

Title 22. Examining Boards.  
Part 30. Texas State Board of Examiners of Professional Counselors.  
Chapter 681. Professional Counselors.  
Subchapter A. The Board.  
Amendments §§681.1-681.17  
Subchapter B. Authorized Counseling Methods and Practices.  
Amendments §681.31  
Subchapter C. Code of Ethics.  
Amendments §§681.41-681.52  
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Amendments §§681.181, 681.182, 681.184  
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Amendment §§681.201-681.204  
Subchapter N. Parenting Coordination and Parenting Facilitation [Parent Coordination and Parent Facilitation.]  
Amendments §§681.251 and 681.252

### Proposed Preamble

The Texas State Board of Examiners of Professional Counselors (board) proposes amendments to §§681.1 - 681.17, 681.31, 681.41 - 681.52, 681.71 - 681.73, 681.81 - 681.83, 681.91 - 681.93, 681.101 - 681.103, 681.111 - 681.113, 681.121, 681.123 – 681.127, 681.141, 681.142, 681.144 - 681.146, 681.161, 681.162, 681.164 - 681.172, 681.181, 681.182, 681.681.184, 681.201 - 681.204, 681.251 and 681.252, new §681.114 and §681.143 and the repeal of §681.147 concerning the licensing and regulation of professional counselors.

### BACKGROUND AND PURPOSE

Texas Government Code, §2001.039 requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Texas Government Code, Chapter 2001 (Administrative Procedure Act). Sections 681.1 - 681.17, 681.31, 681.41 - 681.52, 681.71 - 681.73, 681.81 - 681.83, 681.91 - 681.93, 681.101 - 681.103, 681.111 - 681.113, 681.121, 681.123 - 681.127, 681.141, 681.142, 681.144 - 681.146, 681.161, 681.162, 681.164 - 681.172, 681.181, 681.182, 681.184, 681.201 - 681.204 and 681.251 and 681.252 have been reviewed, and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensing and regulation of professional counselors are still needed; however, changes are needed as described in this preamble, and are the result of the comprehensive rule review undertaken by the board and the board's staff. Section 681.147 is proposed for repeal as explained in this preamble.

In general, each section was reviewed and proposed for re-adoption in order to ensure appropriate subchapter, section, and paragraph organization; to ensure clarity; to improve spelling, grammar, and punctuation; to ensure that the rules reflect current legal and policy considerations; to ensure accuracy of legal citations; to eliminate unnecessary catch-titles; to delete repetitive, obsolete, unenforceable, or unnecessary language; to improve draftsmanship; and to make the rules more accessible, understandable, and usable.

New §681.114 establishes procedures for issuance of licenses to military spouses, as required by Senate Bill 1733, 82nd Legislature, 2011, amending Texas Occupations Code, Chapter 55, relating to the licensing process for military spouses. New §681.143 specifies the types of activities which will be excluded from credit as continuing education hours. This new section includes the information in repealed §681.147; the new placement of this section is necessary to ensure better organization and clarity.

## SECTION-BY-SECTION SUMMARY

This section-by-section summary considers only those sections which were substantially changed in language, meaning, or intent. A number of modifications are proposed for the chapter in order to meet the objectives of the agency review of rules as described in this preamble, such as improving draftsmanship and ensuring clarity.

Non-substantive changes were made to various sections of the chapter, including 681.1 - 681.17, 681.41 - 681.47, 681.50 - 681.52, 681.71, 681.81 - 681.83, 681.91 - 681.93, 681.113, 681.121, 681.124 - 681.127, 681.141, 681.144 - 681.146, 681.161, 162, 681.166, 681.167, 681.170, 681.171, 681.181, 681.182, 681.184, 681.201 - 681.204, 681.251 and 681.252.

The following changes are proposed concerning Subchapter A (relating to the Board.)

The amendment to §681.2 expands the definition of Art Therapy, adds definitions for the terms "Direct client contact", "Indirect hours" and "LPC" and updates and clarifies federal legal references. As a result of the new definitions, the definitions are renumbered accordingly.

The amendment to §681.4 specifies the conditions under which the board may be obliged.

Amendments to §681.10 delete subsection (c) relating to the executive director's general supervision and delegation of staff and renumber the remainder of the section accordingly. The amendment to §681.12 removes the department's authority to set copying fees.

Amendments to §681.14 add online payment as a method of paying a fee; in addition, subsection (d) is updated to reflect the ability of the department to collect subscription and convenience fees.

The following changes are proposed concerning Subchapter B (relating to Authorized Counseling Methods and Practices.)

Amendments to §681.31 change the terms "marriage counseling" to "couples counseling," "chemical dependency counseling" to "addictions counseling" and add "crisis counseling" as an authorized counseling method and practice.

