(f) The experience must have consisted primarily of the provision of direct counseling services within a professional relationship to individuals or groups by using a combination of

mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(g) The LPC Intern must have received direct supervision consisting of an average of one hour a week of face-to-face or live Internet webcam supervision in individual (up to two Interns) or group (three or more) settings for each week the intern is engaged in counseling. No more than 50% of the total hours of supervision can be live Internet webcam supervision and no more than 50% of the total hours of supervision may be received in group supervision. No more than 50% of the total hours of group supervision may be live Internet webcam supervision.

(h) The experience must have been under the direction of a board approved supervisor.

(i) The board may count excess practicum hours toward the experience requirements of this subchapter if:

(1) the hours were part of the applicant's academic practicum or internship accumulated after the commencement of the applicant's planned graduate program;

(2) the hours are in excess of the 300-hour practicum required by §681.82(c) of this title (relating to Academic Requirements); and

(3) the hours to be counted are not more than 400 hours.

(j) LPC Interns shall comply with the ethical standards set out in Subchapter C (relating to Code of Ethics) of this chapter.

(k) Experience received under a supervisor who is a licensee subject to a board disciplinary order shall not qualify as supervised experience for licensure purposes.

§681.93. Supervisor Requirements.

(a) All internships physically occurring

in the State of Texas for which a supervisory agreement is received on or after September 1, 2003, must be completed under a supervisor who holds a regular license issued by the board. The supervisor must have held the license in good standing for at least 24 months from the date of issuance. Completion of a doctoral degree in counseling or a counseling-related field at an accredited university may be substituted for 12 months of the 24 month requirement.

(b) For all internships physically completed in a state or jurisdiction other than Texas, the supervisor must be a person licensed or certified by the state or jurisdiction in a profession that provides counseling and who has the academic training and experience to supervise the counseling services offered by the intern. If the state or jurisdiction has no appropriate licensure or certification, the applicant must submit to the board relevant official graduate transcripts, documentation of practicum and experience, and any professional certifications which demonstrate that the person is qualified to supervise the type of counseling practice performed by the intern.

(c) A supervisor under this section must have met the following requirements.

(1) A licensee seeking approval to be a supervisor must meet the requirements of subsection (a) of this section, successfully complete 40 clock-hours of training in the supervision of professional counseling or mental health services as set forth below; and shall submit a \$100.00 processing fee. Application for supervision status must be submitted within 2 years of completing the supervision course. Licensees who are in an accredited doctorate program are exempt from the 2 year time limit. The initial supervisor approval will expire on the day the licensee's regular license next expires. Renewal of supervisor approval will begin and expire on the same dates as for the regular license. A renewal application must be filed with the board, accompanied by a

\$100 renewal processing fee. The 40 clock-hours of training shall be met through the following:

(A) a graduate course in counselor supervision taken for credit at an accredited college or university; or

(B) continuing education programs meeting the requirements of §681.142 of this title (relating to Types of Acceptable Continuing Education).

(2) The 40 clock-hours shall be completed over a time period not to exceed 90 days and shall include at least the following:

(A) defining and conceptualizing supervision and models of supervision for at least three clock-hours;

(B) supervisory relationship and counselor development for at least three clock-hours;

(C) supervision methods and techniques for at least 12 clock-hours, covering roles (teacher, counselor, and consultant), focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (racial, ethnic, and gender issues), and evaluation methods;

(D) ethical, legal, and professional issues for at least 12 clock-hours, covering roles for supervision and standards of practice, Subchapter B of this title (relating to Authorized Counseling Methods and Practices), §681.92 of this title (relating to Experience Requirements (Internship), and §681.93 of this title (relating to Supervisor Requirements), other codes of ethics, and ethical and legal dilemmas; and

(E) executive and administrative tasks for at least three clock-hours covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

(3) At the time of application for a license, a person must submit required

documentation showing that the person's supervisor meets the requirements of this section.

(d) A board approved supervisor shall maintain and sign a record(s) to document the date of each supervision conference and document the LPC Intern's total number of hours of supervised experience accumulated up to the date of the conference. The record shall reflect the site where the hours were accrued and the content of the session.

(e) The full professional responsibility for the counseling activities of an LPC Intern shall rest with the intern's board approved supervisor(s).

(1) The supervisor shall ensure that the LPC Intern is aware of and adheres to Subchapter C (relating to Code of Ethics) of this chapter.

(2) A relationship between the supervisor and the LPC Intern that impairs the supervisor's objective, professional judgment shall be avoided.

(3) A supervisor may not be related within the second degree by affinity or within the third degree by consanguinity to the LPC Intern.

(4) If a supervisor determines that the LPC Intern may not have the counseling skills or competence to practice professional counseling under a regular license, the supervisor shall develop and implement a written plan for remediation of the LPC Intern.

(5) A supervisor shall timely submit accurate documentation of supervised experience.

(f) A supervisor whose license expires or is revoked or suspended is no longer an approved supervisor and hours accumulated under that person's supervision after expiration, revocation or suspension may not count as acceptable hours unless approved by the board.

(g) A supervisor who become subject to a board disciplinary order is no longer an approved supervisor. The person shall inform all LPC Interns of the board disciplinary order and assist the LPC Interns in finding alternate supervision.

(h) A supervisor may not be an employee of an LPC Intern.

(i) The LPC Intern may compensate the supervisor for time spent in supervision if the supervision is not part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(j) Supervisory status may be denied, revoked, or suspended following a fair hearing for violation of the Act or rules. The fair hearing will be conducted under the fair hearing rules of the Department of State Health Services.

(k) A supervisor whose supervisory status has expired may be required to refund all supervisory fees received after the expiration of the supervisory status to the intern(s) who paid the fees.

(l) Supervision of the intern without being approved as a supervisor or after expiration of the supervisor status may be grounds for disciplinary action.

Subchapter G. Licensure Examinations.

