



# Licensed Chemical Dependency Counselor Program

## Program Rules Title 25, Texas Administrative Code, Chapter 140, Subchapter I

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**SUBCHAPTER I. LICENSED CHEMICAL  
DEPENDENCY COUNSELORS.**

**§140.400. Definitions.**

Notwithstanding the provisions of §441.101 of this title (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--An intentional, knowing, or reckless act or omission by a counselor, applicant for counselor licensure, counselor intern, certified clinical supervisor, clinical training institution, or personnel of any such person that causes or may cause death, emotional harm or physical injury to a client. Abuse includes, without limitation, the following:

(A) any sexual contact, sexual exploitation, or indecent exposure between a counselor, applicant for counselor licensure, counselor intern, certified clinical supervisor, clinical training institution, or personnel of any such person, and a client, or as otherwise defined in this section;

(B) corporal punishment or physical assault;

(C) nutritional deprivation or sleep deprivation;

(D) efforts to cause fear;

(E) the use of any form of communication to threaten, curse, shame, or degrade a client;

(F) restraint that does not conform with Chapter 448 of this title (relating to Standard of Care);

(G) coercive or restrictive actions taken in response to a client's request for discharge or refusal of medication or treatment that are illegal or not justified by the client's condition; and

(H) any other act or omission classified as abuse by Texas law, including, but not limited to, Texas Family Code, §261.001 and Texas Human Resources Code, §48.002.

(2) Accredited institution of higher education--An institution that holds accreditation or candidacy status from an accreditation organization recognized by the Council for Higher Education Accreditation.

(3) Act--Texas Occupations Code, Chapter 504, Chemical Dependency Counselors.

(4) Administrative Hearing--A contested case hearing conducted by the State Office of Administrative Hearings (SOAH) under Texas Government Code, Chapter 2001, Administrative Procedure Act.

(5) Administrative Law Judge--An individual appointed by the chief administrative law judge of SOAH under Texas Government Code, §2003.041, to preside over a contested case proceeding.

(6) Administrative Procedure Act (APA)--Texas Government Code, Chapter 2001, as amended.

(7) Adolescent--An individual 13 through 17 years of age whose disabilities of minority have not been removed by marriage or judicial decree.

(8) Adult--An individual 18 years of age or older, or an individual under the age of 18 whose disabilities of minority have been removed by marriage or judicial decree.

(9) Advanced Practice Nurse--A registered nurse currently licensed in Texas who is approved by the Texas Board of Nurse Examiners to engage in advanced practice.

(10) Applicant--A person who has submitted an application for an initial, or for the renewal of, a license, certification, or registration.

(11) Assessment--An ongoing process through which the counselor collaborates with the client and others to gather and interpret information necessary for developing and revising a treatment plan and evaluating client progress toward achievement of goals identified in the treatment plan, resulting in comprehensive identification of the client's strengths, weaknesses, and problems/needs.

(12) Career School or College--An organization approved and regulated by the Texas Workforce Commission, pursuant to Title 40, Texas Administrative Code, Chapter 807 (relating to Career Schools and Colleges), that offers a course of study in chemical dependency counseling.

(13) Certified Clinical Supervisor (CCS)--A person certified by the department pursuant to Texas Occupations Code §504.1521 (relating to Supervised Work Experience).

(14) Chemical Dependency Treatment (treatment)--A planned, structured, and organized chemical dependency program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from substance-related disorders that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning.

(15) Child--For purposes of reporting abuse and neglect, a child is an individual under the age of 18 whose disabilities of minority have not been removed by marriage or judicial decree. For all other purposes in these rules, child shall mean an individual under the age of 13.

(16) Client--An individual who receives or has received services, including admission authorization or assessment or referral, from a chemical dependency counselor, counselor intern, applicant for licensure as a counselor,

certified clinical supervisor, clinical training institution, or from a person for whom the counselor, intern, certified clinical supervisor or applicant is working on a paid or voluntary basis, or was working at the time the individual was a client.

(17) Clinical Training Institution (CTI)--An individual or legal entity registered with the department to supervise a counselor intern.

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

(19) Counselor--A licensed chemical dependency counselor.

(20) Counselor Intern (CI or intern)--A person seeking a license as a chemical dependency counselor who is registered with the department and pursuing a course of training in chemical dependency counseling at a registered clinical training institution or under the supervision of a certified clinical supervisor.

(21) CSAT--Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, United States Department of Health and Human Services.

(22) Diagnostic and Statistical Manual of Mental Disorders (DSM)--The Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. Any reference to DSM shall constitute a reference to the most recent edition published.

(23) Department--The Department of State Health Services.

(24) Exploitation--The illegal or improper use of a client, or the client's resources, for monetary or personal benefit,

profit, or gain by a counselor, counselor intern, or applicant for counselor licensure, or any other act or omission classified as exploitation by Texas law including, but not limited to, Texas Family Code, §261.001 and Texas Human Resources Code, §48.002. Exploitation includes, but is not limited to, sexual exploitation, as defined herein.

(25) Graduate--An individual who has successfully completed, or been exempted from, as applicable, the 270 hours of education, 300 hour practicum, and 4,000 hours of supervised work experience and who is still registered with the department as a counselor intern.

(26) Hearing--Administrative Hearing.

(27) Indecent Exposure--Exposure by a chemical dependency counselor, counselor intern, certified clinical supervisor, applicant for any such license, or personnel of a clinical training institution or other licensee, of the individual's anus or any part of the individual's genitals, knowing a client is present; or compulsion or encouragement by a chemical dependency counselor, counselor intern, certified clinical supervisor, applicant for any such license, or personnel of a clinical training institution or other licensee, for a client to expose the client's anus or any part of the client's genitals.

(28) Knowledge, Skills, and Attitudes (KSAs)--The knowledge, skills, and attitudes of addictions counseling as defined by CSAT Technical Assistance Publication (TAP 21) "Addictions Counseling Competencies: the Knowledge, Skills, and Attitudes of Professional Practice."

(29) License--Unless otherwise specified explicitly or by the context, any form of licensure issued under this subchapter, including a CI registration, CCS certification, CTI registration, or licensed chemical dependency counselor license.

(30) Licensed Chemical Dependency Counselor (LCDC)--A counselor licensed by the department, pursuant to Texas Occupations

Code, Chapter 504, to engage in the practice of chemical dependency counseling.

(31) Licensee--Unless otherwise specified explicitly or by the context, any holder of a license issued under this subchapter, including the holder of a CI registration, CCS certification, CTI registration, or LCDC license

(32) Neglect--A negligent act or omission by a counselor, applicant for counselor licensure, counselor intern, certified clinical supervisor, clinical training institution, or personnel of any such person that causes or may cause death, physical injury, or substantial emotional harm to a participant or client. Examples of neglect include, but are not limited to:

(A) failure to provide adequate nutrition, clothing, or health care;

(B) failure to provide a safe environment free from abuse;

(C) failure to maintain adequate numbers of appropriately trained staff;

(D) failure to establish or carry out an appropriate individualized treatment plan; and

(E) any other act or omission classified as neglect by the Texas law including, but not limited to, Texas Family Code, §261.001 and Texas Human Resources Code, §48.002.

(33) Peer Assistance Program--A program approved by the department pursuant to Texas Occupations Code, §504.057 (relating to Approval of Peer Assistance Programs).

(34) Person--An individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(35) Practice of Chemical Dependency Counseling--Providing or offering to provide chemical dependency counseling services

involving the application of the principles, methods, and procedures of the chemical dependency counseling profession, as defined by the practice dimensions and competencies identified and described in the CSAT Technical Assistance Publication (TAP 21) "Addictions Counseling Competencies: the Knowledge, Skills, and Attitudes of Professional Practice."

(36) Prevention--A proactive process that uses multiple strategies to preclude the illegal use of alcohol, tobacco and other drugs and to foster safe, healthy, drug-free environments.

(37) Private Practice--The individual practice of a private, licensed chemical dependency counselor who personally renders individual or group services within the scope of the LCDC's license and in the LCDC's offices. To qualify to be engaged in private practice, the individual LCDC must not hold him/herself out as an organized program, or a part thereof, that provides counseling or treatment. This definition does not prohibit the sharing of office space or administrative support staff.

(38) Qualified Credentialed Counselor (QCC)--A licensed chemical dependency counselor or one of the practitioners listed below, if the practitioner is licensed and in good standing in the State of Texas, and, in performing any activity as a QCC, is acting within the authorized scope of the individual's license:

- (A) licensed professional counselor (LPC);
- (B) licensed social worker;
- (C) licensed marriage and family therapist (LMFT);
- (D) licensed psychologist;
- (E) licensed physician;
- (F) licensed physician's assistant;

(G) certified addictions registered nurse (CARN); or

(H) advanced practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or practitioner with a specialty in psychiatric-mental health nursing.

(39) Referral--The process of identifying appropriate services and providing the information and assistance needed to access them.

(40) Rules--An agency statement of general applicability, including a state rule or federal regulation, that implements or prescribes law or policy by defining general standards of conduct, rights, or obligations of persons, or describes the procedure or practice requirements that prescribe the manner in which public business before an agency may be initiated, scheduled, or conducted, or interprets or clarifies law or agency policy. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency that does not affect private rights or procedures. Any reference to a rule shall mean the rule then in effect and as amended, unless otherwise specified.

(41) Screening--The process through which qualified staff, client, and available significant others, as appropriate, determine the most appropriate initial course of action, given the individual's needs and characteristics and the available resources within the community. In a treatment program, screening includes determining whether an individual is appropriate and eligible for admission to a particular program.

(42) Services--Substance abuse services.

(43) Sexual contact--Any intentional touching, or request to be allowed to touch, by a chemical dependency counselor, counselor intern, certified clinical supervisor, applicant for any such license, or personnel of a clinical training institution or other licensee, including touching through clothing, of the anus, breast, or

any part of the genitals of a client; any intentional touching of any part of the body of a client, or request to be allowed to touch, including touching through clothing, with the anus, breast, or any part of the genitals of a chemical dependency counselor, counselor intern, certified clinical supervisor, applicant for any such license, or personnel of a clinical training institution or other licensee; or any compulsion or encouragement by a chemical dependency counselor, counselor intern, certified clinical supervisor, clinical training institution, applicant for any such license, or personnel of such licensee, for a client to engage in touching through clothing, of the anus, breast, or any part of the genitals of another individual, or for a client to touch any part of the body of another individual with the anus, breast, or any part of the client's genitals.