The following changes are proposed concerning Subchapter C (relating to Code of Ethics.)

Amendments to §681.41 expand the requirements a licensee must provide to a client in writing prior to providing services and the use of technological means as a method of communication in certain circumstances. Portions of existing subsection (h) of this section are moved to new subsection (i); separating existing subsection (h) into two separate subsections ensures better clarity and organization. As a result of new subsection (i), the remainder of this section is renumbered to reflect this change. Other amendments to this section recognize a licensee's mandatory compliance with Health and Safety Code, Chapters 181 and 611. In addition, amendments to this section delete existing subsections (z) and (aa); portions of existing (z) and (aa) are included in new subsection (t)(6), which also allows a licensee to require only the applicable part of the divorce decree, rather than the entire document, unless a federal or state statute provides an exemption to the documents in order to ensure a larger population of children can be served and provision of services delivered more effectively and expeditiously. Existing subsection (bb) is deleted in its entirety and moved to amended §681.41(e)(8) for better organization.

Amendments to §681.42 define allowable sexual contact by an LPC with a former client, LPC-Intern or student.

Amendments to §681.45 add Texas Health and Safety Code, Chapter 181, to those laws that a licensee must follow concerning access to mental health records and confidential information. Amendments to §681.48 reorganize the section as portions of existing subsection (a) are removed and placed in new subsection (e).

Amendments to §681.49 emphasize that misrepresentation of a mental health care professional's services may be deemed as false, misleading, deceptive advertising or advertising not readily subject to verification. Reformatting and non-substantive changes were also made to this section.

Amendments to §681.51 expand the grounds on which the board may deny licensure to an applicant, as well as factors taken into consideration by the board in determining an applicant's fitness for licensure.

Amendments to §681.52 clarify the allowable services an LPC Intern can provide.

The following changes are proposed concerning Subchapter D (relating to Application Procedures.)

Amendments to §681.72 reflect the ability of an applicant to submit official transcripts to the board from the school by either mail or e-transcript in order to promote flexibility for the applicant. Additionally, amendments to this section reflect the waiver of the five-year examination rule for applicants who apply for license by reciprocity. Subsection (d) is moved to subsection (c), subsection (e) is deleted and the remainder of the section is renumbered accordingly.

Amendments to §681.73 increase the amount of client contact hours under the supervision of a licensed professional counselor with an art therapy specialty designation from 1,000 to 1,500 hours. This change was made in order to reflect standard practice within the profession.

The following changes are proposed concerning Subchapter E (relating to the Academic Requirements for Licensure)

Amended §681.81 expands the required documents that must be provided by an applicant who attended or graduated from a foreign university. Amendments to this section also add new subsection (c) concerning the board's consideration, on a case-by-case basis, additional evidence from an applicant who attended or graduated from a foreign university if the applicant has difficulty securing documentation of this experience; the rest of the section is renumbered to reflect this addition. Additionally, amendments to this section add new subsection (h) which limits the applicability of a graduate degree and coursework to that earned 10 years or less prior to the licensure application date, absent certain exceptions.

Amended §681.82, stipulates applicants for licensure must earn 60 semester hours in a planned graduate counseling or related field beginning on August 1, 2017; the current requirement is 48 semester hours.

Amendments to §681.83 change subsection (a) to require an applicant complete at least one three-hour course in particular subject areas and add new subsections (c) and (d) which specify the types of courses which may be used to meet the new 60-semester hour graduate program reflected in amended §681.82 and that passage of the National Counselor Exam does not guarantee satisfaction of minimum Texas state licensure requirements.

The following are proposed changes concerning Subchapter F (relating to Experience Requirements for Licensure.):

Amendments to §681.91 add new subsection (d) to allow an LPC intern only one LPC board-approved supervisor on file at any given time; the rest of the section is renumbered accordingly to reflect this addition. Amendments to this section also add new subsection (h) to mandate that applicants who previously held temporary licenses in Texas must reapply under the standards in place at the time of application. The language in subsection (h) replaces former acceptable standards. Other amendments to §681.91 specify when supervision of an intern is completed, delete outdated requirements regarding temporary licenses and add the specific steps an LPC Intern must take before receiving supervision from a new supervisor or at a new supervision site.

Amendments to §681.92 reflect the need for specific types of supervision an LPC Intern must receive and that experience hours earned via technological means of communication may count for no more than one hundred of the total supervised experienced hours. Moreover, beginning on August 1, 2017, an internship may only commence once an applicant has completed a planned graduate program of at least 60 semester hours. Changes to this section also allow an internship experience to include counseling services to families and couples as acceptable clients and increase the number of direct supervision hours to four hours per month in a face-to-face or live internet web cam supervision. Additional amendments to this section add new subsections (h), (m), and (n); the section is renumbered accordingly to accommodate these changes. These new subsections require supervisors to review board rules during designated times, cover changes to supervision or supervision site as well as requirements an LPC Intern must meet to upgrade to a full LPC status.

