Texas Administrative Code
Title 22. Examining Boards
Part 35. Texas State Board of Examiners of Marriage and Family Therapists
Chapter 801. Licensure and Regulation of Marriage and Family Therapists

Adopted by the Texas State Board of Examiners of Marriage and Family Therapists Effective on April 21, 1994; amended to be effective on November 22, 1996; amended to be effective on September 20, 1998; amended to be effective on May 11, 2000; amended to be effective on April 11, 2001; amended to be effective on November 27, 2002; amended to be effective on October 19, 2003; amended to be effective on July 2, 2006; amended to be effective on May 18, 2008; amended to be effective on December 19, 2010; amended to be effective on June 5, 2011; amended to be effective on March 31,2013, 38 TexReg 1982.

The rules relating to licensing and regulation of
Marriage and Family Therapists and Marriage and Family Therapist Associates.

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TEXAS
Department of
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SUBCHAPTER A. INTRODUCTION.

§801.1. Purpose. The purpose of this chapter is to implement the Licensed Marriage and Family Therapist Act, Texas Occupations Code, Chapter 502, concerning licensure and regulation of marriage and family therapists.

§801.2. Definitions. The following words and terms when used in this chapter shall have the following meanings unless the context indicates otherwise.

(1) Accredited institutions or programs--An institution or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council for Higher Education Accreditation (CHEA).

(2) Act-- Licensed Marriage and Family Therapist Act relating to the licensing and regulation of marriage and family therapists, Occupations Code, Chapter 502.

(3) Administrative Law Judge (ALJ)--A person within the State Office of Administrative Hearings who conducts hearings under this subchapter on behalf of the Board.

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

(5) Associate--A licensed marriage and family therapist associate. The appropriate board-approved terminology to use in reference to an Associate is: "Associate," "Licensed Marriage and Family Therapist Associate," "Licensed Marriage and Family Therapist Associate," or "LMFT Associate." Other terminology or abbreviations like "LMFT A" are not board-approved and shall not be used.

(6) Board--The Texas State Board of Examiners of Marriage and Family Therapists.

(7) Client--An individual, family, couple, group, or organization who receives or has received services from a person identified as a marriage and family therapist who is either licensed or unlicensed by the board.

(8) Completed application--The official marriage and family therapy application form, fees and all supporting documentation which meets the criteria set out in §801.73 of this title (relating to Required Application Materials).

(9) Contested case--A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

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

(11) Endorsement--The process whereby the board reviews requirements for licensure completed while under the jurisdiction of a different marriage and family therapy regulatory board from another state. The board may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(12) Family systems--An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, and life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(13) Formal hearing--A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.

(14) Group supervision--Supervision that involves a minimum of three and no more than six marriage and family supervisees or associates in a clinical setting during the supervision hour. A supervision hour is forty-five minutes.

(15) Individual supervision--Supervision of no more than two marriage and family therapy supervisees or associates in a clinical setting during the supervision hour. A supervision hour is forty-five minutes.

(16) Investigator--A professional complaint investigator employed by the Department of State Health Services.

(17) License--A marriage and family therapist license, a marriage and family therapist associate license, or a provisional marriage and family therapist license.

(18) Licensed marriage and family therapist (LMFT)--An individual who offers to provide marriage and family therapy for compensation.

(19) Licensee--Any person licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

(20) Licensed marriage and family therapist associate--An individual who offers to provide marriage and family therapy for compensation under the supervision of a board-approved supervisor.

(21) Marriage and family therapy--The rendering of professional therapeutic services to clients, singly or in groups,

and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.

(22) Month--A calendar month.

(23) Party--Each person, governmental agency, or officer or employee of a governmental agency named by the Administrative Law Judge (ALJ) as having an interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(24) Person--An individual, corporation, partnership, or other legal entity.

(25) Pleading--Any written allegation filed by a party concerning its claim or position.

(26) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally cognizable church, denomination or sect, or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26, Code of Federal Regulation 1.6033-2, subsection (h) (as in effect in 2008);

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

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

(27) Supervision--The guidance or management in the provision of clinical services.

(28) Supervisor--A person meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements).

(29) Texas Open Meetings Act--Government Code, Chapter 551.

(30) Texas Public Information Act--Government Code, Chapter 552.

(31) Therapist--For the purposes of this chapter, a Texas licensed marriage and family therapist or a Texas licensed marriage and family therapist associate.

(32) Waiver--The suspension of educational, professional, and/or examination requirements for applicants who meet the criteria for licensure under special conditions.

SUBCHAPTER B. THE BOARD.

§801.11. The Board.

(a) Membership. The board is composed of nine members appointed by the governor. Four members must be selected from the general public. Five members must be eligible for licensure under the Act, at least one of whom must be a professional educator in marriage and family therapy. These members must have engaged in the practice or education of marriage and family therapy for at least five years, or have 5,000 hours of clinical experience in the practice of marriage and family therapy.

(b) Terms. Members of the board hold office for staggered six-year terms. Three members' terms expire February 1 of each odd-numbered year.