§681.101. Examination.

(a) Each applicant for licensure is required to take and pass the National Counselor Exam and complete the Texas Jurisprudence Exam prior to application.

(b) The development or administration of the examination may be contracted to a national testing company.

(c) The National Counselor Examination will be administered at testing centers located in various cities throughout the state. The Jurisprudence Exam is available online at the board's website.

(d) The examination fees shall be paid to the testing company administering the exams.

(e) Applicants seeking accommodations for the licensure examination under the Americans with Disabilities Act shall inform the testing company of any special accommodations needed in advance and in writing. Disability accommodation requests must be accompanied by verification of the disability from a professional who has diagnosed or can attest to the disability and who recommends accommodation.

(f) As of September 1, 2005, LPC Interns who have not passed the Texas exam will be required to pass the National Counselor Exam prior to the expiration of the temporary license.

§681.102. Notice of Results.

(a) The results of electronically administered licensure examinations shall be provided to the applicant at the testing center upon completion of the examination.

(b) Non-electronically administered examinations may be requested as an ADA accommodation; however, grading will not be immediately available upon completion of the examination.

(c) No matter which numerical or other

scoring system is used in arriving at examination results, the official notice of results to applicants shall be stated in terms of "pass" or "fail".

§681.103. Reexamination.

(a) An applicant who fails the licensure examination may schedule a second examination no sooner than 90 days after the prior exam.

(b) The temporary license of persons who applied for licensure before September 1, 2005, and have failed any two successive examinations shall be voided. Reapplication for a temporary license must be in accordance with §681.72 of this title (relating to Required Application Materials) and §681.91(a)(5) of this title (relating to Temporary License). These individuals may not make application for a temporary license, provisional license, or reapply for a regular license until two years have elapsed from the date of the last examination or until the person has completed nine graduate semester hours in the applicant's weakest portion of the examination. The hours must be in counseling or counseling-related courses. After completion of the coursework or the elapsing of two years, a new application for licensure must be submitted in accordance with §681.81 of this title (relating to General) and §681.82 of the title (relating to Academic Requirements).

Subchapter H. Licensing.

§681.111. Issuance of Licenses.

(a) The board will issue a license to each applicant who has satisfactorily fulfilled all requirements for licensure. An initial regular license will expire on the last day of the licensee's birth month occurring after 12 months of licensure have elapsed.

(b) Regular and temporary licenses shall bear the signature of the board chair.

(c) Provisional licenses shall bear the signature of the executive director.

(d) Any license certificate or renewal card issued by the board remains the property of the board and must be surrendered to the board on demand.

(e) The board will replace a lost, damaged, or destroyed license certificate or renewal cards upon a written request from the licensee and payment of the license replacement fee.

(f) Upon the written request and payment of the license certificate duplicate fee by a licensee, the board will provide a licensee with a duplicate for a second place of practice which is designated in a licensee's file.

(g) Only the highest academic degree earned from an accredited college or university as reported by the American Association of Collegiate Registrars and Admissions Offices in counseling or a counseling-related field may appear on the license certificate.

§681.112. Provisional Licensing.

(a) The board may grant a provisional license to a person who holds, at the time of application, a license as a counselor or art therapist issued by another state, territory, or jurisdiction that is acceptable to the board. An applicant for a provisional license must:

(1) submit an application and license fee;

(2) be licensed in good standing as a counselor or art therapist in another state, territory, or jurisdiction that has licensing requirements that are substantially equivalent to the regular licensing requirements of the Act and submit documentation of such licensure including a letter of good standing and a copy of the licensure file from the other state, territory or jurisdiction or from the National Credentials Registry; and

(3) have passed the National Counselor Exam and the Texas Jurisprudence Exam.

(b) A provisional license is valid for 180 days or until the date the board issues a regular license or denies the provisional licensee's application for a license, whichever occurs first.

(c) The board shall issue a regular license to the holder of a provisional license if the board verifies that the provisional licensee has the academic and experience requirements for a regular license.

(d) The board shall consider only states, territories, and jurisdictions of the United States as acceptable for the purposes of provisional licensing.

§681.113. Surrender of License.

(a) A licensee may voluntarily offer to surrender his or her license for any reason.

(b) The license may be delivered to the board office by hand or certified mail.

(c) If there is no complaint pending, the board office may accept the surrender and void the license.

(d) If a complaint is pending, the procedures for acceptance of a license surrender are set out in §681.168 of this title (relating to Surrender of License when Complaint is Pending.)

(e) A license which has been

surrendered and accepted may not be reinstated;
however, a person may apply for a new license
in accordance with the Act and this chapter.

**Subchapter I. Regular License Renewal;
Inactive and Retirement Status.**

§681.121. General.

(a) A regular license must be renewed every two years.

(b) A person who holds a regular license must have fulfilled any continuing education requirements prescribed by board rule in order to renew a license.

(c) A person whose license has expired for more than one year shall return his or her license certificate to the board.

(d) A person whose license has expired shall not practice professional counseling or advertise counseling treatment interventions, unless exempted by the Act.

(e) The deadlines established for renewals, late renewals, and license renewal penalty fees in this subchapter are based on the postmark date of the documentation submitted by the licensee.

(f) The board shall deny renewal in accordance with the Texas Education Code, §57.491, relating to defaults on guaranteed student loans.

§681.123. License Renewal.

(a) At least 30 days prior to the expiration of a regular license the board will send notice to a licensee's last known address that includes the expiration date of the license and instructions for renewing the license.

(b) Failure to receive notice does not relieve the licensee from the responsibility to timely renew

(c) The board shall not renew a license until it receives the renewal fee and the completed board renewal form including criminal history information, changes of address and other required information.

(d) The board shall issue a renewal card to a licensee who has met all requirements for

renewal. The licensee must display the renewal card with the license.