(44) Sexual Exploitation--A pattern, practice, or scheme of conduct by a chemical dependency counselor, counselor intern, certified clinical supervisor, clinical training institution, applicant for any such license, or personnel of any such person, that involves a client and can reasonably be construed as being for the purpose of sexual arousal or gratification or sexual abuse. It may include, without limitation, sexual contact, a request for sexual contact, or a representation that sexual contact or exploitation is consistent with, a part of, or a condition of receiving services. It is not a defense to sexual exploitation of a client if it occurs:

(A) with the actual or perceived consent of the client;

(B) outside of the delivery of services;

(C) off of the premises used for the delivery of substance abuse services; or

(D) after the client has stopped receiving services, where the conduct occurs within two years of when the client stopped receiving services.

(45) State Office of Administrative Hearings (SOAH)--The agency to which contested cases are referred by the department.

(46) Substance Abuse--A maladaptive pattern of substance use leading to clinically significant impairment or distress, as defined by the most recently published version of the DSM.

(47) Substance Abuse Education--A planned, structured presentation of information provided by qualified staff, related to substance abuse or substance dependence, allowing for discussion of the material presented, and relevant to the client's goals.

(48) Substance Abuse Services (Services)--A comprehensive term intended to describe activities undertaken to address any substance-related disorder as well as education and prevention activities. The term includes, without limitation, the provision of screening, assessment, referral, chemical dependency treatment, and chemical dependency counseling.

(49) Treatment Plan--An individualized, written plan developed and implemented through a collaborative process between qualified personnel and the client and reflecting and identifying desired treatment outcomes and the strategies for achieving them. At a minimum, the treatment plan addresses the identified substance use disorder(s), as well as issues related to treatment progress, including relationships with family and significant others, employment, education, spirituality, health concerns, and legal needs.

(50) Unethical Conduct--Conduct prohibited by the ethical standards adopted by state or national professional organizations or by rules established by a profession's state licensing agency.

#### **§140.401. License Required.**

(a) An individual identified to the public as a chemical dependency counselor must be licensed or exempt under this subchapter. Except as provided by this section, individuals who are not LCDCs shall not:

(1) offer or provide chemical dependency counseling services other than education;

(2) represent themselves as chemical dependency counselors; or

(3) use any name, title, or designation that implies licensure as a chemical dependency counselor.

(b) The following individuals are exempt from LCDC licensure requirements when they offer or provide chemical dependency counseling services within the scope of their authorized duties and scope of practice:

(1) counselors employed by federal institutions;

(2) school counselors certified by the Texas Education Agency;

(3) to the extent such licensees are acting within the authorized scope of their respective licenses, licensed physicians, licensed psychologists, licensed professional counselors (LPC), licensed marriage and family therapists (LMFT), and licensed social workers;

(4) religious leaders of congregations providing pastoral counseling within the scope of their congregational duties and people who are working for or providing counseling with a program exempted under Texas Health and Safety Code, §§464.051 - 464.061 (relating to Faith-Based Chemical Dependency Treatment Programs);

(5) students who are participating in a practicum that meets the requirements as set forth in §140.407 of this title (relating to Practicum Standards) as part of a supervised course of clinical training at a regionally accredited institution of higher education or a career school or college, as long as they do not hold themselves out as, or use any name, title, or designation that implies licensure as a chemical dependency counselor or

registration under this subchapter as a counselor intern;

(6) provides chemical dependency counseling through a program or in a facility that receives funding from the Texas Department of Criminal Justice and who is credentialed as:

(A) a certified criminal justice addictions professional by the International Certification and Reciprocity Consortium; or

(B) having certified criminal justice professional applicant status issued by the Texas Certification Board of Addiction Professionals.

(c) Residents of other states are exempt from the LCDC licensure requirements of this subchapter if they:

(1) are legally authorized to provide chemical dependency counseling in those states; and

(2) do not offer or provide chemical dependency counseling in Texas for more than 30 days in any 12-month period.

(d) An individual who qualifies for an exemption but chooses to obtain an LCDC license from the department under this subchapter is subject to the same rules and disciplinary actions as other licensees.

#### **§140.402. Scope of Practice.**

(a) An LCDC is authorized to provide chemical dependency counseling services involving the application of the principles, methods, and procedures of the chemical dependency profession as defined by the profession's ethical standards and the KSAs as defined in §140.400 of this title (relating to Definitions). The license does not qualify an individual to provide services outside this scope of practice.

(b) The scope of practice for an LCDC includes services that address substance abuse/dependence and/or its impact on the service recipient subject to the following:

(1) the LCDC is prohibited from using techniques that exceed his or her professional competence;

(2) the service recipient may only be the user, family member or any other individual involved in a significant relationship with a user;

(3) the focus of an LCDC's services shall be on assisting individuals or groups to develop an understanding of chemical dependency problems, define goals, and plan action reflecting the individual's or group's interest, abilities, and needs, as affected by claimed or indicated chemical dependency problems; and

(4) LCDCs are not qualified to treat individuals with a mental health disorder or provide family counseling to individuals whose presenting problems do not include chemical dependency.

**§140.403. Fees.**

(a) The schedule of fees is:

(1) initial LCDC application fee--\$25, in addition to any fees assessed under subsection (e) of this section;

(2) initial LCDC licensure fee--\$75, plus a surcharge of \$10 to fund one or more approved peer assistance programs and administrative costs of the department related to peer assistance programs;

(3) LCDC renewal and renewal application fee--\$115, plus a surcharge of \$10 to fund one or more approved peer assistance programs and administrative costs of the department related to peer assistance programs, in addition to any fees assessed under subsection (e) of this section;

(A) late renewal penalty fee (up to 90 days after the license expiration date)--\$37.50;

(B) late renewal penalty fee (between 91 days and one year after the license expiration date)--\$75;

(4) background investigation fee--\$40;

(5) inactive status fee--\$50;

(6) licensure certificate replacement or duplication fee--\$10;

(7) returned check fee--\$25;

(8) clinical supervisor initial and renewal application and certification fee--\$20; and

(9) criminal history evaluation letter fee--\$50.

(b) The department may contract or enter into a memorandum of understanding with a person to administer the LCDC licensure examination, and the fee charged by that person is subject to change. The current fee shall be printed in the examination registration form. Examination fees shall be paid directly to the contract organization administering the examination.

(c) Licensure fees paid to the department are not refundable.

(d) Fees shall be paid in full with a personal check, cashier's check, commercial check, or money order.

(e) For all new and renewal applications, the department is authorized to collect subscription and convenience fees in amounts determined by the Texas Online Authority to recover costs associated with new and renewal application processing through [texas.gov](http://texas.gov). The fees may be paid with a credit card when applying for or renewing a license online.

**§140.404. LCDC Licensure Application Standards and Counselor Intern Registration.**

(a) Every individual seeking LCDC licensure shall apply for registration as a counselor intern and initiate the licensure application process with the department by submitting the following items in a form acceptable to the department:

(1) the initial LCDC application fee and the background investigation fee;

(2) the department's current application form that has been completed, signed, dated, and notarized;

(3) a recent full-face wallet-sized photograph of the applicant;

(4) two sets of fingerprints completed according to department instructions; and

(5) documentation that the applicant has successfully completed intern registration requirements in §140.405 of this title (relating to Requirements for Counselor Intern Registration).

(b) A licensure or counselor intern registration applicant shall:

(1) read the department rules in this subchapter;

(2) follow all laws and rules, including the ethical standards;

(3) provide to the department, or give the department permission to request from third parties, any additional information or references needed or requested by the department; and

(4) notify the department in writing within 30 days of a change in name, address, or telephone number.

(c) Application materials become the property of the department.

(d) No determination will be made on an application unless it is complete.

(1) Incomplete documents will be returned to the sender. The department will hold the remaining documents, but will not take action on the application until all outstanding documents have been completed as required by the department.

(2) The application and background fee is not refundable and will not be returned. When resubmitting documents that were returned to the sender as incomplete, a second application fee is not required.

(e) A document may be considered incomplete if it does not conform to the following standards.

(1) All documents must be complete, signed, and dated. Signatures shall include credentials. If the documentation relates to past activity, the date of the activity shall also be recorded.

(2) Documentation shall be permanent and legible.

(3) When it is necessary to correct a document, the error shall be marked through with a single line, dated, and initialed by the writer. Correction fluid shall not be used.

(f) An applicant for CI registration must receive written notice of registration from the department before accumulating any supervised work, holding oneself out as a registered counselor intern, taking the licensure examination, or providing chemical dependency services supervised in accordance with the requirements of this subchapter.

(g) Within 45 days of receipt of the application, the department will notify the applicant that the application is complete or specify the additional information required.

(h) An application shall be voided after one year if the applicant has not provided the additional information necessary to process the application.

(i) By signing the application, the applicant accepts responsibility for remaining knowledgeable of and abiding by the applicable rules of this subchapter, including revisions.

**§140.405. Requirements for Counselor Intern Registration.**

(a) To be eligible for counselor intern registration under this subchapter, an individual must:

- (1) be at least 18 years of age;
- (2) have a high school diploma or its equivalent;
- (3) successfully complete 270 classroom hours, or 18 semester hours (or 27 quarter hours), of chemical dependency curricula as described in §140.406 of this title (relating to Standards for 270 Educational Hours);
- (4) complete 300 hours of approved supervised field work practicum as described in §140.407 of this title (relating to Practicum Standards);
- (5) pass the criminal history standards described in §140.431 of this title (relating to Criminal History Standards);
- (6) sign a written agreement to abide by the ethical standards contained in §140.423 of this title (relating to Professional and Ethical Standards); and
- (7) be worthy of the public trust and confidence as determined by the department.

(b) Applicants holding at least a baccalaureate degree in chemical dependency counseling, sociology, psychology, or a major approved by the department as one related to human behavior and development are exempt

from the 270 hours of education and the 300 hour practicum. The applicant must submit an official college transcript.

**§140.406. Standards for 270 Educational Hours.**

(a) At least 135 clock hours (nine semester hours) of the education must be specific to substance use disorders and their treatment. The remaining 135 clock hours may be specific or related to chemical dependency counseling. Related education hours may include courses in psychology, sociology, counseling, mental health, behavioral science, psychiatric nursing, ethics, and rehabilitation counseling.