Amendments to §681.93 expand the requirements an LPC must meet prior to applying for supervision status. Additional amendments to this section require supervision status applications be submitted within certain timeframes and remove the exemption previously allowed to licensees in an accredited doctorate program; this section also reflects that disciplinary actions taken against an LPC Intern may also result in his or her supervisor being disciplined. Other changes to §681.93 include requiring accurate documentation of supervised experience be submitted within a certain time frame and impose administrative penalties on supervisors who violate board rules.

The following changes are proposed concerning Subchapter G (relating to Licensure Examination.)

The amendment to §681.101 deletes subsection (f) regarding the necessity for LPC Interns to pass the National Counselor Exam in lieu of the Texas exam prior to the expiration of their temporary licenses.

The amendment to §681.102 deletes a particular method of notifying applicants of examination results.

Amended §681.103 deletes the previous language contained in subsection (b) and replaces it with new language which requires applicants who fail the licensure examination twice to either wait for a period of two years or to complete nine graduate hours in the applicant's weakest portion of the examination prior to retesting, provided the applicant earn at least a grade of "B"

in the completed graduate hours. Some of the language in old subsection (b) is incorporated in the new version of this subsection.

The following are proposed as changes concerning Subchapter H (relating to Licensing):

Amendments to §681.111 delete subsection (c) relating to provisional licenses, as this subsection is more thoroughly covered in §681.112; the remaining subsections are renumbered accordingly. Amendments to §681.112 no longer permit a provisional license to an applicant who holds only an art therapy license in another state, territory or jurisdiction of the United States since current law requires a full LPC license be secured before art therapy license may be obtained. New subsection (d) is added to allow certain provisional licensees to qualify and be issued a regular LPC license; the section is renumbered accordingly to reflect this addition.

New §681.114 “Licensing of Military Spouses” sets forth the alternative licensure procedure for the spouse of a person serving on active duty as a member of the United States armed forces if the military spouse holds a license as a professional counselor in another state. New §681.114 adds the licensing process for military spouses as required by Senate Bill 1733, 82nd Legislature, (Regular Session) 2011.

The proposed changes concerning Subchapter I (relating to the Regular License Renewal; Inactive and Retirement Status):

The amendment to §681.123 provides that continued education information is part of the required information which must be received before the board renews a license.

The Amendment to §681.124 adds new subsection (e) to allow the board to renew an expired license without reexamination, provided certain conditions are met.

The amendment to §681.125 removes the references to LPC Intern inactive status.

The following changes are proposed concerning Subchapter J (relating to Continuing Education Requirements.)

The amendment to §681.126 removes language in subsection (c) relating to eligibility for a new license.

Amendments to §681.141 remove January 1, 2007 as the beginning date a licensee must successfully complete the Texas Jurisprudence Examination each renewal period and require an LPC Supervisor to complete an eight-hour refresher course in supervision every four years as opposed to the previous requirement of three hours of continuing education directly related to supervision practices.

Amendments to §681.142 remove subsection (a)(1) which previously allowed teaching a graduate level course as an acceptable type of continuing education hours; the remainder of the subsection is renumbered accordingly. New subsection (a)(6) is added to reflect attendance at a complaints committee may be credited as continuing education hours in certain circumstances.

New §681.143 specifies the type of activities that the board will not give credit a licensee as continuing education hours and incorporates provisions of repealed §681.147.

The amendment to §681.145 allows certain types of teaching to be credited as continuing education hours.

Section 681.147 is repealed and provisions of it are moved to new §681.143 for better organization and placement.

The following are proposed changes concerning Subchapter K (relating to Complaints and Violations):

The amendment to §681.164 defines moral turpitude.

Amended §681.165 changes a portion of the section title from “Temporary Suspension” to “Emergency Suspension” to better explain this type of suspension the board is allowed to impose.

Amendments to §681.168 specify that violations of the Act or Chapter 681 of this title must be alleged before the board may consider the surrender of an LPC’s license.

The amendment to §681.169 changes the name of the section in order to delineate the rationale for license suspension under this section.

The amendment to §681.172 specifies the font size to be used in a portion of the Notice of Violation.