(e) A license for which a timely request for renewal has been submitted does not expire until the renewal license has been issued or until the renewal application has been denied.

§681.124. Late Renewal.

(a) A person who renews a license after the expiration date but on or within 90 days after the expiration date shall pay the appropriate late renewal fee.

(b) A person whose license was not renewed by the expiration date may renew within one year of the expiration date by paying the renewal fee plus the appropriate license renewal penalty fee.

(c) Upon the expiration of a person's license, the board may require the person to return the license certificate to the board.

(d) If a person did not have the required continuing education at the time of expiration of the license, the person must file evidence of completion of the required continuing education before the license can be renewed. A license is considered expired until all requirements for renewal are met.

(e) On or after one year from the expiration date, a person may no longer reinstate the license and must reapply by submitting a new application, paying the required fees, and meeting the current requirements for licensure including passing all required examinations.

§681.125. Inactive Status.

(a) A licensee may place his or her license on inactive status by submitting a written request prior to the expiration of the license along with the inactive fee. Inactive status periods shall be granted only to persons whose licenses are current or whose licenses have been expired for less than one year.

(b) An inactive status period shall begin on the first day of the month following payment of an inactive status fee.

(c) A person may not act as a professional counselor, represent himself or herself as a professional counselor, or provide counseling treatment intervention during the inactive status period, unless exempted by the Act.

(d) A person may remain subject to investigation and action under Subchapter K of this chapter (relating to Complaints and Violations) during the period of inactive status.

(e) A person must notify the board in writing to return to active status. Active status shall begin after receipt of proof of successful completion of the Texas Jurisprudence Examination, completion of 24 hours continuing education including 4 hours in counselor ethics, within the 2 years preceding reinstatement of active status and payment of applicable fees.

(f) The person's next continuing education cycle will begin upon return to active status and end on the day of license expiration.

(g) A person previously approved as a supervisor whose supervisor status has expired for two or more years or been inactive for two or more years and who wishes to resume the supervisor status or active license status may become a supervisor by again completing a board approved 40 hour supervisor course or equivalent.

(h) The licensee must renew the inactive status every two years.

(i) An LPC Intern's license shall not exceed 4 years on inactive status. Should the Intern fail to return to active status within 4 years, the license will be considered null and void and the person will be required to reapply for licensure under current rules.

§681.126. Retired Status.

(a) A licensee may request his or her license be placed on retired status by submitting a written request along with the license

certificate. Upon request, the board staff will stamp the license certificate as retired and return the retired certificate to the licensee.

(b) Once a licensee places his or her license on retired status, the individual may no longer practice professional counseling or refer to himself or herself as a professional counselor, unless exempted by the Act. The individual will no longer be required to pay renewal fees or to obtain continuing education.

(c) A retired license cannot be renewed or reinstated. To be eligible for a new license to practice professional counseling, the person must apply for a new license by meeting requirements in effect at the time of the application, including passing all required examinations.

(d) A request for retired status while a complaint is pending will be treated as a surrender of license under §681.168 of this title (relating to Surrender of License when Complaint is Pending).

§681.127. Active Military.

(a) For purposes of this section, a "designated representative" is a person authorized in writing by the licensee to act on behalf of the licensee. A copy of the written designation must be provided to the board.

(b) If a licensee fails to renew his or her license because the licensee is called to or is on active duty with the armed forces of the United States serving outside of the State of Texas, the licensee or the licensee's designated representative may request that the license be declared inactive or be renewed. A request for inactive status shall be made in writing to the board prior to expiration of the license or within one year from the expiration date. A request for renewal may be made before or after the expiration date.

(1) A written request shall include a copy of the official transfer orders of the licensee or other official military documentation showing that the licensee is called to or on active duty serving outside of the

State of Texas.

(2) The payment of the inactive status fee, late renewal fee and licensure renewal penalty fee is waived for a licensee under this section.

(3) An active duty licensee shall be allowed to renew under this section without submitting proof of continuing education hours.

(4) The written request shall include a current address and telephone number for the licensee or the licensee's designated representative.

(5) The board may periodically notify the licensee or the licensee's designated representative that the license of the licensee remains in inactive status.

(6) If a licensee is a civilian impacted or displaced for business purposes outside of the State of Texas due to a national emergency or war, the licensee or the licensee's designated representative may request that the license be declared inactive in the same manner as described in this section for military personnel. The written request shall include an explanation of how the licensee is impacted or displaced, which explanation shall be on the official letterhead of the licensee's business. The requirements of this section relating to renewal by active duty licensees shall not apply to a civilian under this paragraph.

Subchapter J. Continuing Education Requirements.

§681.141. General.

(a) The purpose of this subchapter is to establish the continuing education requirements for the renewal of a regular license. These requirements are intended to maintain and improve the quality of professional counseling services provided to the public and maintain licensee knowledge of current research, techniques, and practice; and provide other resources which will improve skill and competence in professional counseling.

(b) Continuing education requirements for renewal shall be fulfilled during a 24-month period beginning on the first day of a licensee's renewal year and ending on the last day of the licensee's renewal year.

(c) A licensee must complete at least four hours of continuing education directly related to counselor ethics issues each renewal period. Completion of the Texas Jurisprudence Exam will count as one hour of continuing education in counselor ethics.

(d) A licensee must complete 24 clock-hours of continuing education acceptable to the board during each 24 month period as described in subsection (b) of this section. A clock-hour shall be 60 minutes of attendance and participation in an acceptable continuing education experience.

(e) Beginning January 1, 2007, a licensee must successfully complete the Texas Jurisprudence Examination each renewal period.

(f) A licensee holding the supervisor status must complete 3 hours of continuing education directly related to supervision practices as part of the 24 hours of continuing education.

§681.142. Types of Acceptable Continuing Education.