(c) Vacancies. In the event of a vacancy, the governor shall appoint a replacement who meets the qualifications of the vacated office to fill the unexpired part of the term.

(d) Elections. At the meeting held nearest to August 31 of each year, the board shall elect a vice-chair by a majority vote of the members present.

(e) Officers.

(1) Chair. The chair shall be appointed by the governor and will serve at the will of the governor.

(A) The chair shall preside at all meetings at which he or she is in attendance and shall perform all duties prescribed by law and board rules.

(B) The chair is authorized by the board to make minor procedural decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board. The executive director shall keep a tabulation of the minor procedural decisions and include them in the executive director's report to the board.

(C) The chair shall sign the approved minutes of each meeting.

(2) Vice-chair.

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

(B) Should the office of the chair become vacant, the vice-chair shall serve until a successor is named.

(f) Committees. The chair may appoint board members to committees to assist the board in its work. All committees appointed by the chair shall consist of no more than four members and shall make reports to the board at regular meetings. The board shall direct all such reports to the executive director for distribution. The board shall appoint at least one public member to any board committee established to review a complaint filed with the board or review an enforcement action against a license holder related to a complaint filed with the board.

(g) Compensation. No member of the board may receive compensation for serving on the board. Each member is entitled to reimbursement of travel expenses for each day that the member performs functions as a member of the board.

(h) Meetings.

(1) Agendas.

(A) The executive director or the executive director's designee shall prepare and submit to each member of the board an agenda which includes items required by law, items requested by members, and other matters of board business which have been approved by the chair.

(B) The official agenda of a board meeting shall be filed with the Texas secretary of state as required by the Texas Open Meetings Act.

(C) Any individual wishing to be on the agenda to present a specified topic at a meeting of the board must provide a written request to the executive director in time to be placed on the agenda (not later than 30 days prior to the scheduled date of the meeting) which describes the topic to be addressed. The chair may limit as appropriate the time for public participation.

(2) Frequency of meetings. The board shall meet at least biannually and may meet at other times as the chair deems necessary. All meetings shall be conducted in accordance with the Texas Open Meetings Act.

(3) Attendance. If a member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during the calendar year, unless the absence is excused by majority vote of the board, a potential ground for removal from the board may exist. The chair shall notify the governor that a potential ground for removal exists. The attendance records of the members may be made available to the governor of the State of Texas and/or the Texas Sunset Advisory Commission.

(4) Rules of parliamentary procedure. All official decisions made by the board shall be made according to parliamentary procedure as set forth in the latest edition of Robert's Rules of Order Revised. If a question arises concerning interpretation of the latest edition of Robert's Rules of Order Revised, the chair or acting chair will make the decision.

(5) Transaction of official business. The board may transact official business only when it is a legally constituted meeting with a quorum present. Five members of the board constitute a quorum.

(i) The board shall not be bound in any way by any statement or action on the part of any board member, subcommittee member, or staff member, except when a statement or action is in pursuance of the specific instruction of the board. Board member or staff member opinions, except when a statement or action is in pursuance of the specific instructions of the board, about ethical dilemmas or practice issues should never be substituted for appropriate professional consultation or legal advice.

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

§801.12. Petition for the Adoption of a Rule.

(a) Purpose. The purpose of this section is to establish procedures for the submission, consideration, and disposition of a petition to adopt a rule.

(b) Submission of the petition.

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

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

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

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

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

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

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

(4) The executive director or the executive director's designee may determine that the petition does not contain the information described in paragraph (2) of this subsection and return the petition to the petitioner.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the executive director shall submit a completed petition to the board for consideration.

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

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

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

§801.13. Executive Director and the Department.

(a) Following consultation with the board members, the department shall designate a department employee as executive director for the board.

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

(c) The department shall exercise general supervision over individuals employed in the administration of the Act.

(d) The executive director shall be responsible for the preliminary information regarding complaints and for the presentation of the formal complaints to the board.

(e) The executive director shall handle all correspondence for the board and obtain, assemble, or prepare reports and information that the board may modify or authorize.

(f) The executive director or the executive director's designee shall have the responsibility of assembling and reviewing materials submitted by applicants for licensure. Determinations made by the executive director or the executive director's designee are subject to the approval and/or modification of the board, which shall make the final decision regarding the eligibility of the applicants.

(g) The executive director shall sign the approved minutes of each meeting.

§801.14. Official Records.

(a) All official records of the board, except those records containing information considered confidential under the provisions of the Texas Public Information Act, shall be open for public inspection during regular office hours.

(b) Official records shall not be taken from board offices; however, persons may obtain copies of files upon written request and by paying the cost per page set by the General Services Commission and the department.

§801.15. Impartiality and Nondiscrimination.

(a) The board shall make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, gender, national origin, age, disability, sexual orientation, or genetic information.

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

§801.16. Policy on Disability Accommodations. The board complies with the Americans with Disabilities Act (42 U.S.C. §12101 *et seq.*) in the delivery of its services to applicants and licensees. A person who needs reasonable accommodations in order to access board services shall request accommodations in writing and may be required to provide

verification of the person's disability and recommendations for appropriate accommodations from a medical, mental health, rehabilitation, or educational professional or specialist qualified to make such recommendations.