#### FISCAL NOTE

Bobbe Alexander, Executive Director, has determined that for each of the first five years the sections are in effect, there will not be fiscal implications to the state or local governments as a result of enforcing or administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS ECONOMIC IMPACT ANALYSIS

Ms. Alexander has also determined that there will be no effect on small businesses or micro-businesses required 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. The proposal will not affect a local economy. There is no anticipated negative impact on local employment.

## PUBLIC BENEFIT

In addition, 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 to continue to ensure public health and safety through the effective licensing and regulation of professional counselors. Finally, the restructuring of many of the rules should improve comprehension, resulting in fewer legal costs to the State and providers.

## REGULATORY ANALYSIS

The board has determined that this proposal is not a “major environmental rule” as defined by Texas 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 specifically intended to protect the environment or reduce risks to human health from environmental exposure.

## TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed rules do 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, do not constitute a taking under Texas Government Code, §2007.043.

## PUBLIC COMMENT

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

## STATUTORY AUTHORITY

The amendments, new rules, and repeal are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments, new rules, and repeal affect Texas Occupations Code, Chapter 503.

Section for repeal.

§681.147. Activities Unacceptable as Continuing Education.

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.

### §681.1. General.

The purpose of this chapter is to implement **[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) - (3) (No change.)

(4) Art therapy--A human service profession in which clients, facilitated by the art therapist, use art media, the creative process, and the resulting artwork to explore their feelings, reconcile emotional conflicts, foster self-awareness, manage behavior, develop social skills, improve reality orientation, reduce anxiety and increase self-esteem.**[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) - (6) (No change.)

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

(8) (No change.)

(9) Direct client contact--Time spent counseling with clients.

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

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

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

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

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

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

(16)[(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, 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)[§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.

(17)[(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) (No change.)

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

(c) (No change.)

§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 or when not in accordance with board rules.

(c) (No change.)

§681.5. Agendas.

(a) Prior to each meeting ~~the~~ **[The]** executive director shall prepare and submit **[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) (No change.)

§681.6. Minutes.

(a) - (b) (No change.)

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

§681.7. Elections.

(a) (No change.)

(b) A vacancy which occurs in the office of vice-chair may be filled at any regular meeting **[as required]**.

§681.8. Officers.

(a) (No change.)

(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) - (d) (No change.)

§681.9. Committees.

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

(b) - (g) (No change.)

§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, approval, and consent of the board.

(b) (No change.)

**[(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.]**

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

(d)**[(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.

(e)**[(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 receive per diem and transportation expenses as provided by the General Appropriations Act.

§681.12. Official Records of the Board.

(a) (No change.)

(b) When a request is **[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) (No change.)

§681.13. Impartiality and Non-discrimination.

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

(b) - (c) (No change.)

#### §681.14. Licensing Fees.

(a) Licensing fees are as follows:

(1) - (2) (No change.)

(3) late renewal fee:

(A) 1-90 days after license expiration--\$125; and

(B) 91-365 days after license expiration--\$150.

(4) - (8) (No change.)

(b) (No change.)

(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 or online payment.

(d) For all applications and renewal applications, the department [board] is authorized to collect subscription and convenience fees, in amounts approved by the Board of the Department of Information Resources, [determined by the Texas Online Authority] to recover costs associated with application and renewal application processing through the state electronic internet portal.[www.texas.gov.]

(e) (No change.)

#### §681.15. Processing Procedures.

Time periods. The board shall comply with the following procedures in processing applications for a license and renewal of a regular license;[.] (No (a) without a (b) – leave as existing in TAC. Also, changing from period to colan requires opening (1) and (2) to make lower case “the” as well as in (3) below

(1) - (2) (No change.)

(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 has the right to **[may]** petition the board to adopt a rule.

(b) - (i) (No change.)

§681.17. Request for Criminal History Evaluation Letter.

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

(1) - (2) (No change.)

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the board **[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 board **[department]** has the same authority to investigate a request submitted under this subsection and the requestor's eligibility that the board **[department]** has to investigate a person applying for a license.

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

(e) If the board **[department]** determines that the requestor is ineligible for a license, the board **[department]** shall issue a letter setting out each basis for potential ineligibility and the board's **[department's]** determination as to eligibility. The letter shall be issued not later than 90 days **[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 board **[department]** at the time the letter is issued, the board **[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) - (2) (No change.)

(3) couples **[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) (No change.)

(5) addictions **[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) - (10) (No change.)

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

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

(14) - (15) (No change.)

(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 disorders **[problems]**; but does not permit the diagnosis of a physical condition or physical 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 but not considered direct client contact for LPC-Interns; and [.]

(18) crisis counseling which focuses on short term counseling interventions to address immediate situations including factors such as safety and immediate needs.

#### SUBCHAPTER C. CODE OF ETHICS.

##### §681.41. General Ethical Requirements.

(a) (No change.)