(a) Acceptable continuing education may include:

(1) teaching or consultation in graduate level programs which are designed to increase professional knowledge related to the practice of professional counseling provided that such teaching and consultation is not part of, or required as a part of, one's employment;

(2) completion of graduate academic courses in areas supporting development of skill and competence in professional counseling at an accredited institution;

(3) participation in case supervision, management, or consultation provided that it is not required as a part of a licensee's employment; is conducted according to stated training or didactic goals such as expertise in specific techniques including supervision techniques or certification in specialty areas of counseling; is conducted by an appropriately state-licensed, state-certified, or state-registered mental health professional who meets board requirements for supervisors, demonstrates training and expertise in the specific area for which supervision is provided, and has received prior approval by the board for the program; and does not exceed six months in length;

(4) participation or teaching in programs directly related to counseling (e.g., institutes, seminars, workshops, or conferences) which are approved or offered by an accredited college or university, a nationally recognized professional organization in the mental health field or its state or local equivalent organization, or a state or federal governmental agency;

(5) completion of an independent study program directly related to counseling and approved or offered by a nationally recognized professional organization in the mental health field or its state equivalent, approved or offered by an accredited college or university, or approved or offered by a board approved continuing education provider; and/or

(6) participation in programs directly related to counseling offered by persons approved by the board as continuing education providers.

(b) Continuing education must fall within these approved content areas:

- (1) normal human growth;
- (2) abnormal human behavior;
- (3) appraisal or assessment techniques;
- (4) counseling theories;
- (5) counseling methods or techniques;
- (A) counseling individuals; and
- (B) groups;
- (6) research;
- (7) life style and career development;
- (8) social, cultural, and family issues;
- (9) professional orientation and counselor ethics; and/or
- (10) other areas directly supporting the continued development of the profession of counseling skills.

§681.144. Pre-Approved Providers.

(a) Continuing education providers may apply for approval to provide continuing education on forms provided by the board. Applicants shall submit a continuing education provider application form, accompanied by a \$50 processing fee.

(b) Providers shall renew the approval status annually by submission of a renewal application form, accompanied by a \$50 processing fee.

(c) Provider applications will be approved based on a review of the application and a determination of the applicant's ability to comply with board rules.

(d) Board approvals are effective for twelve months.

(e) Approved providers of continuing education must comply with board requirements as set out in §681.142 of this title (relating to Types of Acceptable Continuing Education) and §681.145 of this title (relating to Determination of Clock-hour Credits).

(f) Approved providers of continuing education must maintain records of all continuing education activities for a period of five years including names of all presenters, complete course descriptions and objectives, teaching methods, employee attendance sheets for each course, sample certificates of attendance, and evaluation documents from each participant for the specific experience. The provider shall provide each participant with written documentation of attendance, which includes the participant's name, the number of approved continuing education hours, the title and date(s) of the program, the provider number, and the signature of the provider.

(g) Failure to comply with record keeping requirements or failure to comply with requirements of instructor or course qualifications may result in termination of status or denial of renewal status.

(h) Providers are subject to audit of all continuing education records. Upon receipt of written notice of audit, the provider will submit all requested records of continuing education to the board within ten working days. Failure to provide documentation as requested or submission of fraudulent documents will result in termination of approval status.

(i) Upon receipt and audit of documents submitted by the provider, the board will notify the provider of the results of the audit. The board may inform the provider of any corrective action needed, may terminate current approval, or may deny future applications based on a finding of non-compliance with this subchapter.

§681.145. Determination of Clock-hour Credits.

(a) Parts of programs which meet the criteria of §681.142 of this title (relating to Types of Acceptable Continuing Education) shall be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education activity.

(b) Teaching in programs which meet the board's criteria as set out in §681.142 of this title shall be credited on the basis of one clock-hour of credit for one clock-hour taught plus two clock-hours credit for preparation for each hour actually taught. No more than 9 hours of the 24 clock-hour continuing education requirement can be credited under this option. Credit may be granted for the same presentation only once during a two year period.

(c) Completion of academic work at an institution which meets the accreditation standards acceptable to the board and the criteria set out in §681.142 of this title shall be credited on the basis of 15 clock-hours of credit for each semester hour or 10 clock-hours of credit for each quarter hour completed and for which a passing grade was received.

(d) No more than four clock-hours of the 24 clock-hours continuing education requirement may be obtained through case supervision, management, and consultation programs set out in §681.142 of this title.

§681.146. Reporting of Continuing Education.

(a) The board will monitor a licensee's compliance with continuing education requirements by the use of random audit. Licensees will be notified in writing if they have been selected for a continuing education audit. Individual supporting documents of participation in continuing education activities are not to be submitted to the board unless a written Notice of Audit is received informing the licensee that he or she has been randomly selected for a document audit. Upon receipt of a Notice of Audit the licensee will be required to submit all appropriate documentation to substantiate

compliance with the board's continuing education requirements within 15 working days of receipt of notice.

(b) The licensee is responsible for maintaining continuing education records for a period of two years.

(c) An audit shall be automatic for a licensee who was determined to be non-compliant during the immediately preceding audit.

(d) Appropriate continuing education supporting documentation include:

(1) program attended, certificate of attendance;

(2) teaching or consultation in approved programs, a letter on the sponsoring agency's letterhead giving name of program, location, dates, and subjects taught and giving total clock-hours of teaching or consultation;

(3) completion of academic work from accredited schools, evidence of course credit;

(4) official auditing of a graduate level course at a regionally accredited academic institution, a letter from the academic institution or professor which includes the actual number of clock-hours attended.

(e) Failure to meet the continuing education requirement, provide documentation as requested by the board, or providing fraudulent documentation is a violation of board rules and may result in disciplinary action.

§681.147. Activities Unacceptable as Continuing Education.

The board will not give continuing education credit to a licensee for:

(1) education incidental to the regular professional activities of a counselor such as learning occurring from experience or research;

(2) organizational activity such as serving on committees or councils or as an officer in a professional organization;

(3) meetings and activities not related to the practice of professional counseling that are required as a part of one's job;

(4) teaching or consultation that is part of one's employment; and

(5) an experience that does not fit the types of acceptable continuing education in §681.142 of this title (relating to Types of Acceptable Continuing Education).