(b) The education shall be provided by a career school or college, or an accredited institution of higher education.

(c) Educational hours obtained at a career school or college must follow the curriculum for Transdisciplinary Foundations outlined in the KSAs:

- (1) Understanding Addiction;
- (2) Treatment Knowledge;
- (3) Application to Practice; and
- (4) Professional Readiness.

(d) The department will not accept hours unless documented with a passing grade on an official transcript from the school. The applicant shall submit additional information requested by the department if needed to verify the content of a course.

**§140.407. Practicum Standards.**

(a) The practicum shall be completed under the administration of a career school or an accredited institution of higher education.

(b) The applicant must complete the practicum under the administration of a single school.

(c) The department will not accept a practicum without an official transcript from the school and a letter from the school's educational coordinator or chair verifying that the practicum was completed in the field of substance abuse.

(d) Practicum hours may be paid or voluntary.

(e) The practicum shall be delivered according to a written training curriculum that provides the student with an orientation to treatment services and exposure to treatment activities in each of the KSA dimensions. The practicum must include the intern observing treatment delivery and the intern providing services under direct observation. The practicum shall include at least 20 hours of experience in each of the KSA dimensions.

(f) All practicum training shall be provided by qualified credentialed counselors (QCCs).

**§140.408. Requirements for LCDC Licensure.**

(a) To be eligible for, and to complete an initial application for, a chemical dependency counselor license under this subchapter, an individual must:

(1) complete the application required under §140.404 of this title (relating to LCDC Licensure Application Standards and Counselor Intern Registration);

(2) meet the requirements to be a counselor intern in §140.405 of this title (relating to Requirements for Counselor Intern Registration);

(3) hold an associate degree or more advanced degree, with the exception of those LCDCs who are renewing an existing license;

(4) complete 4,000 hours of approved supervised experience working with chemically dependent individuals as described in

§140.409 of this title (relating to Standards for Supervised Work Experience);

(5) pass the written chemical dependency counselor examination approved by the department;

(6) submit an acceptable written case presentation to the test administrator;

(7) submit two letters of recommendation from LCDCs;

(8) submit written assurance that the individual has access to an approved peer assistance program. The department may waive this requirement if the department determines, based upon information submitted by the applicant sufficient to support the determination, that a peer assistance program is not reasonably available to the individual; and

(9) pay the initial LCDC licensure fee.

(b) The department may waive the 4,000 hours of supervised work experience for individuals who hold a masters or doctoral degree in social work or a counseling-related field, and have 48 semester hours of graduate-level courses. An applicant for waiver shall submit an official college transcript with the official seal of the college and the signature of the registrar, and any other related documentation requested by the department.

**§140.409. Standards for Supervised Work Experience.**

(a) An LCDC applicant must be registered with the department as described in §140.404 and §140.405 of this title (relating to LCDC Licensure Application Standards and Counselor Intern Registration, and Requirements for Counselor Intern Registration) before accumulating supervised work experience.

(b) All supervised work experience obtained in Texas and all chemical dependency counseling services offered or provided by a CI must be completed at a registered CTI or under

the supervision of a CCS. The department will not accept hours from an unregistered CTI or from a CCS that has not been certified by the department.

(c) Work experience must be documented on the department's supervised work experience documentation form and signed by a CTI coordinator or a CCS.

(1) All hours included in the documented supervised work experience must be performed within the KSA dimensions and in compliance with the Professional and Ethical Standards set forth in §140.423 of this title (relating to Professional and Ethical Standards for all License Holders).

(2) The supervised work experience form must be accompanied by the counselor intern's job description reflecting duties in the KSA dimensions.

(d) Out-of-state supervised work experience will be accepted only if the following conditions are met.

(1) The applicant is either certified or licensed or in the process of seeking licensure or certification in the other state.

(2) The standards for clinical supervision of work experience must meet or exceed Texas standards and be outlined in the governing agency's rules or standards. A copy of the governing rules or standards must be submitted with the other required documentation of supervised work experience.

(3) The supervised work experience must be documented on the department's supervised work experience form or a comparable form used by the governing agency of the other state.

(e) Supervised work experience may be paid or voluntary.

(f) An individual who has completed the 4,000 hours of supervised work experience and is currently eligible to take or retake the

examination is a graduate intern and may continue to provide chemical dependency services under the auspices of a registered clinical training institution or a certified clinical supervisor during the five-year registration period.

(g) It is the applicant's responsibility to verify the CTI or CCS holds a valid registration or certification issued by the department.

(h) The department may refuse to accept supervised work experience hours submitted to the department that relate to a violation of the Act or this subchapter for which final disciplinary action has been taken against the CI or the CI's registration under this subchapter.

#### **§140.410. Clinical Training Institution (CTI) Registration.**

(a) To become a registered clinical training institution (CTI), a person shall:

(1) provide activities in an array of the KSA dimensions, including assessment and counseling;

(2) serve a predominantly substance-abusing population;

(3) employ a full time QCC as the CTI coordinator;

(4) be in good standing, with no pending disciplinary actions, with applicable licensing and regulatory agencies;

(5) agree to comply with applicable rules in this subchapter; and

(6) submit a complete application.

(b) The program shall receive the registration and training program number before training begins. Approval allows the CTI to provide clinical training at any of its programs or sites with relevant services.

(c) The registration shall expire on the second anniversary of the date of issue. The CTI shall apply to renew the registration every two years by submitting a completed application form. The department may mail a courtesy notice, but it is the program's responsibility to apply in a timely manner.

(d) The CTI shall notify the department in writing within 30 days of the following changes:

- (1) a change in the CTI coordinator;
- (2) a change in the CTI's name, mailing address, or telephone number; and
- (3) closure of the CTI. The CTI shall return its registration with its notice of closure. Closure of the CTI and/or surrender of a CTI's registration in response to a complaint shall be deemed to be the result of formal disciplinary action, as described in §140.429 of this title (relating to Voluntary Surrender of License, Certification, or Registration In Response to a Complaint).

**§140.411. Certified Clinical Supervisor (CCS) Certification Requirements.**

(a) To become a certified clinical supervisor, an individual shall:

- (1) be a QCC, as set forth in §140.400 of this title (relating to Definitions), in good standing, with no active suspension or probated suspension in effect against the individual's license, and no unpaid administrative penalties;
- (2) submit verification of current certification as a clinical supervisor issued by the International Certification and Reciprocity Consortium or one of its member boards;
- (3) submit a plan of activities, to be implemented for any CI the CCS supervises, in an array of the KSA dimensions, including assessment and counseling;

(4) serve a predominantly substance-abusing population;

(5) submit a completed application;

(6) submit two sets of fingerprints completed according to department instructions, if the individual has not previously submitted fingerprints for the purposes of licensure under this subchapter, and pass the criminal history standards described in §140.431 of this title (relating to Criminal History Standards);

(7) pay the background investigation fee, if the individual has not previously paid this fee for the purposes of licensure under this subchapter; and

(8) pay the application fee.

(b) If the individual is licensed as a chemical dependency counselor, then the certification as a clinical supervisor will expire on the same day as the license. If the individual is not licensed as a chemical dependency counselor, then the certification as a clinical supervisor will expire on the second anniversary of the last day of the month of issuance.

(c) An individual may renew this certification by submitting the items as described in subsection (a) of this section.

**§140.412. LCDC Licensure Examination.**

(a) To be eligible for the LCDC licensure examination, an applicant shall:

(1) be registered with the department as a counselor intern;

(2) submit an acceptable case study to the test administrator; and

(3) pay the examination fee to the test administrator.

(b) All required documentation and fees must be submitted to the test administrator by the specified deadlines. It is the applicant's responsibility to obtain testing information.

(c) An applicant may only take the examination four times, and all testing must be completed within five years from the date of registration.

**§140.413. Counselor Intern Registration Expiration.**

A counselor intern's registration will expire if an applicant fails the LCDC licensure examination a fourth time or if an applicant does not complete one or more of the requirements for licensure as set forth in §140.408 of this title (relating to Requirements for LCDC Licensure) within five years from the date of registration, whichever date is earlier. In either case, the department will not issue a license. To re-register as a counselor intern after expiration of a counselor intern's registration, the individual must meet the requirements for subsequent registration set forth in this section.

(1) An applicant whose registration has expired cannot offer or provide chemical dependency counseling services or represent himself or herself as a CI or graduate CI.

(2) An individual whose CI registration has expired under this section may reapply for CI registration and licensure only after completing 12 semester hours or 18 quarter hours of course work at a career school or college or an accredited institution of higher education. The coursework must be related to chemical dependency counseling, psychology, sociology, counseling, mental health, behavioral science, psychiatric nursing, ethics, or rehabilitation counseling. The new application shall not be considered complete without an official college transcript documenting the required course work, a subsequent registration application form with the other items required under §140.404 of this title (relating to LCDC Licensure Application Standards and Counselor Intern Registration), and the initial LCDC application and background investigation fee. In

addition, the applicant must pass the criminal history standards described in §140.431 of this title (relating to Criminal History Standards) at the time of re-registration and is subject to the applicable requirements of the following subparagraphs:

(A) if an individual whose CI registration has expired applies to re-register within five years of the date of expiration of the individual's CI registration and the department grants the new application for CI registration, the individual must complete only the requirements for licensure that were not fulfilled during the individual's previous period of registration, and may take the examination an additional three times, if needed. The outstanding requirements for licensure must be completed within three years of the new date of registration. During this period, the applicant may provide chemical dependency counseling services as a counselor intern in accordance with the supervision requirements of this subchapter.

(B) if an individual applies for re-registration as a CI more than five years after the individual's CI registration expired and the department grants the new application for CI registration, the applicant must complete all requirements of §140.408 of this title (relating to Requirements for LCDC licensure) during the new period of registration to become licensed, except that the applicant may rely on a qualifying degree obtained prior to the period of registration.

**§140.414. LCDC Licensure Through Reciprocity.**

(a) An individual licensed or certified in another state as a chemical dependency counselor may apply for licensure as an LCDC through reciprocity by submitting:

(1) a copy of the reciprocal license or certification, with verified information from the issuing authority as to any disciplinary history;

(2) the department's current reciprocity application, which has been completed, signed, dated, and notarized;

(3) two sets of fingerprints completed according to department instructions;

(4) a recent full-face wallet-sized photograph of the applicant;

(5) two letters of recommendation; and

(6) the application fee and the background investigation fee;

(7) proof of successful completion of a licensing examination approved by the department; and

(8) an official transcript showing that the individual holds an associate degree or more advanced degree.