(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) (No change.)

(d) A licensee shall make reasonable efforts to discourage **[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. Prior to providing services a [A] licensee shall inform an individual in writing [before services are provided] of the following:

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

(6) supervision of the licensee by another licensed health care professional including the name, address, contact information 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.]**

(7) the name, address and telephone number of the board for the purpose of reporting violations of the Act or this chapter; and

(8) the established plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice.

(f) (No change.)

(g) Technological means of communication may be used to facilitate the therapeutic counseling process which has already been established. Technological means may be used in crisis counseling with no previous counseling relationship.

**[(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.

(i) 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.

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

~~(k)~~[(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.

~~(l)~~[(k)] A licensee shall set and maintain professional boundaries.

~~(m)~~[(l)] (1) 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.

(n)**[(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.

(o)**[(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.

(p)**[(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.

(q)**[(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.

~~(r)~~~~(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.

~~(s)~~~~(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 (q) and (r) ~~[(p) and]~~ of this section.

~~(t)~~~~(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) Pursuant to Texas Health and Safety Code, Chapter 611, on ~~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.

(5) A licensee shall comply with requirements of Texas Health and Safety Code, Chapter 611 and Chapter 181, concerning the release of mental health records and confidential information.

(6) 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 part of the divorce decree. A licensee shall maintain these documents in the client's record. When federal or state statutes provide an exemption to secure consent of a parent or guardian prior to providing services to a minor, a licensee shall follow the protocol set forth in such federal or state statutes.

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

~~(v)~~~~(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.

(w)~~(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.

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

(y)~~(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.

(z)~~(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 these individuals **[the above]** or employees of a treatment facility.

(2) (No change.)

(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 relationship **[marital]** dysfunction.

(4) (No change.)

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

(1) a client as defined in §168.2(6) [§681.2(7)] of this title (relating to Definitions);

(2) (No change.)

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

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

(A) - (G) (No change.)

(c) - (d) (No change.)

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

(1) - (8) (No change.)

(9) making a request for a [to] date;

(10) - (13) (No change.)

(f) (No change.)

(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) (No change.)

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

(C) (No change.)

(2) - (3) (No change.)

§681.43. Testing.

(a) (No change.)

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

(c) - (e) (No change.)

§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) - (3) (No change.)

§681.45. Confidentiality and Required Reporting.

(a) - (b) (No change.)

(c) A licensee shall comply with Texas Health and Safety Code, Chapters 181 and 611 [**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) - (3) (No change.)

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

(5) (No change.)

(e) - (f) (No change.)

§681.46. Licensees and the Board.

(a) (No change.)

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

(c) - (f) (No change.)

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

§681.47. Assumed Names.

(a) (No change.)

(b) An assumed or trade name used by a licensee shall **[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) - (2) (No change.)

(3) on a bill for counseling **[treatment intervention]** provided to a client.

(b) - (d) (No change.)

(e) 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.

**[(e) In addition to the requirements of subsection (a) of this section, an LPC Intern shall inform the client of the name, telephone number, and address of the intern's supervisor.]**

§681.49. Advertising and Announcements.

(a) (No change.)

(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 mental health care service or procedure;

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

(4) (No change.)

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

(6) - (8) (No change.)

(9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved for [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.

(e) 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.

(f)[(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.

(g)[(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 "LPC"["**L.P.C.**"], or a statement such as "licensed by the Texas State Board of Examiners of Professional Counselors."

(h)[(g)] LPC Interns **[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.

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

~~(j)~~**(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) - (c) (No change.)

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

#### §681.51. Finding of Misconduct Occurring before Licensure.

(a) (No change.)

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

(c) The board may deny a license, license renewal, or specialty recognition if it substantiates that the applicant lacks the necessary skills and abilities to provide adequate counseling; has misrepresented any materials in the licensure application or renewal application, or any materials submitted to the board; has violated any provision of the Act in effect when the applicant applied; or has violated the code of ethics, or any other section of this chapter which would have applied had the applicant been licensed when he/she committed the violation.

(d) To determine the applicant's fitness, the board shall consider the applicant's skills and abilities to provide adequate counseling services to clients; the applicant's ethical behavior in relationships with other professionals and clients; and the applicant's worthiness of public trust and confidence.

#### §681.52. LPC Interns.

(a) An LPC Intern may practice only under the supervision of a Licensed Professional Counselor Supervisor and may not practice within the LPC Intern's own private independent practice of professional counseling.

(b) An LPC Intern may be employed by a Licensed Professional Counselor or by an entity that employs the Licensed Professional Counselor Intern on a salary basis or be a consultant or volunteer.