§801.17. License Certificate.

(a) The board shall prepare and provide to each Licensed Marriage and Family Therapist and Licensed Marriage and Family Therapist Associate a license certificate and a renewal card which contains the licensee's name and license number.

(b) Any license certificate or renewal card issued by the board remains the board's property and must be surrendered to the board upon demand.

§801.18. Fees.

(a) The board has established the following fees for licenses, license renewals, examinations, and all other administrative expenses under the Licensed Marriage and Family Therapists Act (Act).

(b) The schedule of fees shall be as follows:

(1) application fee--$40;

(2) licensure examination fee--shall be in accordance with the current contracted examination fee;

(3) initial licensure fee issued for a two-year term--$90;

(4) biennial renewal fee--$130;

(5) late renewal fee--late renewal fees shall be set as follows:

(A) on or within 90 days--biennial renewal fee plus one-fourth of the current biennial renewal fee ($33); and

(B) longer than 90 days but less than one year--biennial renewal fee plus one-half of the current biennial renewal fee ($65);

(6) inactive status (administrative) fee--$75;

(7) duplicate license fee--$10;

(8) provisional licensure fee--$40;

(9) continuing education sponsor fee--$50 annually;

(10) child support reinstatement fee--$40;

(11) verification fee--$10;

(12) student loan default reinstatement fee--$40;

(13) criminal history evaluation letter fee--$50;

(14) application fee for board approved supervisor status--$20; and

(15) renewal fee for board-approved supervisor status--$50 biennially.

(c) All fees are nonrefundable.

(d) For all applications and renewal applications, the board is authorized to collect subscription and convenience fees to recover costs associated with application and renewal application processing through www.texas.gov. For all applications and renewal applications, the board is authorized to collect fees to fund the Office of Patient Protection in accordance with Occupations Code, Chapter 101 (relating to Health Professions Council).

(e) The board shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. All fee changes shall be made through rulemaking procedures.

§801.19. Request for Criminal History Evaluation Letter.

(a) In accordance with the Texas 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.

SUBCHAPTER C. GUIDELINES FOR PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS.

§801.41. Purpose. The purpose of this subchapter is to provide guidelines regarding the provision of professional therapeutic services and to establish standards of professional and ethical conduct required of a licensee.

§801.42. Professional Therapeutic Services. The following are professional therapeutic services which may be provided by a Licensed Marriage and Family Therapist or a Licensed Marriage and Family Therapist Associate.

(1) Marriage and couples therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples through the changing life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of either partner.

(2) Sex therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies in the resolution of sexual disorders.

(3) Family therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective, and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a family member.

(4) Child therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a child.

(5) Play therapy which utilizes systems, methods, and processes which include play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors as part of the therapist's role in helping children overcome their social, emotional, and mental problems.

(6) Individual psychotherapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies to achieve mental, emotional, physical, social, moral, educational, spiritual, and career development and adjustment through the developmental life span. These family system approaches assist in stabilizing and alleviating mental, emotional or behavioral dysfunctions in an individual.

(7) Divorce therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive behavioral, developmental, psychodynamic, affective and family system methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of the partners.

(8) Mediation which utilizes systems, methods, and processes to facilitate resolution of disputes between two or more dissenting parties, including but not limited to any issues in divorce settlements, parenting plan modifications, parent-child conflicts, pre-marital agreements, workplace conflicts,

and estate settlements. Mediation involves specialized therapeutic skills that foster cooperative problem solving, stabilization of relationships, and amicable agreements. A court appointed mediation requires a specialized training period.

(9) Group therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment throughout the life span.

(10) Chemical dependency therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective methods and strategies, and 12-step methods to promote the healing of the client.

(11) Rehabilitation therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society.

(12) Referral services which utilizes systems methods and processes which include evaluating and identifying needs of clients to determine the advisability of referral to other specialists, and informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources. This includes social studies and family assessments of the individual within the family.

(13) Diagnostic assessment which utilizes the knowledge organized in the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as the International Classification of Diseases (ICD) as part of their therapeutic role to help individuals identify their emotional, mental, and behavioral problems when necessary.

(14) Psychotherapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to assist clients in their efforts to recover from mental or emotional illness.

(15) Hypnotherapy which utilizes systems methods and processes which include the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional disorders and addictions.

(16) Biofeedback which utilizes systems methods and processes which include electronic equipment to monitor and provide feedback regarding the individual's physiological responses to stress. The therapist who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the therapist's academic program or the substantial equivalent provided through continuing education.

(17) Assessment and appraisal which utilizes systems methods and processes which include formal and informal instruments and procedures, for which the therapist has received appropriate training and supervision in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental problems.

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

(19) Activities under the Texas Family Code, Chapter 153, Subchapter K, pertaining to parenting plan and parenting facilitator.

(20) Parent education and parent training including advice, counseling, or instructions to parents or children.

(21) Life coaching and any related techniques or modalities.

(22) Any other related services provided by a licensee.