(b) The applicant shall meet the criminal history standards described in §140.431 of this title (relating to Criminal History Standards).

(c) The department will not issue a license based on reciprocity unless it finds that the licensing or certification standards of the state of origin are at least substantially equivalent to the requirements for licensure of the Act and this subchapter. A state that does not require successful completion of a licensing examination approved by the department or a degree, as set forth in subsection (a) of this section, does not have standards that are substantially equivalent to the requirements for licensure under the Act and this subchapter. Any applicant for reciprocity that has not successfully completed a licensure examination approved by the department or a degree that satisfies subsection (a) of this section shall be required to do so as a prerequisite to eligibility for a license based upon reciprocity.

(d) An applicant who does not qualify for reciprocity may apply for licensure based upon the standards set forth in §140.408 of this title.

#### **§140.415. Issuing Licenses.**

(a) Absent action by the department against the applicant under §140.426 of this title (relating to Disciplinary Actions), the department will issue the applicable form of license under this subchapter when the applicant has met all requirements and paid all required fees for the license.

(b) All licensees under this subchapter shall keep current versions of the certificate of licensure and the department's public complaint notice containing the current name, mailing address, and telephone number for the department, and a statement that a complaint against a licensee under this subchapter may be directed to the department, prominently displayed in their place of business. LCDCs may apply an adhesive label issued by the Texas Certification Board of Addiction Professionals with the designation and expiration date of any other related certification held by the license holder that is approved by the International Certification and Reciprocity Consortium or another person approved by the department.

(c) A licensee shall not duplicate a licensure certificate to obtain a second copy of the license. A licensee may obtain an official duplicate certificate from the department by submitting a written request and the fee specified in §140.403 of this title (relating to Fees).

(d) The department will replace a lost or damaged certificate if the licensee provides:

(1) the remnants of the original licensure certificate (if damaged);

(2) the original licensure certificate and copy of legal documents (for a name change);

(3) the original licensure certificate (for printing error); or

(4) a notarized statement if the licensure certificate has been lost, stolen, or destroyed.

(e) A license replaced because of a printing error or mail damage will be replaced without cost, but all other replacements of licensure certificates require a fee, as specified in §140.403 of this title.

(f) LCDCs and CCSs shall notify the department in writing within 30 days of a change in name, address, or telephone number.

(g) The licensee shall return the original licensure certificate if it is relinquished, suspended, revoked, or voluntarily surrendered.

(h) All licensees shall remain knowledgeable of and abide by applicable statutes and rules and their amendments.

(i) A licensee may at any time voluntarily offer to relinquish his or her license for any reason, without compulsion.

(1) The original licensure certificate may be delivered to the department by hand or postal delivery.

(2) If there is no complaint pending against the licensee, the department may accept the relinquishment and void the applicable license.

(3) If a complaint is pending, the procedures for acceptance of a license surrender are set out in §140.429 of this title (relating to Voluntary Surrender of License, Certification, or Registration In Response to a Complaint).

(4) A license that has been surrendered and accepted may not be reinstated. However, a person may apply for a new license in accordance with the Act and this subchapter.

#### **§140.416. LCDC License Expiration, Renewal, and Continuing Education Requirements.**

(a) An LCDC license issued under this subchapter is valid until the expiration date printed on the license, which is calculated on a two-year renewal cycle from the date of original licensure. The licensee is responsible for renewing the license in a timely manner. The department will send the licensee a renewal notice, but failure to receive notice from the department does not waive or extend renewal deadlines.

(b) To renew a license, the LCDC shall:

(1) send a complete renewal application to the department;

(2) pay the renewal and renewal application fees as set forth in §140.403 of this title (relating to Fees);

(3) meet the criminal history standards described in §140.431 of this title (relating to Criminal History Standards); and

(4) complete all required continuing education as described in §140.418 of this title (relating to Continuing Education Standards).

(c) An LCDC who is otherwise eligible to renew a license may renew an unexpired license by submitting a complete renewal application and paying the required renewal fee to the department before the expiration date of the license. The renewal application and fee must be postmarked on or before the expiration date.

(d) If the LCDC's license has been expired for 90 days or less, the person may renew the license by paying to the department a fee in an amount specified in §140.403 of this title (relating to Fees.).

(e) If the LCDC's license has been expired for more than 90 days but less than one year, the person may renew the license by

paying to the department a fee in an amount specified in §140.403 of this title.

(f) If the LCDC's license has been expired for one year or more, the person may not renew the license. The LCDC may obtain a new license by submitting to reexamination and complying, under current standards, with the requirements and procedures for obtaining an initial license.

(g) Notwithstanding in subsection (f) of this section, the department may renew an LCDC license that has been expired for one or more years without reexamination if the applicant was licensed in this state, moved to another state, and is currently licensed as an LCDC and in good standing in that state, with no pending disciplinary actions or active sanctions against the license or LCDC, and has been in practice in the other state for the two years preceding the date the person applies for renewal. The person must pay to the department a fee in an amount equal to two times the required renewal fee for the license.

(h) An LCDC whose license has expired cannot offer or provide chemical dependency counseling services as defined by the KSAs or represent himself or herself as an LCDC.

(i) An LCDC who holds a master's degree or more advanced degree shall complete at least 24 hours of continuing education during each two-year licensure period. The 24 hours of education must include the specific courses required in subsection (k) of this section and, if applicable, in subsection (l) of this section.

(j) An LCDC who does not meet the criteria in subsection (i) of this section must complete at least 40 hours of continuing education. The 40 hours of education must include the specific courses required in subsection (k) of this section and, if applicable, in subsection (l) of this section.

(k) Continuing education hours must include at least three hours of ethics training and a total of at least six hours of training in HIV, Hepatitis C, and sexually transmitted diseases.

(l) If an individual's job duties include clinical supervision, required hours of continuing education must include three hours of clinical supervision training.

(m) An LCDC who teaches a qualifying continuing education course shall receive the same number of hours as students attending the course. Only one set of hours can be accrued for a single curriculum, and no more than one half of the required amount of hours of continuing education as set forth in subsections (i) and (j) of this section shall be granted for courses taught by the LCDC.

#### **§140.417. Renewal of License by Active Military Members.**

If an LCDC, CI, or CCS fails to timely renew his or her license because the licensee is called to or is on active duty with the armed forces of the United States, or ordered by proper authority to active duty, outside the state of Texas, the licensee or the licensee's authorized representative may request an additional amount of time, equal to the total amount of time on active duty, for the licensee to complete any continuing education or other renewal requirements. A written request for an extension of time to complete renewal requirements under this section must be received by the department by no later than 60 days after the licensee is discharged from active duty, but, whenever possible, shall be submitted before the commencement of active duty or the scheduled expiration of the applicable license.

(1) If the request is made by the licensee's authorized representative, the request shall include a copy of the appropriate power of attorney or written evidence of a spousal relationship.

(2) The written request shall include a copy of the official transfer orders of the

licensee or other official military documentation showing that the licensee is called to or on active duty. The licensee shall also provide documentation of the date of discharge from active duty, either with the written request or upon discharge, whichever is later.

(3) If a timely request is made in accordance with this section, the department will exempt the licensee from payment of the late renewal fee.

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

(5) A person eligible for an extension of time to complete renewal requirements under this section for a license issued under this subchapter may not provide services to which the applicable license under this subchapter applies after the regularly scheduled expiration of that person's license until such time, if any, as the licensee completes renewal of the license in accordance with this subsection.

**§140.418. Continuing Education Standards.**

(a) The department will accept continuing education (CE) hours that meet the criteria in this section. Hours that do not meet these criteria may be evaluated on a case-by-case basis.

(b) Subject to department review, the department will accept continuing education credits approved by:

(1) recognized state boards, including, but not limited to the Texas State Board of Social Work Examiners, the Texas State Board of Examiners of Marriage and Family Therapists, and the Texas State Board of Examiners of Professional Counselors;

(2) the National Association of Alcohol and Drug Abuse Counselors; and

(3) the Texas Certification Board for Addiction Professionals.

(c) All continuing education hours must be specific to substance use disorders and their treatment, or related to chemical dependency counseling, as defined by the KSA dimensions. Related education hours may include psychology, sociology, counseling, mental health, behavioral science, psychiatric nursing, ethics, and rehabilitation counseling.

(d) The department may accept continuing education hours approved by other state or federal agencies or organizations, subject to the department's review and approval.

(e) The department will monitor an LCDC'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 courses are not to be submitted to the department unless written notification of an audit is received informing the licensee that he or she has been randomly selected for a document audit. Upon receipt of written notification of an audit, the licensee shall submit all appropriate documentation to substantiate compliance with the continuing education and documentation requirements as set forth in this section and §140.416 of this title (relating to LCDC License Expiration, Renewal and Continuing Education Requirements).

(f) Continuing education certificates must contain:

(1) applicant's name and license number;

(2) date the continuing education hours were completed;

(3) number of hours assigned to each course;

(4) course title;

(5) educational provider name and, if applicable, number;

(6) approving agency or entity's name; and

(7) name and signature of instructor or coordinator.

(g) The department will accept education hours from an accredited college or university.

(1) College transcripts must contain the official seal of the college and the signature of the registrar.

(2) One semester hour of college credit is equivalent to 15 continuing education hours. One quarter hour of college credit is equivalent to 10 continuing education hours.

(h) Independent study or distance learning courses must be guided and monitored by the instructor and include an evaluation of performance and/or participation verification. In addition, the course must be structured so that students have access to faculty or instructors for questions and assistance in the completion of such course work.

#### **§140.419. Inactive Status.**

(a) An LCDC may request to have his or her license placed on inactive status by submitting a written request and paying the inactive status fee before the license expires. Inactive status shall not be granted unless the license is current and in good standing.

(b) A person on inactive status cannot perform activities outlined in the KSA dimensions, represent himself or herself as an LCDC, or act in the capacity of a QCC. A person is subject to investigation and

enforcement action during the period of inactive status.

(c) Inactive status shall not exceed two years and is not renewable.