**[(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 LPC Intern **[intern]**.

(d) Client records are not the property of the LPC Intern **[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 LPC Intern's **[intern's]** name shall be followed by the name of the supervisor in the same type size and font.

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

#### SUBCHAPTER D. APPLICATION PROCEDURES.

##### §681.71. General.

(a) - (b) (No change.)

(c) Applicants submitting complete application packets, but which contain incomplete or unacceptable information will be notified in writing 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) (No change.)

##### §681.72. Required Application Materials.

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

(1) - (2) (No change.)

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

(4) - (6) (No change.)

(b) The practicum documentation form shall contain:

(1) (No change.)

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

(3) - (4) (No change.)

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

(6) - (7) (No change.)

(c) 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.

(d)[(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 completed [**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.]**

(e)[(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), either by mail or e-transcript, 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.

(f)[(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. If applying by reciprocity, the five year limit does not apply. 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) - (b) (No change.)

(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) 1,500**[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) (No change.)

(d) (No change.)

#### SUBCHAPTER E. ACADEMIC REQUIREMENTS FOR LICENSURE.

##### §681.81. General.

(a) (No change.)

(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. Prior to submitting an application for licensure, the potential applicant shall provide the board with documents and evidence to establish that his/her formal education is equivalent to at least a master's degree as required by the License Professional Counselors Licensing Act and Rules and Regulations of the Board, granted by a United States university that is regionally accredited. Documentation must include:

(1) an original or certified copy of a diploma or other certificate of graduation;

(2) a transcript or comparable document of all course work completed;and

(3) a certified translation of all documents submitted in a language other than English.

(c)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.

(d)~~(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 such as course syllabi.

(e)~~(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.

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

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

(h) A graduate degree and graduate coursework that was awarded or earned more than 10 years prior to the application date may not be used to fulfill the requirements for licensure unless the applicant has held a license issued by another state or has been counseling in Texas in an exempt setting for at least five years prior to the application date.

#### §681.82. Academic Requirements.

(a) Persons applying for licensure must have:

(1) (No change.)

(2) a planned graduate program in counseling or related field of at least 48 semester hours with 60 semester hours for applicants starting a counseling program as of August 1, 2017.

(b) The 48/60 [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 48/60 [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 48/60 [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 the practicum must be direct client contact [**direct client counseling contact must be shown**].

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

(3) (No change.)

§681.83. Academic Course Content.

(a) An applicant must complete at least one three-semester hour course in each of the following areas:

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

(2) - (5) (No change.)

(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) - (10) (No change.)

(b) The remaining courses needed to meet the 48/60 [48] graduate-hour requirement shall be counseling or related course work that are in areas directly supporting the development of an applicant's professional counseling skills and shall be courses related primarily to professional counseling.

(c) As of August 1, 2017 the following courses to meet the 60 hour requirement may include:

(1) crisis counseling;

(2) addictions counseling; to include but not limited to gambling, sexual, eating, alcohol, or drug;

(3) additional course in counselor ethics; to include records management, business law and professional practice and the study of current board rule;

(4) additional course in abnormal human behavior to include such content as criteria of psychiatric diagnosis, use of the DSM Multi-Axial system and theories of psychopathology. Ability to recognize indicators of functional and organic disorders in clients. Basic knowledge of types of psychopharmacological medications; and

(5) couples, families, or parenting.

(d) Passing the National Counselor Exam does not guarantee that Texas state licensure requirements have been satisfied.

#### SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE.

##### §681.91. Temporary License.

(a) - (c) (No change.)

(d) An LPC Intern may have only one LPC board-approved supervisor on file at any given time.

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

(f)[(e)] An [A temporary] LPC Intern license will expire 60 months from the date of issuance.

(g)[(f)] An LPC 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 current requirements and procedures for obtaining an original license, including examination requirements.

(h) Applicants who previously held licensure in Texas must reapply under requirements in place at the time of application.

**[(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) (No change.)

(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). Supervision is complete upon the LPC Intern receiving the regular license. Supervision shall continue after completion of the 3,000 hour and until the LPC Intern receives their regular license.

(k)An LPC Intern 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.

**[(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 for each supervisor and each site may not be counted toward licensure.]**

(l)[(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 Texas [this state's] board forms.

§681.92. Experience Requirements (Internship).

(a) All applicants [**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 one hundred hours [**10%**] of the total supervised experience hours. Only actual time spent counseling may be counted.

(c) An Intern may not [**must**] complete the required 3,000 clock-hours of supervised experience in a time period less [**of no fewer**] than 18 months.

(d) (No change.)

(e) The internship may only [**must**] commence after:

(1) (No change.)