§801.43. Professional Representation.

(a) When providing professional therapeutic services, as defined in §801.42 of this title (relating to Professional Therapeutic Services) a licensee shall indicate his or her licensure status as a Licensed Marriage and Family Therapist or a Licensed Marriage and Family Therapist Associate, including any probationary status or other restrictions placed on the licensee by the board.

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

(1) the effectiveness of services;

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

(3) the practice of marriage and family therapy.

(c) A licensee shall not misrepresent any agency or organization by presenting it as having attributes that it does not possess.

(d) A licensee shall not encourage, or within the licensee's power, allow a client to hold exaggerated ideas about the efficacy of services provided by the licensee.

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

§801.44. Relationships with Clients.

(a) A licensee shall provide marriage and family therapy professional services only in the context of a professional relationship.

(b) A licensee shall make known to a prospective client the important aspects of the professional relationship, including but not limited to, the licensee's status as a Licensed Marriage and Family Therapist, including any probationary status or other restrictions placed on the licensee by the board, office procedures, after-hours coverage, fees, and arrangements for payment (which might affect the client's decision to enter into the relationship).

(c) A licensee shall obtain an appropriate consent for treatment before providing professional services. A licensee shall make reasonable efforts to determine whether the conservatorship, guardianship, or parental rights of the client have been modified by a court.

(d) A licensee shall make known to a prospective client the confidential nature of the client's disclosures and the clinical record, including the legal limitations of the confidentiality of the mental health record and information.

(e) No commission or rebate or any other form of remuneration shall be given or received by a licensee for the referral of clients for professional services. A licensee employed or under contract with a chemical dependency facility or a mental health facility, shall comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Act, Texas Health and Safety Code, Chapter 164, shall not be considered as a violation of state law regarding illegal remuneration.

(f) A licensee shall not exploit his/her position of trust with a client or former client.

(g) A licensee shall not engage in activities that seek to meet the licensee's personal needs instead of the needs of the client.

(h) A licensee shall not provide marriage and family therapy services to family members, personal friends, educational associates, business associates, or others whose welfare might be jeopardized by such a dual relationship.

(i) A licensee shall set and maintain professional boundaries with clients and former clients.

(j) A licensee may disclose confidential information to medical or law enforcement personnel if the licensee determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(k) In group therapy settings, the licensee shall take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(l) A licensee shall make a reasonable effort to avoid non-therapeutic relationships with clients or former clients. A non-therapeutic relationship is an activity initiated by either the licensee or the client for the purposes of establishing a non-therapeutic relationship. It is the responsibility of the licensee to ensure the welfare of the client if a non-therapeutic relationship arises.

(m) A licensee shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes, and billing information for a minimum of 5 years for an adult client and 5 years beyond the age of 18 years of age for a minor.

(n) Records created by licensees during the scope of their employment by educational institutions; by federal, state, or local government agencies; or political subdivisions or programs are not required to comply with the requirements of subsection (m) of this section.

(o) A licensee shall bill clients or third parties for only those services actually rendered or as agreed to in writing.

(p) A licensee shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from it. Upon termination, if the client still requires mental health services, the licensee shall make reasonable efforts in writing to refer the client to appropriate services.

(q) A licensee who engages in interactive therapy via the telephone or internet must provide the client with his/her license number and information on how to contact the board by telephone, electronic communication, or mail, and must adhere to all other provisions of this chapter.

(r) A licensee shall only offer those services that are within his or her professional competency, and the services provided shall be within accepted professional standards of practice and appropriate to the needs of the client.

(s) A licensee shall base all services on an assessment, evaluation, or diagnosis of the client.

(t) A licensee shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.

(u) A licensee shall not promote or encourage the illegal use of alcohol or drugs by clients.

(v) A licensee shall not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee shall take immediate and reasonable action to inform the other mental health services provider.

(w) A licensee shall refrain from providing services while impaired by medication, drugs, or alcohol.

(x) Upon termination of a relationship, if professional counseling or other marriage and family therapy services are still necessary, the licensee shall take reasonable steps to facilitate the transfer to appropriate care.

(y) A licensee shall not aid or abet the unlicensed practice of marriage and family therapy services by a person required to be licensed under the Act. A licensee shall report to the board knowledge of any unlicensed practice.

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

§801.45. Sexual Misconduct.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Mental health services--The assessment, diagnosis, treatment, or therapy in a professional relationship to assist an individual or group in:

(A) alleviating mental or emotional illness, symptoms, conditions, or disorders, including alcohol or drug addiction;

(B) understanding conscious or subconscious motivations;

(C) resolving emotional, attitudinal, or relationship conflicts; or

(D) modifying feelings, attitudes, or behaviors that interfere with effective emotional, social, or intellectual functioning.

(2) Mental health services provider--A licensee or any other licensed or unlicensed individual who performs or purports to perform mental health services, including a licensee under the provisions of the Act.

(3) Sexual contact--

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

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

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

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

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

(5) Therapeutic deception--A representation by a licensee that sexual contact with, or sexual exploitation by, the licensee is consistent with, or a part of, a client's or former client's therapy.