(d) To return to active status, the person shall submit a written request to reactivate the license, a completed renewal application form, the renewal application fee and the license renewal fee, and documentation of 20 hours of continuing education obtained within the inactive status period. The continuing education shall include the courses described in §140.416(k) of this title (relating to LCDC License Expiration, Renewal, and Continuing Education Requirements).

(e) An inactive license will automatically expire at the end of the two-year inactive period. Renewal of an expired inactive license shall be subject to the provisions set forth in §504.203 of the Act (relating to License Renewal).

#### **§140.420. Peer Assistance Programs.**

(a) The department may issue or renew, as applicable, a license, registration or certification to an individual convicted or placed on community supervision in any jurisdiction for a drug or alcohol offense described in §140.431 (relating to Criminal History Standards) if the department determines that the applicant has successfully completed participation in an approved peer assistance program.

(b) A peer assistance program shall identify, assist, and monitor participating LCDCs whose ability to perform a professional service is impaired or likely to be impaired by abuse of or dependency on drugs or alcohol, so that the individuals may return to safe practice. An LCDC who meet the standard for participation shall be referred to in this section as an "impaired professional." A peer assistance program shall offer support and assistance with a rehabilitative emphasis rather than a disciplinary emphasis.

(c) To become an approved peer assistance program, a professional association shall:

(1) submit an application form prescribed by the department;

(2) submit a written description of the peer assistance program that includes:

(A) goals and objectives, including criteria for successful completion of the peer assistance program;

(B) target population;

(C) the plan for ensuring services are available throughout the state;

(D) how the following areas are to be addressed:

(i) identification of and intervention with impaired professionals;

(ii) assistance with accessing quality treatment;

(iii) monitoring, support, and evaluation of participants;

(iv) intervention in crises, including relapses; and

(v) support during the reentry by participants to professional practice or instructional roles.

(E) staffing plans, minimum staff qualifications by position, and planned staffing levels relative to numbers of participants.

(F) the plan for program quality assurance and self-evaluation; and

(G) the methods that will be utilized to promote and encourage use of the program.

(3) meet the minimum criteria established for peer assistance programs under Texas Health and Safety Code, Chapter 467 and Chapter 451 of this title, as well as any additional criteria set forth in this section and in Texas Occupations Code §504.057 for peer assistance programs for LCDCs. An approved peer assistance program will remain subject to and comply with these provisions once approved. In the event of direct conflict between any of the provisions, the provisions of Texas Occupations Code, §504.057 and this section shall govern.

(d) A peer assistance program may seek department funding for its program by responding to a department solicitation relating to peer assistance programs established under Texas Occupations Code, §504.057. A peer assistance program must be approved by the department to be eligible to contract with the department for funding of its program. Approval of the peer assistance program shall expire on the second anniversary of the date of approval. To renew the approval status, a professional association shall submit the materials as outlined in subsection (c) of this section.

(e) The peer assistance program shall comply with applicable Federal and State confidentiality laws and regulations, including, without limitation, Code of Federal Regulations, Title 42, Part 2 (relating to Confidentiality of Alcohol and Drug Abuse Patient Records) and Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records).

(f) The peer assistance program shall notify the department, and, if required by Texas Health and Safety Code, §467.005 (relating to Reports), the person who made the report of the impaired professional to the peer assistance program, if the impaired individual fails to participate in the applicable program as required by the department.

(g) An impaired professional who is reported to a peer assistance program by the department or another third party shall, as a condition of participation in the program, give consent to the program that, at a minimum,

authorizes the program to disclose the impaired person's failure to successfully complete the program to the department, and, as necessary for the peer assistance program to comply with its notification requirements, to the person who reported the impaired professional to the program.

(h) The department may revoke its approval of a program established by a professional association under this chapter, after a right to a fair hearing in accordance with §§1.41, 1.51 - 1.55 of this title (relating to Fair Hearing Procedures), if the authority determines that:

(1) the program does not comply with the criteria established by the department; and

(2) the professional association does not bring the program into compliance within a reasonable time, as determined by the department.

**§140.421. Standards for the Training and Supervision of Counselor Interns.**

(a) A CTI shall appoint a single training coordinator who is a qualified credentialed counselor (QCC). The CTI coordinator or a CCS shall oversee all training activities and ensure compliance with department requirements and rules relating to the training and supervision of CIs.

(b) The CTI or CCS shall establish acceptance criteria for CIs. No applicant shall be accepted to a CTI or accepted for CCS supervision without:

(1) documentation that the applicant is registered as a counselor intern with the department; and

(2) a signed ethics agreement that is consistent with the Professional and Ethical Standards in §140.423 of this title (relating to Professional and Ethical Standards).

(c) The CTI or CCS shall establish the following level system to classify counselor interns according to hours of supervised work experience:

(1) Level I: 0-1,000 hours of work experience;

(2) Level II: 1,001-2000 hours of work experience;

(3) Level III: 2,001-4,000 hours of work experience; and

(4) Graduate Status: over 4,000 hours of work experience.

(d) The CTI or CCS shall have a supervision structure that includes all intern levels. The CTI or CCS shall designate each intern's level in writing and provide the intern with a copy of the documentation.

(e) All counselor interns at a CTI must be under the direct supervision of a QCC as described in §140.422 of this title (relating to Direct Supervision of Interns). A CCS must directly supervise a counselor intern under the CCS's supervision, as described in §140.422 of this title.

(f) The CTI or CCS shall provide each Level I, II, and III intern with reading assignments and training activities for the supervised work experience that includes material in each KSA dimension.

(g) The CTI or CCS shall use the department's counselor intern evaluation forms to structure the intern's 4,000 hours of supervised work experience. The CI's supervising QCC, under the oversight and monitoring of the CTI coordinator, shall perform the CTI's responsibilities in the following paragraphs of this subsection.

(1) The CCS or CTI shall set weekly objectives with the CI based on areas targeted for improvement.

(2) The CCS or CTI shall provide the CI reading, computer, and/or video assignments that address areas needing improvement. The CTI or CCS shall allow the intern two hours per month to complete these assignments.

(3) The CCS or CTI shall monitor the intern's progress and provide verbal and written feedback during weekly supervision meetings.

(4) The intern shall complete a written KSA self-evaluation during the first 50 hours of work experience.

(5) The CCS or the CTI and the intern shall complete and discuss a written KSA evaluation at the completion of each level of experience (after 1,000 hours, 2,000 hours, and 4,000 hours).

(h) The CTI or CCS shall not allow a Level I, II, or III intern to accrue more than 40 hours of work experience per week.

(i) A graduate intern may continue to provide chemical dependency counseling services at a registered clinical training institution or with a CCS during that individual's maximum CI registration period.

(j) The CTI coordinator or CCS shall send the following documents directly to the department and provide the intern with copies within ten working days from the date the intern completes the required 4,000 hours or leaves the agency:

(1) the department's supervised work experience documentation form, fully completed and signed by the CCS or the CI's supervising QCC and the CTI Coordinator; and

(2) a copy of the intern's job description showing job responsibilities within the KSAs.

(k) All activities counted towards the intern's supervised work experience shall be

within the scope of chemical dependency counseling services as defined by the KSAs.

(l) The CTI or CCS shall not approve hours for which the intern fails to substantially complete related activities and supervision assignments. Any failure to complete assignments shall be documented on the weekly supervision form.

(m) The CTI or CCS shall give each CI the department's CTI and CCS Assessment Form with instructions to complete the assessment and mail it directly to the department.

(n) The CTI or CCS shall use current department forms for all training and supervision documentation mandated by the department.

(o) The CTI shall ensure that each CTI coordinator and supervising QCC obtains three hours of continuing education in clinical supervision every two years.

(p) The CTI or CCS shall inform interns of licensure examination requirements and procedures, as well as examination schedules and information provided by the department.

(q) The CTI or CCS shall ensure that interns designate their status by using "counselor intern," "intern" or "CI" when signing client record entries, and that only registered CIs use this designation.

(r) The CTI or CCS shall maintain a complete file for each counselor intern for five years from the end of the CI's employment with a CTI or supervision by a CCS, as applicable, to include:

(1) letter of registration;

(2) ethics agreement signed by the intern;

(3) copies of KSA evaluations;

(4) documentation of all supervision activities;

(5) documentation of intern levels and accumulated hours at each level; and

(6) copy of the supervised work experience documentation form.

(s) The CTI or CCS shall give the intern a copy of all information contained in the intern file when the intern completes the required supervised work experience and/or leaves the agency.

**§140.422. Direct Supervision of Interns.**

(a) Direct supervision is oversight and direction of a counselor intern by a CCS, or either the CTI coordinator or the intern's supervising QCC at a CTI, which complies with the provisions in this section. Nothing in this section or subchapter shall be construed to authorize the provision of chemical dependency treatment without a license, where a license is required under Texas Health and Safety Code, Chapter 464 and Chapter 448 of this title.

(b) The CCS, or the CTI coordinator and the intern's supervising QCC at a CTI, shall assume responsibility for the actions of the intern within the scope of the intern's clinical training.

(c) If the intern has less than 2,000 hours of supervised work experience, the supervisor must be on site when the intern is providing services. If the intern has at least 2,000 hours of documented supervised work experience, the supervisor may be on site or immediately accessible by telephone.

(d) During an intern's first 1,000 hours of supervised work experience (Level I), the CCS, or the CTI coordinator or intern's supervising QCC at a CTI, shall:

(1) be on duty at the program site where the intern is working;

(2) observe and document the intern performing assigned activities at least

once every two weeks (or at least once every 80 hours of the CI's work schedule);

(3) provide and document one hour of face-to-face individual or group supervision each week; and

(4) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(e) During an intern's second 1,000 hours of supervised work experience (Level II), the CCS, or the CTI coordinator or intern's supervising QCC at a CTI, shall:

(1) be on duty at the program site where the intern is working;

(2) observe and document the intern performing assigned activities at least once every month (or at least once every 160 hours of the CI's work schedule);

(3) provide and document one hour of face-to-face individual or group supervision each week; and

(4) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(f) An individual who has successfully completed the licensing examination may be supervised in accordance with Level III standards set forth in subsection (g) of this section, but is still required to complete 4,000 hours of supervised work experience before achieving graduate status in the absence of a waiver under §140.408 of this title (relating to Requirements for LCDC Licensure).

