

Title 22. Examining Boards.
Part 30. Texas State Board of Examiners of Professional Counselors.
Chapter 681. Professional Counselors.
Subchapter A. The Board.
Amendment §681.2
Subchapter B. Authorized Counseling Methods and Practices.
Amendment §681.31
Subchapter C. Code of Ethics
Amendments §§681.41, 681.52
Subchapter F. Experience Requirements for Licensure
Amendments §681.92, 681.93
Subchapter H. Licensing
Amendment §681.114
Subchapter K. Complaints and Violations
Amendments §§681.161, 681.171

Proposed Preamble

The Texas State Board of Examiners of Professional Counselors (board), proposes amendments to §§681.2, 681.31, 681.41 681.52, 681.92, 681.93, 681.114, 681.161 and 681.171, concerning the licensing and regulation of professional counselors.

BACKGROUND AND PURPOSE

The proposed rules add new definitions and clarifications to Subchapters A, B and C which are necessary to reflect the changing methods of counseling. The amendments also provide clarification regarding requirements for LPC interns and experience. The proposal specifies responsibilities of board approved supervisors. The proposal implements Senate Bill 1733, 82nd Legislature, 2011, Regular Session, and Senate Bill 162 and House Bill 2254 of the 83rd Legislature, Regular Session, 2013, which amended Occupations Code, Chapter 55, relating to the occupational licensing of spouses of members of the military, the eligibility requirements for certain occupational licenses issued to applicants with military experience, and apprenticeship requirements for occupational licenses issued to applicants with military experience. At the same time, the proposal removes outdated language in order to expand the population of eligible individuals with military experience.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §681.2 defines the term distance counseling. As a result of the new definition, the subsections are renumbered accordingly.

The proposed amendment to §681.31 expands a current term to include marriage counseling, as an authorized counseling method and practice.

Proposed amendments to §681.41 specify requirements for distance counseling as well as providing guidance and clarification on the use of this counseling process.

Proposed amendments to §681.52 preclude an LPC Intern from holding oneself out as in independent practice and also clarify that this limitation applies but is not limited to websites, advertisements, or intake documents.

Proposed amendments to §681.92 add a new subsection (f) which prohibits the acceptance of post graduate supervised experience hours earned with a previous temporary license if those hours are over 5 years old. The rest of the section is renumbered accordingly to reflect the addition of this new subsection.

Proposed amendments to §681.93 require the board approved supervisor to ensure the supervised hours of the LPC Intern are earned in accordance with board rules.

Proposed amendments to §681.114 reflect implementation of Senate Bill 1733, 82nd Legislature, 2011, Regular Session, Senate Bill 162 and House Bill 2254 of the 83rd Legislature, Regular Session, 2013, which amended Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses).

Proposed amendments to §681.161 expand the complaint procedure and resulting process of handling the complaint.

Proposed amendment to §681.171 removes the reference to the Act (Texas Occupations Code), Chapter 503, Subchapter K, in order to provide the board with more flexibility regarding administrative penalties.

FISCAL NOTE

Bobbe Alexander, Executive Director, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Alexander has also determined that there will be no economic costs to small businesses or micro-businesses as a result of these proposed rules as these entities will not be required to alter their business practices to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

The board has determined that this proposal is not a “major environmental rule” as defined by Government Code, §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC BENEFIT

Ms. Alexander has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is increased number of individuals served by licensed professional counselors/interns by the availability of additional licensed health professionals through the facilitation of the occupational licensing of applicants with applicable military experience and of qualified military spouses and the effective regulation of the practice of counseling in Texas, which will protect and promote public health, safety, and welfare and ensure that statutory directives are carried out.

PUBLIC COMMENT

Comments on the proposal may be submitted to Bobbe Alexander, Executive Director, State Board of Examiners of Professional Counselors, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347 or by email to lpc@dshs.state.tx.us. When emailing comments, please indicate “Comments on Proposed Rules” in the email subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board’s duties.

The amendments affect Occupations Code, Chapter 503.

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

SUBCHAPTER A. THE BOARD.

§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) - (9) (No change.)

(10) Distance counseling--Where the client is in one location in the State of Texas and the counselor is in another location in the State of Texas.

(11) [(10)] Health care professional--Any person licensed, certified, or registered by the state in a health related profession.

(12) [(11)] Indirect hours--Time spent in management, administration or other aspects of counseling service ancillary to direct client contact.

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

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

(15) [(14)] LPC--A person holding a regular license as a professional counselor with authority to practice in independent practice.

(16) [(15)] LPC Intern--A person who holds a temporary license to practice counseling.

(17) [(16)] Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, 26 U.S.C. §501(c)(3) and other individuals participating with them in pastoral counseling if:

(A) the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of the legally recognized denomination, church, sect, religious organization or an integrated

auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, §1.6033-2(g)(i) (2012);

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

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

(18) [(17)] 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.