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

(1) a client or a former client;

(2) an associate or an intern for whom the licensee has administrative or clinical responsibility;

(3) an intern in a marriage and family therapy graduate program in which the licensee offers professional or educational services; or

(4) a clinical supervisor or supervisee of the licensee.

(c) A licensee shall not provide therapeutic services to a person with whom the licensee has had a sexual relationship.

(d) A licensee shall not practice therapeutic deception or sexual exploitation.

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

(1) with the consent of the person;

(2) outside the therapy or treatment sessions of the person; or

(3) off the premises regularly used by the licensee for the therapy or treatment sessions of the person.

(f) The following, when done in the context of professional services, shall be considered to be sexual exploitation.

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

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

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

(2) Any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual.

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

(4) Making sexually demeaning comments to or about an individual's sexual orientation.

(5) Making comments about potential sexual performance except when the comment is pertinent to the issue of sexual function or dysfunction in therapy or treatment.

(6) Requesting details of sexual history or sexual likes and dislikes when not necessary for therapy or treatment of the individual.

(7) Initiating conversation regarding the sexual likes and dislikes when not necessary for therapy or treatment of the individual.

(8) Kissing or fondling.

(9) Making a request for non-professional social contact.

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

(11) Any intentional exposure of genitals, anus, or breasts.

(12) Encouraging a client, student, associate, or former client to masturbate in the presence of the licensee.

(13) Masturbation by the licensee when a client, student, associate, or former client is present.

(g) Examples of sexual contact shall include those activities and behaviors described in Texas Penal Code, §21.01.

§801.46. Testing.

(a) A licensee shall make known to clients the purposes and explicit use of any testing done as part of a professional relationship.

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

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

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

§801.47. Drug and Alcohol Use. A licensee shall not:

(1) use alcohol or drugs in a manner which adversely affects the licensee's ability to provide marriage and family therapy services; or

(2) use any kind of illegal drugs.

§801.48. Record Keeping, Confidentiality and Release of Records, and Required Reporting.

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

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

(c) A licensee shall comply with Texas Health and Safety Code, Chapters 181 and 611, and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice, concerning access to and release of mental health records and confidential information.

(d) A licensee shall report information if required by any of the following statutes:

(1) Texas Family Code, Chapter 2614, concerning abuse or neglect of minors;

(2) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons;

(3) Texas Health and Safety Code, Chapter 161, Subchapter K, §161.131 et seq., concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an in-patient mental health facility, a chemical dependency treatment facility, or a hospital providing comprehensive medical rehabilitation services;

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

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

(e) A licensee shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes and billing information for a minimum of 5 years for an adult client and 5 years beyond the age of 18 for a minor.

(f) A licensee shall retain and dispose of client records in such a way that confidentiality is maintained.

(g) In independent practice, establish a plan for the custody and control of the licensee's client mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's professional services.

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

(1) In addition to the requirements under subsection (d) of this section, if a licensee has reasonable cause to suspect that a client has been the victim of a sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider during therapy or any other course of treatment, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or mental health services provider (during therapy or any other course of treatment), the licensee shall report alleged misconduct not later than the 30th day after the date the licensee became aware of the misconduct or the allegations to:

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

(B) the board if the misconduct involves a licensee; and

(C) any other state licensing agency which licenses the mental health services provider.

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

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

(A) identify the reporter;

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

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

(D) provide the name of the alleged perpetrator.

§801.49. Licensees and the Board.

(a) Any person licensed by the board is bound by the provisions of the Act and this chapter.

(b) A licensee shall report alleged misrepresentations or violations of this chapter to the board.

(c) The licensee shall report name changes, any changes in home or business, address or phone number, employment setting, or other relevant changes to the board in writing and signed within 30 days of the change.

(d) The board is not responsible for any lost or misdirected mail if sent to the address last reported by the licensee.

(e) The failure of a licensee to timely respond to a request from the board or staff for information or other correspondence is unprofessional conduct and grounds for disciplinary proceedings.

(f) A licensee shall provide documentation to the board within 30 days of the granting of an academic degree relevant to the practice of marriage and family therapy.

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

(1) the licensee's arrest, deferred adjudication, or criminal conviction, other than for a Class C misdemeanor traffic offense;

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

(3) the settlement of a judgment rendered in a civil lawsuit filed against the licensee and related to the licensee's marriage and family therapy practice; or

(4) complaints, investigations, or actions against the licensee by a governmental agency or by a licensing or certification body.

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

§801.50. Corporation and Business Names.

(a) An individual practice by a licensee may be incorporated in accordance with Texas Business Organizations Code, Chapter 301 (relating to Provisions Relating to Professional Entities) or other applicable law.

(b) When an assumed name is used in any practice of therapy, the name of the licensee must be listed in conjunction with the assumed name. An assumed name used by a licensee must not be false, deceptive, or misleading.

§801.51. Consumer Complaint Information.

(a) At a minimum, a licensee shall inform each client of the name, address, and telephone number of the board for the purpose of directing complaints to the board:

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

(2) on a sign prominently displayed in the place of business; or

(3) in a bill for therapy services provided to a client or third party.