Subchapter K. Complaints and Violations.

§681.161. Complaint Procedures.

(a) A complaint may be filed in writing with the board.

(b) A complaint shall not be accepted by the board office if it is not filed within five years of the date of termination of the counselor-client relationship which gave rise to the alleged violations. If the client was a minor at the time of the alleged violation, this time limitation does not begin to run until the client reaches the age of 18 years. A complainant shall be notified of the non-acceptance of untimely complaints. This time limitation shall not apply to complaints involving violations of §681.42 of this title (relating to Sexual Misconduct) or the board's previous rules relating to sexual activities.

(c) Upon receipt of a complaint, the executive director shall send an acknowledgment letter to the complainant. The executive director may accept an anonymous complaint if there is sufficient information for the investigation.

(d) A complaints committee shall be appointed to work with the executive director to:

(1) review each complaint and determine whether the complaint fits within the category of a serious complaint affecting the health and safety of clients or other persons;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) ensure that a person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(4) resolve the issues of the complaint which arise under the Act or this chapter.

(e) Prior to or during an investigation, the executive director or his or her designee shall request a response from the licensee or person against whom an alleged violation has been filed to gather information required by the

complaints committee of the board. The licensee or person against whom an alleged violation has been filed must respond within 15 working days of the executive director's request.

(f) If it is determined that the matters alleged in the complaint are non-jurisdictional, or if the matters alleged in the complaint would not constitute a violation of the Act or this chapter, the Executive Director may dismiss the complaint and give written notice of dismissal to the licensee or person against whom the complaint has been filed, the complainant, and the complaints committee.

(g) If it is determined that there are sufficient grounds to support the complaint, the matters in question shall be investigated. The executive director or the committee may initiate the investigation.

(h) If the committee determines that there are insufficient grounds to support the complaint, the committee shall dismiss the complaint and give written notice of the dismissal to the licensee or person against whom the complaint has been filed and the complainant.

(i) The board shall use a private investigator only if the department's investigators available to the board have a conflict of interest.

(j) If a written complaint is filed with the board that the board has the authority to resolve, the board, periodically, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

§681.162. Disciplinary Action; Notices.

(a) The board may deny, revoke, temporarily suspend, or suspend a license, or may probate disciplinary action, or may issue a reprimand or impose an administrative penalty to a person who:

(1) violates a provision of the Act;

(2) violates a rule adopted by

the board;

(3) is legally committed to an institution because of mental incompetence from any cause;

(4) offers to pay or agrees to accept any remuneration, directly or indirectly, to or from any person or entity for securing or soliciting a client or patronage; or

(5) is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Code of Criminal Procedure, Chapter 56.

(b) Prior to institution of formal proceedings to discipline a licensee, the board shall give written notice to the licensee of the facts or conduct alleged to warrant the disciplinary action. The notice shall inform the licensee or applicant of the opportunity to retain legal representation. The licensee or applicant shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(c) If denial, revocation, or suspension of a license is proposed, the board shall give written notice of the basis for the proposal and that the licensee or applicant must request, in writing, a formal hearing within 15 working days of receipt of the notice, or the right to a hearing shall be waived and the license shall be denied, revoked, or suspended.

(d) Receipt of a notice under subsection (b) or (c) of this section is presumed to occur on the tenth working day after the notice is mailed to the last address known to the board unless another date is reported by the United States Postal Service.

(e) Cease and Desist Order. If it appears to the board that a person who is not licensed under the Act is violating the Act, a rule adopted under the Act, or another state statute or rule relating to the practice of counseling, the board, after notice and an opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity. A

violation of an order under this subsection constitutes grounds for the imposition of an administrative penalty by the board.

§681.164. Licensing of Persons with Criminal Convictions.

(a) This section establishes guidelines and criteria for the eligibility of persons with criminal convictions to obtain and retain licenses as professional counselors

(b) The board shall consider the criminal conviction of a licensee or applicant as possible grounds for disciplinary action or application denial.

(c) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee. In considering whether a criminal conviction directly relates to the profession of counseling, the board shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to practice counseling;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a counselor. In making this determination, the board will apply the criteria outlined in Texas Occupations Code, §53.023 (relating to Additional Factors).

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

(1) the misdemeanor of knowingly or intentionally practicing counseling without a license;

(2) an offense involving moral turpitude;

(3) the misdemeanor of failing to report child abuse or neglect;

(4) a misdemeanor involving deceptive business practices;

(5) the offense of assault or sexual assault;

(6) the felony offense of fraud;

(7) a misdemeanor and/or a felony offense under various titles of the Texas Penal Code:

(A) concerning Title 5 offenses against the person;

(B) concerning Title 7 offenses against property;

(C) concerning Title 8 offenses against public administration;

(D) concerning Title 9 offenses against public order and decency;

(E) concerning Title 10 offenses against public health, safety, and morals; and

(F) concerning Title 4 offenses of attempting or conspiring to commit any of the offenses in subparagraphs (A) - (E) of this paragraph; or

(8) any other misdemeanor or felony directly relating to the duties and responsibilities of a licensee

(e) Procedures for disciplinary action or application denial against persons with criminal convictions:

(1) The board's executive director will give written notice to the person

that the board intends to take disciplinary action or deny the application after a hearing in accordance with the provisions of the Administrative Procedure Act, and the board's hearing procedures in Subchapter L of this chapter (relating to Formal Hearings).

(2) If the board takes disciplinary action or denies an application under these sections, the executive director will give the person written notice of the reasons for the decisions.

§681.165. Suspension, Temporary Suspension, Revocation, or Denial.