(2) the completion of a planned graduate program in counseling of at least 48 semester hours with 60 semester hours as of August 1, 2017; and

(3) the completion of the examinations [**if**]required.

(f) The experience must consist [**have consisted**] 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.

(g)The LPC Intern must receive [have received] direct supervision consisting of a minimum [an average] of four hours per month of face to face [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) Supervisors, during supervision, shall review board rules on an average of one hour for every ten hours spent in supervision and note such on logs.

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

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

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

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

(l)[(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.

(m) An LPC Intern 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 and approved supervision form on file with the board supervised hours may not be counted toward licensure.

(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) 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 the supervision of a board-approved supervisor. [a supervisor who holds a regular license issued by the board.] The supervisor must have held the regular license in good standing for at least 36 [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 in this subsection [below]; and shall submit a \$100 processing fee. Application for supervision status must be submitted within 2 years of completing the 40-hour supervision course or within 5 years of completing a doctoral level supervision course from an accredited university. [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) - (B) (No change.)

(2) - (3) (No change.)

(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 approved site where the hours were accrued and the content of the supervision [session].

(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) - (4) (No change.)

(5) A supervisor shall **[timely]** submit accurate documentation of supervised experience to the board within 30 days of completion of hours.

(f) A supervisor whose license is expired, **[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 becomes **[become]** subject to a board disciplinary order is no longer an approved supervisor. The person shall immediately inform all LPC Interns under their supervision of the board disciplinary order and assist the LPC Interns in finding alternate supervision.

(h) - (l) (No change.)

(m) Supervisors who are in violation of board rules may be subject to an administrative penalty of up to \$5,000 per day depending on the level of severity.

#### SUBCHAPTER G. LICENSURE EXAMINATIONS.

§681.101. Examination.

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

**[(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) - (b) (No change.)

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

(b) A person who fails the exam twice will be required to either wait 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 counseling or counseling-related courses with a grade of "B" or better. Research and practicum courses will not be accepted as meeting the nine graduate semester hours.

**[(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) (No change.)

(b) All **[Regular and temporary]** licenses shall bear the signature of the board chair.

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

(c)**[(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.

(d)**[(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.

(e)**[(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.

(f)**[(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) (No change.)

(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) (No change.)

(b) - (c) (No change.)

(d) If an applicant who applies for a provisional license meets the requirements of subsection (a) of this section and has engaged in the practice of mental health counseling on a full time basis for five years of the immediately preceding seven years prior to application for licensee the applicant may qualify for and be issued a regular license.

(e)**[(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) - (d) (No change.)

(e) A license which has been surrendered and accepted by the board may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

§681.114. Licensing of Military Spouses.

(a) This section sets out 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).

(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 I. REGULAR LICENSE RENEWAL; INACTIVE AND RETIREMENT STATUS.

§681.121. General.

(a) (No change.)

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

(c) - (f) (No change.)

§681.123. License Renewal.

(a) - (b) (No change.)

(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, continuing education and other required information.

(d) - (e) (No change.)

#### §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 regular renewal fee plus the appropriate late penalty [renewal] fee.

(b) - (d) (No change.)

(e) The board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applied for renewal. The person must pay to the board a fee that is equal to the amount of the license examination fee.

**(f) [(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) - (b) (No change.)

(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) - (h) (No change.)

**[(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) - (b) (No change.)

(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) (No change.)

§681.127. Active Military.

(a) (No change.)

(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) - (5) (No change.)

(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, and **[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) - (d) (No change.)

(e) A **[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 an eight-hour refresher course in supervision every four years.**[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;]**

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

(2)[(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;

(3)[(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;

(4)[(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]

(5)[(6)] participation in programs directly related to counseling and are offered by persons approved by the board as continuing education providers; and/or

(6) attendance at a complaints committee meeting of the board without being a respondent to or involved in a complaint. The hours obtained can be used for either ethics or supervision credit.

(b) (No change.)

#### §681.143. Activities Unacceptable as Continuing Education.

The board shall 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).

§681.144. Pre-Approved Providers.

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

(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) - (i) (No change.)

§681.145. Determination of Clock-hour Credits.

(a) Programs **[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 as long as not part of employment, 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) - (d) (No change.)

§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) - (e) (No change.)

#### SUBCHAPTER K. COMPLAINTS AND VIOLATIONS.

##### §681.161. Complaint Procedures.

(a) (No change.)

(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 counseling **[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 has been provided regarding the alleged violation to conduct an **[for the]** investigation.

(d) - (e) (No change.)

(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**[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) (No change.)

(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 complainant and licensee or person against whom the complaint has been filed **[and the complainant]**.

(i) (No change.)

(j) If a written complaint is filed with the board which **[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) - (b) (No change.)