(b) The board shall prepare information of consumer interest that describes the regulatory functions of the board and board procedures for handling and resolving complaints.

(c) The board shall make consumer information available to the public and appropriate state agencies.

§801.52. Display of License Certificate.

(a) A licensee shall display an original, board-issued license certificate and renewal card in a prominent place in all locations of practice.

(b) A licensee shall display only an original of the license certificate or annual renewal card issued by the board.

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

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

(e) A licensee who elects to copy a board-issued license certificate or certificate card is responsible for the use or misuse of the reproduced license.

§801.53. Advertising and Announcements.

(a) Information used by a licensee in any advertisement or announcement of services shall not contain information which is false, misleading, deceptive, inaccurate, incomplete, out of context, or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements. Only the highest academic degree earned from an accredited college or university or only the highest academic degree earned at a foreign university that has been determined to be equivalent to a degree from an accredited institution or program by a member of the National Association of Credential Evaluation Services and relevant to the profession of therapy or a therapy-related field shall be used when advertising or announcing therapeutic services to the public or in therapy-related professional representations. A licensee may advertise or announce his or her other degrees or equivalent degrees earned at foreign institutions from accredited colleges or universities if the subject of the degree is specified.

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

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

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

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

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

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

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

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

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

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

(c) The board imposes no restrictions on advertising by a licensee with regard to the use of any medium, the licensee's personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a licensee, or the use of a trade name. A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

(d) All advertisements or announcements of therapeutic services including telephone directory listings by a person licensed by the board shall clearly state the licensee's licensure status by the use of a title such as "Licensed Therapist," "Licensed Marriage and Family Therapist," "LMFT," "Licensed Marriage and Family Therapist Associate," "LMFT Associate" or a statement such as "licensed by the Texas State Board of Examiners of Marriage and Family Therapists."

(e) A licensee shall not include in advertising or announcements any information or any reference to certification in a field outside of therapy or membership in any organization that may be confusing or misleading to the public as to the services or legal recognition of the licensee.

(f) An LMFT or LMFTA holding a provisional license shall indicate the provisional status on all advertisements, billing, and announcements of treatment by the use of the term "Provisional Licensed Marriage and Family Therapist or Provisional Licensed Marriage and Family Therapist Associate", as appropriate.

§801.54. Research and Publications.

(a) In research with a human subject, a licensee is responsible for the welfare of the human subject throughout a project and shall take reasonable precautions so that the

human subject shall suffer no injurious emotional, physical, or social effect.

(b) A licensee shall disguise data obtained from a therapeutic relationship for the purposes of education or research to ensure full protection of the identity of the human subject client.

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

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

§801.55. Parenting Coordination.

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

(1) who, regardless of the title by which the person is designated by the court, performs any function described in the Texas Family Code, §153.606, in a suit affecting the parent-child relationship; and

(2) who:

(A) is appointed under Texas Family Code, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through confidential procedures; and

(B) is not appointed under another statute or a rule of civil procedure.

(b) A licensee who serves as a parenting coordinator is not acting under the authority of a license issued by the board, and is not engaged in the practice of marriage and family therapy. The services provided by the licensee who serves as a parenting coordinator are not within the jurisdiction of the board, but rather the jurisdiction of the appointing court.

(c) A licensee who serves as a parenting coordinator has a duty to provide the information in subsection (b) of this section to the parties to the suit.

(d) Records of a licensee serving as a parenting coordinator are confidential under the Texas Civil Practices and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator shall comply with the Texas Civil Practices and Remedies Code, Chapter 154, relating to the release of information.

(e) A licensee shall not provide marriage and family therapy services to any person while simultaneously providing parenting coordination services. The foregoing rule shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

§801.56. Parenting Facilitation.

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

(b) In accordance with the Texas Family Code, §153.601(3-a), a "parenting facilitator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described by the Texas Family Code, §153.6061, in a suit affecting the parent-child relationship; and

(2) who:

(A) is appointed under Texas Family Code, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through procedures that are not confidential; and

(B) is not appointed under another statute or a rule of civil procedure.

(c) Notwithstanding any other provision of this chapter, licensees who desire to serve as parenting facilitators shall comply with all applicable requirements of the Texas Family Code, Chapter 153, and this section. Licensees shall also comply with all requirements of this chapter unless a provision is clearly inconsistent with the Texas Family Code, Chapter 153, or this section.

(d) In accordance with the Texas Family Code, §153.6102(e), a licensee serving as a parenting facilitator shall not provide other marriage and family therapy services to any person while simultaneously providing parenting facilitation services. The foregoing rule shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

(e) In accordance with the Texas Family Code, §153.6101(b)(1), a licensed marriage and family therapist associate shall not serve as a parenting facilitator.

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

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

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

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

(2) Assessment function. A parenting facilitator shall review applicable court orders, including protective orders, social studies, and other relevant records to analyze the impasses and issues as brought forth by the parties.

(3) Educational function. A parenting facilitator shall educate the parties about child development, divorce, the impact of parental behavior on children, parenting skills, and communication and conflict resolution skills.