(a) If the board suspends a license, the suspension shall remain in effect for the period of time stated in the order or until the board determines that the reason for the suspension no longer exists.

(b) If a suspension overlaps a license renewal date, the person suspended shall comply with the renewal procedures in this chapter; however, the suspension shall remain in effect pursuant to subsection (a) of this section.

(c) Upon the revocation, suspension or non-renewal of a license, a licensee shall return his or her license certificate and all existing renewal cards to the Executive Director.

(d) The board or the complaints committee of the board may suspend a license on an emergency basis.

§681.166. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal conference held to determine whether the matters in controversy can be resolved without further proceedings.

(b) The decision to hold a conference shall be within the discretion of the executive director or a member of the complaints committee.

(c) An informal conference shall be voluntary and shall not be a prerequisite to a

formal hearing.

(d) The executive director shall establish the time, date and place of the informal conference, and provide written notice to the licensee or applicant. Notice shall be provided no less than 10 working days prior to the date of the informal conference by certified mail, return receipt requested to the last known address of the licensee or applicant. The licensee or applicant may waive the 10-day notice requirement.

(e) The notice shall inform the licensee or applicant of the nature of the alleged violation or the reason for application denial; that the licensee may be represented by legal counsel; that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate within time limits set by the Executive Director; that the board's legal counsel shall be present; that the licensee's or applicant's attendance and participation is voluntary; and that the informal conference shall be canceled if the licensee or applicant notifies the executive director that he or she or his or her legal counsel will not attend. A copy of the board's rules concerning informal disposition shall be enclosed with the notice of the informal conference.

(f) At least one member of the complaints committee shall be present at an informal conference.

(g) The conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(h) The licensee, the licensee's attorney, the board's attorney, the executive director and the complaints committee member may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(i) The board's legal counsel may attend each informal conference. The complaints committee member or executive director may call upon the attorney at any time for assistance

in the informal conference.

(j) The licensee shall be afforded the opportunity to make statements that are material and relevant.

(k) The complaints committee member or the executive director may exclude anyone from all or part of the informal conference.

(l) Any written statement submitted by the complainant shall be reviewed at the conference.

(m) At the conclusion of the informal conference, the complaints committee member or the executive director may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act or this chapter. The complaints committee member may also conclude that the board lacks jurisdiction; conclude that a violation of the Act or this chapter has not been established; order that the investigation be closed; or refer the matter for further investigation.

(n) The licensee or applicant may either accept or reject the recommendations at the informal conference. If the recommendations are accepted, an agreed order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order may contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within 10 working days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the recommendations.

(o) If the licensee or applicant signs and accepts the proposed recommendations, the agreed order shall be submitted to the complaints committee and the board for approval. Placement of the agreed order on the committee and board agendas shall constitute only a recommendation for approval by the board.

(p) The identity of the licensee or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee or applicant chooses to attend the board meeting. The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(q) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(r) If the board does not approve a proposed agreed order, the licensee or applicant shall be so informed. The matter shall be referred to the executive director for other appropriate action.

(s) A proposed agreed order is not effective until the board has approved the agreed order and the order is signed by the board chair.

(t) A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the Administrative Procedure Act, Texas Government Code, §2001.054(c).

(u) If a licensee who has requested an informal conference fails to appear at the conference and fails to provide notice of the licensee's inability to attend the conference at least 24 hours in advance of the time the conference is scheduled, such action may constitute a withdrawal of the request for a formal hearing.

(v) Refund Order.

(1) The board may order a license holder to pay a refund to a client or other payer as provided in an agreement resulting from an informal settlement conference instead of, or in addition, to imposing an administrative

penalty under this chapter.

(2) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the client or other payer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

§681.167. Waiver of Right to Hearing.

(a) Failure to respond to a notice from the board or if a licensee agrees with the action proposed in the notice, the board may enter an order taking disciplinary action or an order of application denial as described in the written notice to the licensee or applicant.

(b) Upon an affirmative majority vote, the board shall enter an order imposing appropriate disciplinary action or an order of application denial.

§681.168. Surrender of License when Complaint is Pending.

(a) When a licensee has offered the surrender of his or her license after a complaint has been filed, the board shall consider whether to accept the surrender of the license.

(b) Surrender of a license without acceptance thereof by the board or a licensee's failure to renew the license shall not deprive the board of jurisdiction against the licensee under the Act, this chapter, or other applicable statute.

(c) When the board has accepted a license surrender after a complaint has been filed, the license surrender is deemed to be the result of a formal disciplinary action and a board order shall be prepared accepting the license surrender.

(d) Upon surrender of a license during the course of the investigation, the surrender is considered a final disciplinary action and may be considered for denial upon subsequent reapplication for license.

§681.169. License Suspension or Denial

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the executive director shall immediately determine if the board has issued a license to the obligator named in the order, and, if a license has been issued:

(1) record the suspension of the license in the board's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) The board shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the board.

(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 in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to engage in the practice of counseling or continues to use the titles "Licensed Professional Counselor," "Licensed Counselor," "Licensed Professional Counselor - Art Therapist," "Art

Therapist" or the initials "L.P.C.," "L.P.C.-A.T.," or "A.T." after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the board.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the executive director shall promptly issue the suspended license to the individual if the individual is otherwise qualified for the license.

(h) The individual shall pay a reinstatement fee in an amount equal to the annual renewal fee set out in §681.14 of this title (relating to Licensing Fees) prior to issuance of the license under subsection (g) of this section.

(i) In accordance with the Family Code §232.0135, the board shall deny the license renewal application of a license holder who has failed to pay child support or failed to comply with the terms of an order providing for the possession of or access to a child.

§681.170. Monitoring of Licensees.

(a) The executive director shall maintain a complaint tracking system

(b) A licensee that has had disciplinary action taken against his or her license may be required to submit regularly scheduled reports to the executive director.

(c) The executive director shall review the reports and shall provide the reports to the complaints committee.