(g) During an intern's last 2,000 hours of required supervised work experience (Level III), the CCS, or the CTI coordinator or intern's supervising QCC at a CTI, shall:

(1) be available by phone while the intern is working;

(2) observe and document the intern performing assigned activities as determined necessary by the CTI coordinator or CCS;

(3) provide and document one hour of face-to-face individual or group supervision each week; and

(4) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(h) After an intern achieves graduate status, the CCS, or the CTI coordinator or intern's supervising QCC at a CTI, shall:

(1) be available by phone while the graduate intern is working;

(2) provide and document one hour of face-to-face individual or group supervision each week; and

(3) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the graduate intern.

(i) A supervisor must provide, at a minimum, an average of two hours of supervision-related activity per week per intern.

**§140.423. Professional and Ethical Standards for all License Holders.**

(a) A licensee shall not discriminate against any client or other person on the basis of gender, race, religion, age, national origin, disability, sexual orientation, or economic condition.

(b) A licensee shall maintain objectivity, integrity, and the highest standards in providing services to the client.

(c) A licensee shall:

(1) in addition to complying with any other applicable reporting requirements, promptly report to the department any suspected, alleged, or substantiated incidents

of abuse, neglect, or exploitation committed by oneself or another licensee under this subchapter;

(2) unless otherwise prohibited by law, promptly report to the department violations of Texas Occupations Code, Chapter 504 (relating to Chemical Dependency Counselors), or rules adopted under the Act, including violations of this subchapter by oneself or another licensee;

(3) recognize the limitations of the licensee's ability and shall not offer services outside the licensee's scope of practice or licensure or use techniques that exceed the person's license authorization or professional competence; and

(4) make every effort to prevent the practice of chemical dependency counseling by unqualified or unauthorized persons.

(d) A licensee shall not engage in the practice of chemical dependency counseling if impaired by, intoxicated by, or under the influence of chemicals, including alcohol.

(e) A licensee shall uphold the law and refrain from unprofessional and unethical conduct. In so doing, the licensee shall:

(1) comply with all applicable laws, regulations, and orders;

(2) not make any claim, directly or by implication, that the person possesses professional qualifications, licensure, or affiliations that the person does not possess;

(3) include, as applicable, their current credentials when signing all professional documents;

(4) not mislead or deceive the public or any person; and

(5) refrain from any act that might tend to discredit the license or profession.

(f) A licensee shall:

(1) report information fairly, professionally, and accurately to clients, other professionals, the department, and the general public;

(2) maintain complete, accurate, and appropriate documentation of services provided;

(3) not submit or cause or allow to be submitted to a client or third party payer a bill for services that were not provided or were improper, unreasonable, or medically or clinically unnecessary, with the exception of a missed appointment for which notice has been given that a charge will be assessed, and as permitted by law concerning third party billing; and

(4) provide responsible and objective training and supervision to interns and subordinates under the LCD, CCS, or CTI's supervision. This includes properly documenting supervision and work experience and providing supervisory documentation needed for licensure.

(g) In any publication, a licensee shall give written credit to all persons or works that have contributed to or directly influenced the publication.

(h) Licensees shall respect a client's dignity, and shall not engage in, or permit their employees or supervisees to engage in, any action that may injure the welfare of any client or person to whom the licensee is providing services. The licensee shall:

(1) make every effort to provide access to treatment, including advising clients about resources and services, taking into account the financial constraints of the client;

(2) remain loyal and professionally responsible to the client at all times, disclose the counselor's ethical code of standards, and inform the client of the counselor's loyalties and responsibilities;

(3) not engage in any activity that could be considered a professional conflict, and shall immediately remove oneself from such a conflict if one occurs;

(4) terminate any professional relationship or counseling services that are not beneficial, or are in any way detrimental to the client;

(5) always act in the best interest of the client;

(6) not abuse, neglect, or exploit a client;

(7) not engage in a sexual, personal, or business relationship with a client or a member of the client's immediate family (including any client receiving services from the licensee's employer) for at least two years after the client's services end;

(8) not request a client to divulge confidential information that is not necessary and appropriate for the services being provided;

(9) not offer or provide chemical dependency counseling, supervision, or related services, nor meet with a client, in settings or locations which are inappropriate, harmful to the client or others, or which would tend to discredit the profession of chemical dependency counseling; and

(10) refrain from using any method or engaging in any conduct that could be considered coercive or degrading to the client or another, including, without limitation, threats, negative labeling, or attempts to provoke shame or humiliation.

(i) A licensee shall protect the privacy of all clients and shall not disclose confidential information without express written consent, except as permitted by law. The licensee shall remain knowledgeable of and obey all state and federal laws and regulations relating to confidentiality of chemical dependency treatment records, and shall:

(1) inform the client, and obtain the client's consent, before tape-recording the client or allowing another person to observe or monitor the client;

(2) ensure the security of client records;

(3) not discuss or divulge information obtained in clinical or consulting relationships except in appropriate settings and for professional purposes which clearly relate to the case, to the extent authorized by law;

(4) avoid invasion of the privacy of the client;

(5) provide the client his/her rights regarding confidentiality, in writing, as part of informing the client in any areas likely to affect the client's confidentiality; and

(6) ensure the data requested from other parties is limited to information that is necessary and appropriate to the services being provided and is accessible only to appropriate parties.

(j) A licensee shall inform the client about all relevant and important aspects of the professional relationship between the client and the licensee, and shall:

(1) in the case of clients who are not their own consenters, inform the client's parent(s) or legal guardian(s) of circumstances that might influence the professional relationship;

(2) not enter into a professional relationship with members of the counselor's family, close friends or associates, or others whose welfare might be jeopardized in any way by such relationship;

(3) not establish a personal relationship with any client (including any individual receiving services from the licensee's employer) for at least two years after the client's services end;

(4) neither engage in any type or form of romantic or sexual behavior with a client (including any individual receiving services from the licensee's employer) for at least two years after the client's services end nor accept as a client anyone with whom they have engaged in romantic or sexual behavior; and

(5) not exploit relationships with clients for personal gain.

(k) A licensee shall treat other professionals with respect, courtesy, and fairness, and shall:

(1) refrain from providing or offering professional services to a client who is receiving chemical dependency treatment and/or counseling services from another professional, except with the knowledge of the other professional and the consent of the client, until treatment and/or counseling services with the other professional ends;

(2) cooperate with the department, professional peer review groups or programs, and professional ethics committees or associations, and promptly supply all requested or relevant information, unless prohibited by law; and

(3) ensure that the person's actions in no way exploit relationships with supervisees, employees, students, research participants or volunteers.

(l) Prior to providing treatment and/or counseling or substance abuse services, a licensee shall inform the client of the licensee's fee schedule and establish financial arrangements with a client. The counselor shall not:

(1) charge exorbitant or unreasonable fees for any service;

(2) pay or receive any commission, consideration, or benefit of any kind related to the referral of a client for services;

(3) use the client relationship for the purpose of personal gain, or profit, except for the normal, usual charge for services provided; or

(4) accept a private professional fee or any gift or gratuity from a client if the client's services are paid for by another funding source, or if the client is receiving treatment from a facility where the licensee provides services (unless all parties agree to the arrangement in writing).

**§140.424. Standards for Private Practice.**

(a) This subsection applies to counseling records of an LCDC's private practice. Documentation of professional services rendered in another setting shall be created and maintained in accordance with any legal requirements for documentation applicable to the particular setting in which they were provided.

(1) The counselor shall establish and maintain a record for every client at the time of initial service delivery. The client record shall include:

(A) client identifying information;

(B) assessment results, including a statement of the client's problems and/or diagnosis;

(C) plan of care;

(D) documentation of all services provided, including date, duration, and method of delivery; and

(E) a description of the client's status at the time services are discontinued.

(2) The counselor shall maintain a record of all charges billed and all payments received.

(3) All entries shall be permanent, legible, accurate, and completed in a timely manner.

(4) All documents and entries shall be dated and authenticated. Authentication of electronic records shall be by a digital authentication key.

(5) When it is necessary to correct a record, the error shall be marked through with a single line, dated, and initialed by the counselor.

(6) The counselor shall protect all client records and other client-identifying information from destruction, loss, tampering, and unauthorized access, use or disclosure. Electronic client information shall be protected to the same degree as paper records and in accordance with applicable law and accepted security standards for electronic health records prevailing at the time, and shall have a reliable backup system.

(7) The counselor shall comply with all applicable state and federal laws relating to confidentiality, including the requirements of Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records) and Code of Federal Regulations, Title 42, Part 2 (relating to Confidentiality of Alcohol and Drug Abuse Patient Records).

(8) The counselor shall not deny clients access to the content of their records except as provided by law, including Texas Health and Safety Code, §611.0045 (relating to Right to Mental Health Record).

(9) Client records shall be kept for at least five years. Records of adolescent clients shall be kept for at least five years after the client becomes eighteen years of age.

(b) This subsection applies to an LCDC in private practice using the internet or telephone to provide chemical dependency counseling services.

(1) The counselor must reside in and perform the services from Texas.

(2) The department maintains its authority to regulate the counselor regardless of the location of the client.

(3) The counselor is subject to the applicable laws of other states and countries where the client may reside or receive services by electronic means, including any laws limiting the counselor's practice.

(4) The counselor's provision of services by electronic medium must comply with applicable law and accepted security standards at the time, including, as applicable, Code of Federal Regulations, Title 42, Part 2 (relating to Confidentiality of Alcohol and Drug Abuse Patient Records), Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA)(P.L. 104-191), and Health Information Technology for Economic and Clinical Health Act (HITECH Act), Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (Feb. 17, 2009), and their implementing regulations, including 45 Code of Federal Regulations Parts 160 (relating to General Administrative Requirements), 164 (relating to Security and Privacy), and 170 (Health Information Technology Standards, Implementation Specifications, And Certification Criteria And Certification Programs For Health Information Technology).

(5) The counselor must be able to verify the identification of the client and ensure the client's appropriate age.

(6) If a counselor uses the Internet as the electronic means by which counseling is provided or transfers client or other protected health information through the Internet, the counselor must comply with the following:

(A) counseling, client, and other protected health information may only

be transferred using encryption that meets or exceeds the Security Standards for the Protection of Electronic Protected Health Information under 45 Code of Federal Regulations Part 164, Subpart C, that are in effect at the time;

(B) e-mail communication containing counseling, client, and/or other protected health information is subject to the restrictions set forth in subparagraph (A) of this subsection; and

(C) the counselor must provide technical backup for system problems by providing a phone number to the client to call for technical support and a contingency plan for the client when a technical problem occurs.