(4) Coordination/case management function. A parenting facilitator shall work with the professionals and systems involved with the family (for example, mental health, health care, social services, education, or legal) as well as with extended family, stepparents, and significant others as necessary.

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

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

(k) A licensee serving as a parenting facilitator shall be alert to the reasonable suspicion of substance abuse by parents or children, as well as mental health impairment of a parent or child.

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

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

(n) A licensee serving as a parenting facilitator shall not initiate providing services until the licensee has received and reviewed the fully executed and filed court order or the signed agreement of the parties.

(o) A licensee serving as a parenting facilitator shall maintain impartiality in the process of parenting facilitation. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(p) A licensee serving as a parenting facilitator:

(1) shall terminate or withdraw services if the licensee determines the licensee cannot act in an impartial or objective manner;

(2) shall not give or accept a gift, favor, loan or other item of value from any party having an interest in the parenting facilitation process;

(3) shall not coerce or improperly influence any party to make a decision;

(4) shall not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting facilitator process; and

(5) shall not accept any engagement, provide any service, or perform any act outside the role of parenting facilitation that would compromise the facilitator's integrity or impartiality in the parenting facilitation process.

(q) A licensee serving as a parenting facilitator may make referrals to other professionals to work with the family, but shall avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration shall be given or received by a licensee for parenting facilitation or other professional referrals.

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

(s) A licensee serving as a parenting facilitator shall communicate with all parties, attorneys, children, and the court in a manner which preserves the integrity of the parenting facilitation process and considers the safety of the parents and children.

(t) A licensee serving as a parenting facilitator:

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

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

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

(u) A licensee serving as a parenting facilitator shall, prior to the beginning of the parenting facilitation process and in writing, inform the parties of:

(1) the limitations on confidentiality in the parenting facilitation process; and

(2) the basis of fees and costs and the method of payment, including any fees associated with postponement, cancellation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(v) Information obtained during the parenting facilitation process shall not be shared outside the parenting facilitation process except for professional purposes, as provided by court order, by written agreement of the parties, or as directed by the board.

(w) In the initial session with each party, a licensee serving as a parenting facilitator shall review the nature of the parenting facilitator's role with the parents to ensure that they understand the parenting facilitation process.

(x) A licensee serving as a parenting facilitator:

(1) shall comply with all mandatory reporting requirements, including but not limited to Texas Family Code, Chapter 261, concerning abuse or neglect of minors;

(2) shall report to law enforcement or other authorities if they have reason to believe that any participant appears to be at serious risk to harm themselves or a third party;

(3) shall maintain records necessary to support charges for services and expenses, and shall make a detailed accounting of those charges to the parties and their counsel, if requested to do so;

(4) shall maintain notes regarding all communications with the parties, the children, and other persons with whom they speak about the case; and

(5) shall maintain records in a manner that is professional, legible, comprehensive, and inclusive of information and documents that relate to the parenting facilitation process and that support any recommendations made by the licensee.

(y) Records of a licensee serving as a parenting facilitator are not mental health records and are not subject to the disclosure requirements of Texas Health and Safety Code, Chapter 611. At a minimum, records shall be maintained for the period of time described in §801.48(e) of this title (relating to Record Keeping, Confidentiality and Release of Records, and Required Reporting), or as otherwise directed by the court.

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

(aa) Charges for parenting facilitation services shall be based upon the actual time expended by the parenting facilitator, or as directed by the written agreement of the parties, and/or formal order of the court.

(bb) All fees and costs shall be appropriately divided between the parties as directed by the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

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

(dd) Services and activities for which a licensee serving as a parenting facilitator may charge include time spent interviewing parents, children and collateral sources of

information; preparation of agreements, correspondence, and reports; review of records and correspondence; telephone and electronic communication; travel; court preparation; and appearances at hearings, depositions and meetings.

(ee) The minimum training for a licensee serving as a parenting facilitator that is required by the Texas Family Code, §153.6101(b), and is determined by the court is:

(1) eight hours of family violence dynamics training provided by a family violence service provider;

(2) 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court;

(3) 24 classroom hours of training in the fields of family dynamics, child development, family law; and

(4) 16 hours of training in the laws and board rules governing parenting coordination and facilitation, and the multiple styles and procedures used in different models of service.

(ff) A licensee serving as a parenting facilitator:

(1) shall complete minimum training as required by the Texas Family Code, §153.6101, as determined by the appointing court;

(2) shall have extensive practical experience with high conflict or litigating parents;

(3) shall complete and document upon request advanced training in family dynamics, child maltreatment, co-parenting, and high conflict separation and divorce; and

(4) shall regularly complete continuing education related to co-parenting issues, high-conflict families and the parenting coordination and facilitation process.

(gg) A licensee serving as a parenting facilitator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the licensee's skill or expertise.

(hh) Since parenting facilitation services are addressed under multiple titles in different jurisdictions nationally, acceptability of training to meet the requirements of subsection (cc) of this section is based on functional skills taught during the training rather than the use of specific titles or names.