(d) The complaints committee may consider more severe disciplinary proceedings if the licensee fails to comply with the provisions of a disciplinary order

§681.171. Assessment of Administrative Penalties.

(a) The assessment of an administrative penalty is governed by the Act, Chapter 503, Subchapter K.

(b) The amount of an administrative penalty shall be based on the following criteria.

(1) The seriousness of a violation shall be categorized by one of the following severity levels:

(A) Level I--violations that have or had an adverse impact on the health or safety of a client (or former client, where applicable);

(B) Level II--violations that have or had the potential to cause an adverse impact on the health or safety of a client (or former client, where applicable) but did not actually have an adverse impact; or

(C) Level III--violations that have no or minor health or safety significance.

(2) The range of administrative penalties by severity levels is as follows:

(A) Level I--up to \$5,000 per day;

(B) Level II--up to \$2,500 per day; or

(C) Level III--up to \$1,250 per day.

(3) Subsequent violations in the same severity level for which an administrative penalty has previously been imposed shall be categorized at the next higher severity level.

(4) Adjustments to the range of an administrative penalty may be made for:

- (A) prompt reporting;
- (B) corrective action;
- (C) compliance history;
- (D) multiple violations.

or

§681.172. Due Process Following Violation of an Order.

(a) A licensee who is alleged to be in violation of a board disciplinary order shall be provided with the following due process. The department will send a Notice of Violation of the Order to the licensee. The Notice of Violation shall include:

(1) a brief statement of the acts or omissions believed to constitute a violation, including information sufficient to apprise the licensee about the date and nature of the violation;

(2) a statement that, within 10 days of receiving the Notice of Violation, the licensee must respond in writing to explain why the licensee believes he or she did not violate the Order, or if such violations did occur, why the disciplinary action proposed in the Order should not be imposed; and

(3) a statement in large bold type that, if the licensee fails to respond, the disciplinary action described in the Order will be imposed, and further that additional disciplinary actions may be taken if the conduct constituting the violation of the Order also violates a board rule or statute: "FAILURE TO RESPOND. YOUR FAILURE TO RESPOND WILL BE CONSIDERED A WAIVER OF YOUR RIGHT TO A HEARING. THE FACTUAL ALLEGATIONS IN THIS NOTICE OF VIOLATION WILL BE DEEMED ADMITTED AS TRUE AND THE PROPOSED DISCIPLINARY ACTION WILL BE IMPOSED BY DEFAULT. ADDITIONAL DISCIPLINARY ACTIONS MAY BE TAKEN."

(b) When the department receives the licensee's written response, the executive director and board chair will review the response and decide whether there are sufficient grounds to find that the Order was violated and, if so, whether the disciplinary action provided in the Order should be imposed.

(c) The executive director and the board chair shall write and submit their decision to the board for final action.

(d) A decision to impose or to forego imposing disciplinary action under the terms of the Order does not preclude the board from initiating disciplinary action independent of the Order if the alleged conduct may constitute a violation of statute or rules.

Subchapter L. Formal Hearings.

§681.181. Purpose.

These rules cover the hearing procedures and practices that are available to persons or parties who request formal hearings. The intended effect of these rules is to supplement the contested case provisions of the Government Code, Chapter 2001, Administrative Procedure Act (APA) and the hearing procedures of the State Office of Administrative Hearings (Texas Government Code, Chapter 2003).

§681.182. Formal Hearing Procedures.

(a) For purposes of this section, default means the failure of the respondent to appear in person or by legal representative on the day and at the time set for hearing in a contested case or the failure to appear by telephone in accordance with the notice of hearing.

(b) Remedies available upon default. The Administrative Law Judge (ALJ) shall proceed in the party's absence and such failure to appear shall entitle the department to seek informal disposition as provided by the Government Code, Chapter 2001. The ALJ shall grant any motion by the department to remove the case from the contested hearing docket and allow for informal disposition by the commissioner.

(c) The board may enter a default judgment by issuing an order against the defaulting party in which the factual allegations in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof, upon the offer of proof that proper notice was provided to the defaulting party opponent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Government Code, Chapter 2001, and the State Office of Administrative Hearings Rules of Procedure.

(d) Motion to set aside and reopen. A timely motion by the respondent to set aside the default order and reopen the record may be granted if the respondent establishes that the failure to attend the hearing was neither

intentional nor the result of conscious indifference, and that such failure was due to mistake, accident, or circumstances beyond the respondent's control.

(1) A motion to set aside the default order and reopen the record shall be filed with the board prior to the time that the order of the board becomes final pursuant to the provisions of the Government Code.

(2) A motion to set aside the default order and reopen the record is not a motion for rehearing and is not to be considered a substitute for a motion for rehearing. The filing of a motion to set aside the default order and reopen has no effect on either the statutory time periods for the filing of a motion for rehearing or on the time period for ruling on a motion for rehearing, as provided in the Government Code.

(e) This subsection also applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the notice was sent to the party's last known address as shown on the department's records, with no showing of actual receipt by the defaulting party or the defaulting party's agent. In that situation, the default procedures described in subsection (c) of this section may be used if there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to the defaulting party's last known address.

§681.184. Action after the Hearing.

(a) Motion for rehearing. A motion for rehearing shall be governed by the APA or other pertinent statute and shall be filed with the board

(b) Appeals. All appeals from final board orders or decisions shall be governed by the APA or other pertinent statute and shall be addressed to the board.

Subchapter M. Schedule of Sanctions.

§681.201 General.

This schedule of sanctions is adopted as required by the Act, §503.402. The schedule is intended to be utilized by the complaints committee as a guide in assessing sanctions for violations of the Act or this chapter. The schedule is also intended to serve as a guide to administrative law judges, and as a written statement of applicable rules or policies of the board pursuant to the Government Code, §2001.058(c). The failure of an administrative law judge to follow the schedule may serve as a basis to vacate or modify an order pursuant to the Texas Government Code, §2001.058(e). This schedule is not intended as a substitute for thoughtful consideration of each individual disciplinary matter. Instead, it should be used as a tool in that effort.