(7) The counselor must provide services that utilize audio or video in real time.

(8) The counselor must provide a description of all services offered to the client in writing and describe who is appropriate for the services. The description must include:

(A) a grievance procedure and provide a link to department information for filing a complaint when using the Internet and the toll-free number for the department when counseling by telephone;

(B) the counselor's credentials, education level, and training;

(C) a link to the licensure verification page when using the Internet and the toll-free number for the department when counseling by telephone;

(D) the difference between electronic counseling and traditional counseling; and

(E) the potential risk regarding clinical issues, security and confidentiality.

(9) Services may only be offered by licensed chemical dependency counselors.

(10) The counselor must provide an emergency contact person and phone number and emergency procedures to the client in writing.

**§140.425. Complaint and Investigation Procedures.**

(a) The provisions of this section shall apply to complaints against a licensee under this subchapter, notwithstanding the provisions of §442.102 of this title (relating to Complaints and Investigations).

(b) A person wishing to report an alleged violation of the Act or this subchapter may file a complaint with the department. All complaints shall be in writing and under oath.

(c) Upon receipt of a complaint, the department will send an acknowledgment letter to the complainant, together with the department's policies and procedures pertaining to complaint investigation and resolution. The department may accept an anonymous complaint if there is sufficient information for the investigation.

(d) The department will document, evaluate, prioritize, and investigate complaints based on the seriousness of the alleged violation and the level of client or participant risk, and will make any report to another agency required by law.

(e) Prior to or during an investigation, the department will request a response from the licensee or person against whom a complaint has been filed, and provide the department's policies and procedures pertaining to complaint investigation and resolution. The licensee or person against whom an alleged violation has been filed shall respond within 15 working days of receipt of the department's request.

(f) Pursuant to a department investigation regarding an alleged violation of

the Act or this subchapter, a licensee shall produce records, documents and other evidence related to the license, registration, or approval to the department, upon request, unless otherwise prohibited by law. A licensee shall not interfere with the department's access to clients, witnesses or other parties.

(g) 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 subchapter, the department may close the complaint and give written notice of the closure to the person against whom the complaint was filed and the complainant.

(h) The department may refer complaints outside its jurisdiction, or also within the jurisdiction of another licensing program within the department or of another agency, to the appropriate program or agency for action, as permitted by law.

(i) The department, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person against whom the complaint was made of the status of the complaint, unless the notice would jeopardize an undercover investigation.

**§140.426. Disciplinary Actions.**

(a) The provisions of this section shall apply to all types of licensees under this subchapter, notwithstanding the provisions of §442.103 of this title (relating to Procedure for Contested Cases for Counselor and Facility Licenses), and shall not limit the authority of the department to take any other action against a license, registration, or certification, or the holder of, or applicant for, a license, registration, or certification, under §140.431 of this title (relating to Criminal History Standards), or as otherwise authorized by applicable statute or rule.

(b) The department may take action as authorized under subsection (c) of this section if an applicant for, or holder of, a license,

registration, or certification issued under this subchapter:

(1) violates or assists another to violate the Act, a rule under this subchapter, or an Order issued under the Act or this subchapter's rules;

(2) circumvents or attempts to circumvent the Act or a rule under this subchapter;

(3) directly or indirectly participates in a plan to evade the Act or a rule under this subchapter;

(4) has a license to practice chemical dependency counseling in another jurisdiction refused, suspended, or revoked for a reason that the department determines would constitute a violation of the Act or a rule under this subchapter;

(5) engages in false, misleading, or deceptive conduct as defined by Business and Commerce Code, §17.46;

(6) engages in conduct that discredits or tends to discredit the profession of chemical dependency counseling;

(7) directly or indirectly reveals a confidential communication made to the person by a client or recipient of services, except as required or permitted by law;

(8) refuses to perform an act or service the person is licensed to perform under this subchapter on the basis of the client's or recipient's age, sex, race, religion, national origin, color, or political affiliation; or

(9) commits an act for which liability exists under Civil Practice and Remedies Code, Chapter 81 (Relating to Sexual Exploitation By Mental Health Services Provider).

(c) Where grounds exist to take action against a person, against a license, certification, or registration issued under this subchapter, or

against an applicant or holder of a license, certification, or registration issued under this subchapter, the department may:

(1) deny, refuse to issue, or refuse to renew a license, certification, or registration;

(2) revoke or suspend a license, certification, or registration;

(3) probate a suspension of a license, certification, or registration;

(4) impose an administrative penalty against a person who violates the Act or a rule under this subchapter; or

(5) issue a reprimand against the applicable license holder.

(d) The department will determine the length of the probation or suspension. If the department probates the suspension of a license, certification, or registration, the department may require the holder of the applicable license to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) complete additional educational requirements, as required by the department to address the areas of concern that are the basis of the probation.

(e) An individual whose license, registration, or certification is revoked under this subchapter is not eligible to apply for a license, registration, or certification under this subchapter for a minimum of two years after the date of revocation. The department may consider the findings that resulted in revocation and any other relevant facts in determining whether to deny the application under this section, or as otherwise permitted by law, if an otherwise complete and sufficient application for a license,

registration, or certification is submitted after two years have elapsed since revocation.

(f) A voluntary surrender accepted by the department in response to a complaint under §140.429 of this title (relating to Voluntary Surrender of License, Certification, or Registration In Response to a Complaint) shall be deemed to be the result of a formal disciplinary action as provided for in that section.

(g) The department, upon determination that grounds may exist to take disciplinary action, shall issue a notice of violation notifying the respondent of the proposed action.

(1) The notice letter shall be sent via regular first-class and certified mail to the respondent's address of record.

(2) The notice shall specify:

(A) the statutes, rules, or orders allegedly violated;

(B) the factual basis of the alleged violations;

(C) the disciplinary action the department intends to take; and

(D) notice of an opportunity for a hearing to be held under the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(3) If the department is proposing to assess an administrative penalty, the letter shall also inform the respondent of the amount of the proposed penalty and of the opportunity for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(4) The letter shall also include the following notices:

(A) If the respondent does not request a hearing on or before the 20th day after notice is effective, the allegations will be deemed true and the department will issue a

default final order implementing the proposed action.

(B) Notice is effective three days after the date of mailing.

(h) A respondent must submit a timely written request for a hearing to avoid having the allegations in the notice letter deemed true and a default order implementing the proposed action issued by the department. The request for hearing is timely if filed with the department or postmarked on or before the 20th day after the notice is effective. If the respondent fails to timely file a request for a hearing, the factual allegations of the notice letter may be deemed true and shall form the basis of a default final order by the department making findings of fact and conclusions of law consistent with the notice of violation, and implementing the proposed action.

(i) The department shall implement a final order to suspend a license issued under this subchapter for failure to pay child support as provided by the Texas Family Code, Chapter 232.

#### **§140.427. Administrative Penalties.**

(a) The provisions of this section shall apply to administrative penalties proposed or assessed against any person for violation of the Act or a rule under this subchapter, notwithstanding the provisions of §442.104 of this title (relating to Administrative Penalties for Licensed Facilities and Counselors and Offender Education Programs).

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

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts made to correct the violation; and

(5) any other matter that justice requires.

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

(1) Level I--violations in which harm or other adverse impact to public health, safety, or welfare has actually occurred or is likely to occur and/or recur;

(2) Level II--violations that demonstrate a potential for harm or other adverse impact to public health, safety, or welfare; or

(3) Level III--violations that are not likely to substantially affect public health, safety, or welfare.

(d) The range of administrative penalties by severity levels is as follows for each violation:

(1) Level I--up to \$1000 per day;

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

(3) Level III--up to \$100 per day.

(e) Subsequent violations of the same or similar nature in the same severity level for which an administrative penalty has previously been imposed may be categorized at the next higher severity level, based upon the repeated violation. Subsequent Level I violations of the same or similar nature for which an administrative penalty has previously been imposed at the Level I severity level may be assessed a higher penalty within that severity level, up to \$1,000 per day per violation, based upon the repeated violation.

#### **§140.428. Informal Disposition.**

(a) At any stage of a disciplinary case, informal disposition of a complaint or contested case involving an applicant or licensee may be made through an informal conference held to determine whether the matters in controversy can be resolved without further proceedings, including by agreed order.

(b) In any case where a notice of violation has been issued proposing disciplinary action against an applicant or licensee, that person will be given the opportunity to attend an informal conference to show compliance with the law, pursuant to Texas Government Code §2001.054 (relating to Licenses), prior to a requested hearing. If the applicant or licensee fails to appear at a scheduled informal conference, the department may deem that person to have waived the right to an informal conference and may proceed to hearing.

(c) An informal conference shall be voluntary for the applicant or licensee and shall not be a prerequisite to a formal hearing.

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

(e) The department will establish the time, date and place of the informal conference, and provide written notice to the licensee or applicant. Written notice will be provided no less than 10 business days prior to the date of the informal conference at the last known address of the licensee or applicant.

(f) The applicant or licensee may be represented by legal counsel at the informal conference. The department's legal counsel and appropriate staff will be present at the conference.

(g) At the conclusion of the informal conference, the department may propose an informal disposition of the complaint or contested case. The proposal may include proposed entry of an agreed order imposing any

disciplinary action authorized by the Act or this subchapter. The department may also conclude that the department lacks jurisdiction; that the matter should be referred for further investigation; that the complaint should be closed without action; or that the department will proceed to a contested case hearing on the proposed action, if one has been requested by the applicant or licensee, in accordance with §140.430 of this title (relating to Procedures for Contested Cases).

(h) The licensee or applicant may either accept or reject the department's proposal at the informal conference. If the recommendations are accepted, a proposed agreed order will be forwarded to the licensee or applicant, or that person's attorney. The order will include any agreed findings of fact and conclusions of law. If the licensee or applicant fails to return the signed order within 20 days of receipt of the proposed order, or within another time frame specified or agreed to by the department, the department's proposed order will be deemed withdrawn and the department may proceed to a contested case hearing on the action originally proposed, if the applicant or licensee has requested one, or otherwise proceed with appropriate action against the applicant or licensee. The licensee or applicant will be deemed to have received the proposed agreed order three days after mailing.