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) - (2) (No change.)

(3) marriage/couples [**couples**] 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) - (18) (No change.)

SUBCHAPTER C. CODE OF ETHICS.

§681.41. General Ethical Requirements.

(a) - (f) (No change.)

(g) Technological means of communication may be used to facilitate the therapeutic counseling process. A distance site provider is advised to have a face to face initial intake session before beginning a distance counseling relationship. When distance counseling, the licensee must reside in the State of Texas and the client must be a resident of Texas with the exception of the military.

[(g) Technological means of communication may be used to facilitate the therapeutic counseling process.]

(h) - (z) (No change.)

§681.52. LPC Interns.

(a) - (d) (No change.)

(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. The LPC Intern shall not hold oneself out to be in independent practice, including but not limited to websites, advertisements, or intake documents. On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the LPC Intern's name shall be followed by the name of the supervisor in the same type size and font.

(f) - (g) (No change.)

SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE.

§681.92. Experience Requirements (Internship).

(a) - (e) (No change.)

(f) Post graduate supervised experience hours earned with a previous temporary license will not be accepted if over 5 years old.

(g) [(f)] The experience must consist primarily of the provision of direct counseling services within a professional relationship to individuals, families, couples, 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.

(h) [(g)] The LPC Intern must receive direct supervision consisting of a minimum of four hours per month 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.

(i) [(h)] Supervisors, during supervision, shall review board rules and note such on logs.

(j) [(i)] The experience must have been under the supervision of a board approved supervisor.

(k) [(j)] 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) no more than 400 hours can be counted for excess practicum.

(l) ~~[(k)]~~ LPC Interns shall comply with the ethical standards set out in Subchapter C (relating to Code of Ethics) of this chapter.

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

(n) ~~[(m)]~~ A supervisor must submit the change of supervision form into the board office for approval before commencing supervision at a new site or with a new supervisor. Without an approved supervision form on file with the board supervised hours may not be counted toward licensure.

(o) ~~[(n)]~~ To upgrade from the LPC Intern status to full LPC, an LPC Intern must submit the supervised experience documentation form, proof of passing the Texas Jurisprudence exam within two years prior to upgrade and the upgrade fee if applicable.

§681.93. Supervisor Requirements.

(a) - (d) (No change.)

(e) The full professional responsibility for the counseling activities of an LPC Intern shall rest with the intern's board approved supervisor(s). If the LPC Intern receives disciplinary action by the board the supervisor may also be subject to disciplinary action.

(1) - (5) (No change.)

(6) It is the responsibility of the board approved supervisor to ensure the supervised hours of the LPC Intern were:

(A) earned after the temporary license was issued; and

(B) in not less than 18 months.

(f) - (m) (No change.)

SUBCHAPTER H. LICENSING.

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

(a) This section sets out licensing procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section: **[the alternative license procedure for military spouse required under Texas**

Occupations Code, Chapter 55 (relating to License While on Military Duty and for Military Spouse.)

(1) "Military service member" means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) "Military spouse" means a person who is married to a military service member who is currently on active duty.

(3) "Military veteran" means a person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) The board's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

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

(f) An applicant who is a military spouse who holds a current license issued by another jurisdiction that has substantially equivalent licensing requirements shall complete and submit an application form and fee. The license issue a license to a qualified applicant who holds such a license as soon as practicable and the renewal of the license shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order.

(i) If the board issues an initial license to an applicant who is a military spouse in accordance with subsection (f) of this section, the board shall assess whether the applicant has met all licensing requirements of this state by virtue of the current license issued by another jurisdiction. The board shall provide this assessment in writing to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide proof of completion at the time of the first application for license renewal. A license shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.

[(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license as a professional counselor issued by another state that has substantially equivalent licensing requirements shall complete and submit an application form and fee. In accordance with Texas Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.]

[(c) The spouse of a person serving on active duty as a member of the armed forces of the United States who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order.]

SUBCHAPTER K. COMPLAINTS AND VIOLATIONS.

§681.161. Complaint Procedures.

(a) - (d) (No change.)

(e) The executive director initially reviews the complaint to determine jurisdiction. If a complaint appears to be within the board's jurisdiction, the executive director shall decide whether to authorize sending a copy of the complaint to the respondent and requesting a response, which may include but not be limited to requesting that a copy of the client's records be attached to the response. If the executive director does not authorize written notification of the respondent, the complaint will be referred for an investigation and the assigned investigator will determine whether the respondent will be notified by letter, phone call, site visit, or some other appropriate means. If the complaint is against a person licensed by another board, the department

staff will forward the complaint to that board not later than the 15th day after the date the agency determines that the information shall be referred to the appropriate agency as provided in Government Code, Chapter 774, relating to exchange of information between regulatory agencies.

[(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) - (j) (No change.)

§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 highest severity level.

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

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