§681.202. Relevant Factors.

When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction which includes: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the complaints committee or the administrative law judge. Specific factors are to be considered as set forth as follows.

(1) Seriousness of Violation.

The following factors are identified:

(A) the nature of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as emotional, physical, or financial;

(B) the extent of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as whether the harm is low, moderate or severe, and the number of persons harmed or exposed to risk; and

(C) the frequency and time periods covered by the violations, such as

whether there were multiple violations, or a single violation, and the period of time over which the violations occurred.

(2) Nature of the violation. The following factors are identified:

(A) the relationship between the licensee and the person harmed, or exposed to harm such as a dependent relationship of a client-counselor, or stranger to the licensee;

(B) the vulnerability of the person harmed, or exposed to harm;

(C) the moral culpability of the licensee, such as whether the violation was:

(i) intentional or premeditated;

(ii) due to blatant disregard or gross neglect; or

(iii) resulted from simple error or inadvertence; and

(D) the extent to which the violation evidences lack of character, such as lack integrity, trustworthiness, or honesty.

(3) Personal Accountability. The following factors are identified:

(A) admission or wrong or error, and acceptance of responsibility;

(B) appropriate degree of remorse or concern;

(C) efforts to ameliorate the harm or make restitution;

(D) efforts to ensure future violations do not occur; and

(E) cooperation with any investigation or request for information.

(4) Deterrence. The following factors are identified:

(A) the sanction required to deter future similar violations by the licensee;

(B) sanctions necessary to ensure compliance by the licensee of other provisions of the Act or this chapter; and

(C) sanctions necessary to deter other licensees from such violations.

(5) Miscellaneous Factors. The following factors are identified:

(A) age and experience at time of violation;

(B) presence or absence of prior or subsequent violations;

(C) conduct and work activity prior to and following the violation;

(D) character references; and

(E) any other factors justice may require.

§681.203. Severity Levels and Sanction Guide.

The following severity levels and sanction guides are based on the relevant factors in §681.202 of this title (relating to Relevant Factors).

(1) Level One - revocation of license. These violations evidence intentional or gross misconduct on the part of the licensee and/or cause or pose a high degree of harm to the public and/or require severe punishment as a deterrent to the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure.

(2) Level Two - extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require termination of licensure for a period of not less than one year.

(3) Level Three - moderate suspension of license. These violations are less serious than Level Two violations, but require termination of licensure for a period of time less than a year.

(4) Level Four - probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate.

(5) Level Five - reprimand. These violations involve inadvertent or relatively minor misconduct and/or rule violations.

§681.204. Other Actions.

The complaints committee or executive director, as appropriate, may also resolve pending complaints by issuance of formal advisory letters informing licensees of their duties under the Act or this chapter, and whether the conduct or omission complained of appears to violate such duties. Such advisory letters may be introduced as evidence in any subsequent disciplinary action involving acts or omissions after receipt of the advisory letters. The complaints committee or executive director, as appropriate, may also issue informal reminders to licensees regarding compliance with minor licensing matters. The licensee is not entitled to a hearing on the matters set forth in a formal advisory letters or informal reminders, but may submit a written response.

Subchapter N. Parent Coordination and Parent Facilitation.

§681.251. 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 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 parent coordinator is not acting under the authority of a license issued by the board and is not engaged in the practice of professional counseling. The services provided by the licensee who serves as a parent coordinator are not within the jurisdiction of the board, but rather the jurisdiction of the appointing court.

(c) A licensee who serves as a parent 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 Civil Practice and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator shall comply with the Civil Practice and Remedies Code, Chapter 154, relating to the release of information.

(e) A licensee shall not provide professional counseling services to any person

while simultaneously providing parent 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.

§681.252. Parent Facilitation.

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

(b) In accordance with 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 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 parent 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 Family Code, §153.6102(e), a licensee serving as a parenting facilitator shall not provide other professional counseling services to any person while simultaneously providing parent 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) In accordance with Family Code, §153.6101(b)(1), a licensed professional counselor intern shall not serve as a parent facilitator.

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

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

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

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

(2) Assessment function --A parenting facilitator 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.

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

(j) In order to protect the parties and children in domestic violence cases involving power, control and coercion, a parenting facilitator shall tailor the techniques used so as to avoid offering the opportunity for further coercion.

(k) A licensee serving as a parent 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.

(l) A licensee serving as a parenting facilitator shall not provide legal advice.

(m) A licensee serving as a parenting facilitator shall serve by written agreement of the parties and/or formal order of the court.

(n) 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.

(o) 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.

(p) 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.

(q) 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.

(r) A licensee serving as a parenting facilitator should attempt to bring about resolution of issues by agreement of the parties; however, the parenting facilitator is not acting in a formal mediation role. An effort towards resolving an issue, which may include therapeutic, mediation, education, and negotiation skills, does not disqualify a licensee from making recommendations regarding any issue that remains unresolved after efforts of facilitation.

(s) A licensee serving as a parenting facilitator 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.

(t) A licensee serving as a parenting facilitator:

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

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

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

(u) A licensee serving as a parenting facilitator 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.

(v) 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 board.

(w) 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.

(x) 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.

(y) 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 §681.41(q) of this title (relating to General Ethical Requirements), or as otherwise directed by the court.

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

(aa) 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.

(bb) 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.

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

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

(ee) The minimum training for a licensee serving as a parent facilitator that is required by Family Code, §153.6101(b)(2), 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 board rules governing parent coordination and facilitation, and the multiple styles and procedures used in different models of service.

(ff) A licensee serving as a parent facilitator 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 (cc) of this section is based on functional skills taught during the training rather than the use of specific titles or names.