**§140.429. Voluntary Surrender of License, Certification, or Registration In Response to a Complaint.**

(a) When a licensee has offered the surrender of that person's license in response to a complaint, the department will consider whether to accept the surrender of the license. A licensee will be deemed to have offered the surrender of that person's license in response to a complaint when the surrender is offered after the licensee has received notice that a complaint has been received by the department. A licensee will be deemed to have received notice that a complaint has been received by the department three days after a letter notifying the licensee is mailed by the department.

(b) Surrender of a license without the department's acceptance thereof shall not deprive the department of jurisdiction under the Act, this subchapter, or other applicable law.

(c) When the department accepts the surrender of a license offered in response to a complaint, the license surrender is deemed to be the result of a formal disciplinary action and an order shall be prepared accepting the license surrender on that basis.

(d) If the department accepts the surrender of a license offered in response to a complaint, the person is not eligible to apply for a license, registration, or certification under this subchapter for a minimum of two years after the date of acceptance of the surrender.

**§140.430. Procedures for Contested Cases.**

(a) The provisions of this section shall apply to licensees under this subchapter, notwithstanding the provisions of §442.103 of this title (relating to Procedure for Contested Cases for Counselor and Facility Licenses).

(b) Where the department has issued a notice of violation that has not been resolved by informal disposition and the respondent has timely requested a hearing, the department will proceed to a hearing under the APA, Texas Government Code, Chapter 2001; SOAH Rules of Procedure, 1 Texas Administrative Code, Chapter 155; and formal hearing procedures set forth at §§1.21, 1.23, 1.25, and 1.27 of this title.

(c) The department will provide written notice of the hearing to the respondent by first class mail and certified mail, return receipt requested, at respondent's last known address as reflected in the department's address of record for the respondent. A Notice of Hearing that complies with the requirements of Texas Government Code, §2001.051 and §2001.052 (relating to Opportunity for Hearing and Participation; Notice of Hearing and Contents of Notice), and 1 Texas Administrative Code §155.401 (relating to Notice of Hearing), will be provided at least ten days before the date of the hearing. Respondent's receipt of the Notice of

Hearing at least ten days before the date of the hearing will be presumed if the department mailed the Notice of Hearing at least ten days before the date of the hearing, and allowed an additional three days for mailing.

(d) If the respondent fails to appear at a scheduled SOAH hearing after being given proper notice of the hearing at respondent's last known address as reflected in the department's address of record for the respondent, the department may move for dismissal of the case from the SOAH docket, without prejudice, to allow for informal disposition of the case by default order, as provided for in §1.25 of this title (relating to Default). Based upon the respondent's failure to appear after proper notice of the hearing, the factual allegations of the notice letter may be deemed true and shall form the basis of a final default order by the department making findings of fact and conclusions of law consistent with the notice of violation, and implementing the proposed action.

(e) If a respondent makes a written request to the department for a transcript of a SOAH proceeding, the department will assess the cost of the transcript to that respondent. If there were multiple respondents to the proceeding, the department will assess the cost proportionally among those respondents requesting a transcript. Where a respondent appeals a final department decision in a contested case, the respondent shall pay the cost of preparation of the original or a certified copy of the record that is required to be sent to the reviewing court, and such charge may be assessed against respondent by the court in accordance with the Texas Rules of Civil Procedure as a court cost.

**§140.431. Criminal History Standards.**

(a) The department reviews the criminal history of each applicant for initial licensure, certification, and registration. Reviews are also conducted when the department receives information that a licensee has been charged, indicted, placed on deferred adjudication, community supervision, or probation, or

convicted of an offense described in subsection (d) of this section.

(b) An applicant shall disclose and provide complete information about all misdemeanor and felony charges, indictments, deferred adjudications, episodes of community supervision or probation, and convictions. Failure to make full and accurate disclosure may be grounds for application denial or disciplinary action, including revocation, against the applicant for, or holder of, a license, registration, or certification.

(c) The department obtains criminal history information from the Texas Department of Public Safety, including information from the Federal Bureau of Investigations (FBI).

(d) For purposes of this section, the department has identified the following offenses as offenses directly related to the duties and responsibilities of the licenses, certifications, and registrations issued under this subchapter, and has categorized them according to the seriousness of the offense. The provisions of this section shall not limit the authority of the department to take any other action against a license, registration, or certification, or the holder of, or applicant for, a license, registration, or certification, as otherwise authorized by applicable statute or rule.

(1) Category X includes:

(A) capital offenses;

(B) sexual offenses involving a child victim;

(C) felony sexual offenses involving an adult victim who is a client (one or more counts);

(D) multiple counts of felony sexual offenses involving any adult victim; and

(E) homicide 1st degree.

(2) Category I includes:

(A) kidnapping;

(B) arson;

(C) homicide lesser degrees;

(D) felony sexual offenses involving an adult victim who is not a client (single count); and

(E) attempting to commit crimes in Category I or X.

(3) Category II includes felony offenses that are not listed separately in this section and that result in actual or potential physical harm to others and/or animals.

(4) Category III includes:

(A) class A misdemeanor alcohol and drug offenses;

(B) class A misdemeanor offenses resulting in actual or potential physical harm to others or animals;

(C) felony alcohol and drug offenses; and

(D) all other felony offenses not listed separately in this section.

(5) Category IV includes:

(A) class B misdemeanor alcohol and drug offenses; and

(B) class B misdemeanor offenses resulting in actual or potential physical harm to others or animals.

(e) Except as provided in subsection (j) of this section, the department shall deny the initial or renewal licensure, certification, or registration application of a person who has been convicted or placed on community supervision in any jurisdiction for a:

(1) category X offense during the person's lifetime;

(2) category I offense during the 15 years preceding the date of application;

(3) category II offense during the ten years preceding the date of application;

(4) category III offense during the five years preceding the date of application, unless, at the time of application, proceedings have been dismissed and the person has been discharged after having been placed on and completing community supervision following a deferred adjudication; or

(5) category IV offense during the three years preceding the date of application.

(f) The department shall deny the initial or renewal license, certification, or registration application of a person who has been found to be incapacitated by a court on the basis of a mental defect or disease.

(g) When a person's application is denied under subsection (e) or (f) of this section, the person may reapply when:

(1) the person receives a full pardon based on the person's wrongful conviction;

(2) the timeframes established in subsection (e) of this section have been met; or

(3) the person who had been found to be incapacitated is found to be no longer incapacitated, in which case the provisions of this section applicable to the status of the charge and prosecution at that time will apply.

(h) The department shall suspend a license, certification, or registration if the department receives written notice from the Texas Department of Public Safety or another law enforcement agency that the individual has

been charged, indicted, placed on deferred adjudication, community supervision, or probation, or convicted of an offense described in subsections (d) and (e) of this section. The licensee will remain subject to applicable renewal requirements during the period of suspension. An application to renew any form of license suspended under this subsection will be subject to the denial and exception provisions as stated in subsection (e) of this section, to the extent applicable at the time of renewal application. If subsection (e) of this section does not apply, the applicant is otherwise eligible for renewal, and the applicant is still subject to summary suspension under this subsection, the applicable license will remain suspended under this subsection upon renewal, and until paragraph (2) of this subsection or subsection (e) of this section becomes applicable.

(1) The department shall send notice stating the grounds for summary suspension by certified mail to the license, certification, or registration holder at the address listed in the department's records. The suspension is effective three days after the date of mailing.

(2) If no other bar to licensure, certification, or registration exists at the time, the department will restore the person's license, certification, or registration upon receipt of official documentation that the charges have been dismissed or the person has been acquitted, except that, where the dismissal follows a deferred adjudication, the time frames set forth in subsection (e) of this section will apply.

(i) The department will defer action on the application of a person who has been charged or indicted for an offense described in subsection (d) of this section. If the person is convicted or placed on community supervision for the offense, subsection (e) of this section will apply. If the charges are dismissed or the person is acquitted, the application will be processed without adverse action under this section on the basis of those charges. However, the department may consider the facts and evidence underlying the charge in determining whether adverse action against the applicant might be warranted

under §140.426 of this title (relating to Disciplinary Actions).

(j) Notwithstanding subsection (e) of this section, if no other bar to the applicable licensure or renewal exists at the time, the department may issue or renew, as applicable, an LCDC license, registration, or certification of a person convicted or placed on community supervision in any jurisdiction, within the timeframes set forth in subsection (e) of this section, for a drug or alcohol offense described in subsection (d) of this section, if the department determines that the individual has successfully completed participation in a peer assistance program approved by the department.

(1) When an individual described in subsection (j) of this section successfully reaches the re-entry phase of a peer assistance program, the department may grant a temporary "re-entry approval," with a limited term and any appropriate conditions, set in conjunction with the peer assistance program, based upon the applicant's needs and the anticipated length of the re-entry phase of the peer assistance program for the applicant.

(2) At the end of the term of the re-entry approval, the department may extend the term if the applicant is still successfully participating in the re-entry phase of the peer assistance program, may grant the applicable initial or renewal license, registration, or certification, or renew the LCDC license if the department determines that the applicable individual has successfully completed the peer assistance program, or shall deny the license under subsection (e) of this section, if the LCDC has failed to successfully complete the peer assistance program.

(k) A person whose license, certification, or registration has been denied or suspended under this section may only appeal the action if:

(1) the person was convicted or placed on community supervision; and

(2) the appeal is based on the grounds that the timeframes defined in subsection (e) of this section have been met.

**§140.432. Request for Criminal History Evaluation Letter.**

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

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

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

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

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

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

(e) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each

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

**§140.433. Licensing, Certification, or Registration of Military Service Members, Military Veterans, and Military Spouses.**

(a) This section sets out licensing, certification, and registration procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section, the following terms shall have the following meanings:

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

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

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

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

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

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

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

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

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

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

(i) If the department issues an initial license, certificate, or registration to an applicant who is a military spouse in accordance with subsection (f) of this section, the department shall assess whether the applicant has met all licensing, certification, or registration requirements of

this state by virtue of the current license, certificate, or registration issued by another jurisdiction. The department shall provide this assessment in writing to the applicant at the time the license, certificate, or registration is issued. If the applicant has not met all licensing, certification, or registration requirements of this state, the applicant must provide proof of completion at the time of the first application for license, certificate, or registration renewal. A license, certificate, or registration shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.