(c) If denial, revocation, or suspension of a license is proposed, the board shall give written notice of the basis for the proposal and state 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) - (e) (No change.)

§681.164. Licensing of Persons with Criminal Convictions.

(a) - (b) (No change.)

(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 or if the crime involves moral turpitude which are those crimes including but not limited to dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflect adversely on a licensee's honesty, trustworthiness, or fitness to practice under the scope of the person's license. In considering whether a criminal conviction directly relates to the profession of counseling, the board shall consider but not limited to:

(1) - (4) (No change.)

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

(1) - (6) (No change.)

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

Penal Code:

(A) concerning Title 5 which relates to offenses against the person;

(B) concerning Title 7 which relates to offenses against property;

(C) concerning Title 8 which relates to offenses against public administration;

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

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

(F) concerning Title 4 which relates to 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 [**directly relating**] to the duties and responsibilities of a licensee.

(e) (No change.)

§681.165. Suspension, Emergency [Temporary] Suspension, Revocation, or Denial.

(a) - (b) (No change.)

(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 [**Executive Director**].

(d) (No change.)

§681.166. Informal Disposition.

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

(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 [**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) - (v) (No change.)

§681.167. Waiver of Right to Hearing.

(a) Failure to respond to a notice from the board or if a licensee or applicant 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) (No change.)

§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, alleging violations of the Act or this chapter, the board shall consider whether to accept the surrender of the license.

(b) - (c) (No change.)

(d) Upon surrender of a license during the course of the investigation, the surrender is considered a final disciplinary action and may not be reinstated; however a person may apply for a new license in accordance with the Act and this chapter. [be considered for denial upon subsequent reapplication for license.]

§681.169. Suspension of License for Failure to Pay Child Support or Non-Compliance with Child Custody Order. [**License Suspension or Denial Relating to Child Support and Child Custody**]

(a) - (i) (No change.)

§681.170. Monitoring of Licensees.

(a) (No change.)

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

(c) - (d) (No change.)

§681.171. Assessment of Administrative Penalties.

(a) (No change.)

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

(1) - (2) (No change.)

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

(4) (No change.)

§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 inform [**advise**] the licensee about the date and nature of the violation;

(2) (No change.)

(3) a statement in bold letters of at least 10 point font [**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) - (d) (No change.)

#### SUBCHAPTER L. FORMAL HEARINGS.

##### §681.181. Purpose.

This subchapter covers [**These rules cover**] the hearing practices and procedures [**procedures and practices**] that are available to persons or parties who request formal hearings. The intended effect of this subchapter [**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) (No change.)

(b) Remedies available upon default. The Administrative Law Judge (ALJ) may [**shall**] proceed in the party's absence and such failure to appear shall entitle the department to seek informal disposition as provided by the Administrative Procedure Act (APA), Government Code, Chapter 2001. The ALJ may [**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, if it is established [**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) - (e) (No change.)

§681.184. Action After the Hearing.

(a) Motion for rehearing. A motion for rehearing shall be governed by the APA or other pertinent statutes [**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 statutes [**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 Texas 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. Rather [~~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 in paragraphs (1) - (5) of this section [~~as follows~~].

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

§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) (No change.)

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

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

(4) - (5) (No change.)

#### §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 formal advisory letters or informal reminders [**a formal advisory letter or informal reminder**], but may submit a written response to be included with such letters in the licensing record.

#### SUBCHAPTER N. PARENTING COORDINATION AND PARENTING FACILITATION. **[PARENT COORDINATION AND PARENT FACILITATION.]**

#### §681.251. Parenting [**Parent**] Coordination.

(a) In accordance with the Family Code, §153.601(3), “parenting coordinator” means an impartial third party:

(1) - (2) (No change.)

(b) A licensee<sub>2</sub> who serves as a parenting [**parent**] coordinator<sub>2</sub> 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 parenting [**parent**] coordinator are not within the jurisdiction of the board, but rather the jurisdiction of the appointing court.

(c) A licensee<sub>2</sub> who serves as a parenting [**parent**] coordinator<sub>2</sub> has a duty to provide the information in subsection (b) of this section to the parties to the suit.

(d) (No change.)

(e) A licensee shall not provide professional counseling services to any person while simultaneously providing parenting [**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. Parenting [**Parent**] Facilitation.

(a) - (b) (No change.)

(c) Notwithstanding any other provision of this chapter, licensees who desire to serve as parenting [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) (No change.)

(e) In accordance with Family Code, §153.6101(b)(1), a licensed professional counselor intern shall not serve as a parenting [parent] facilitator.

(f) - (h) (No change.)

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

(j) - (x) (No change.)

(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) - (gg) (No change.)