SUBCHAPTER D. APPLICATION PROCEDURES.

§801.71. Purpose. The purpose of this subchapter is to set out the application procedures for examination and licensure as a marriage and family therapist or marriage and family therapist associate.

§801.72. General.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official board forms.

(b) The board will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(c) An application must be completed within one year of the original date of filing. An application that is not completed one year past the date an application is opened is void.

§801.73. Required Application Materials.

(a) Application form. The application form shall contain:

(1) specific information regarding personal data, employment and type of practice, other state licenses and certifications held, disciplinary actions taken by other jurisdictions, felony or misdemeanor convictions, educational background including direct clinical experience, supervised experience, and references;

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

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

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

(5) a statement that the applicant understands that the fees submitted in the licensure process are nonrefundable;

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

(7) official transcripts.

(b) Supervised experience form. The supervised experience form must be completed by the applicant's supervisor and is valid only when it bears the supervisor's signature.

(c) Course work. An applicant must have the official transcript(s) showing all relevant course work sent directly to the board office.

(d) Other documents. Vita, resume, and/or other documentation of the applicant's credentials may be submitted.

(e) Effective September 1, 2006, all applicants for licensure must submit proof of successful completion of the jurisprudence examination at the time of application. The jurisprudence examination must be completed no more than six months prior to the date of licensure application.

SUBCHAPTER E. CRITERIA FOR DETERMINING FITNESS OF APPLICANTS FOR EXAMINATION AND LICENSURE.

§801.91. Purpose. The purpose of this subchapter is to establish the criteria by which the board will determine the qualifications required of applicants for approval for examination and/or licensure.

§801.92. Finding of Non-Fitness for Licensure. The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of a license:

(1) lack of the necessary skills and abilities to provide adequate marriage and family therapy services;

(2) any misrepresentation in the application or other materials submitted to the board;

(3) the violation of any provision of the Act or this chapter in effect at the time of application which is applicable to an unlicensed person;

(4) the violation of any provision of code of ethics which would have applied if the applicant had been a licensee at the time of the violation; or

(5) criminal conviction per §801.332 of this title (relating to Criminal Conviction).

§801.93. Finding of Non-Fitness for Licensure Subsequent to Issuance of License. The board may take disciplinary action based upon information received after issuance of a license, even if the violation occurred prior to issuance of the license.

SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE.

§801.111. Purpose. This subchapter establishes the academic requirements for examination and licensure for a marriage and family therapist or for a marriage and family therapist associate.

§801.112. General.

(a) The board shall accept the following as meeting academic requirements for licensure as a marriage and family therapist associate:

(1) a master's degree or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE);

(2) a master's degree or doctorate degree in marriage and family therapy from an accredited institution or program as defined in §801.2 of this title (relating to Definitions), but the program is not accredited by COAMFTE, provided that the practicum is at least 9 credit hours or 12 months. If the practicum is not at least 9 credit hours or 12 months an applicant may be approved to take the licensing examination and may be issued an associate license upon successfully passing the examination. Prior to receiving a license as a marriage and family therapist under this section, the applicant shall complete the pre-graduation practicum deficit in addition to the post-graduate supervised experience requirements consistent with the requirements in §801.142 of this title (relating to Supervised Clinical Experience Requirements and Conditions); or

(3) a master's or doctorate degree from an accredited institution or program as defined in §801.2 of this title in a related mental health field with a planned course of study in marriage and family therapy as described in §801.113(d) and (e) of this title (relating to Academic Requirements) with minimum course content as described in §801.114 of this title (relating to Academic Course Content).

(b) Degrees and coursework received at foreign universities shall be acceptable only if the degree conferred and coursework has been determined by a member of the National Association of Credential Evaluation Services (NACES) to be equivalent to a degree conferred by or coursework completed in an accredited institution or program. It is the applicant's responsibility to have degrees and coursework so evaluated.

(c) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory,

must be substantiated through course descriptions in official school catalogs, bulletins, syllabi, or by other means.

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

(e) The board shall accept no coursework which an applicant's transcripts indicate was not completed with a passing grade or for credit.

(f) In the case of coursework taken outside of a program of studies for which a degree was granted, no course in which the applicant received a grade below "B" or "pass" shall be counted toward meeting academic requirements for examination or licensure.

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

§801.113. Academic Requirements.

(a) Persons applying for the licensure examination must have completed or be enrolled in a marriage and family therapy graduate internship program, or its equivalent, which is approved by the board.

(b) Persons applying for licensure as a marriage and family therapist or a marriage and family therapist associate must have a master's or doctorate degree in marriage and family therapy or a master's or doctorate degree in a related mental health field with course work and training determined by the board to be substantially equivalent to a graduate degree in marriage and family therapy from a regionally accredited institution of higher education or an institution of higher education approved by the board.

(c) A degree or course work in a related mental health field is substantially equivalent if it is at least 45 semester hours which the applicant completed at a regionally accredited school. The 45 semester hours may be course work taken in the required graduate degree program.

(d) A degree or course work in a related mental health field must have been a planned course of study designed to train a person to provide direct services to assist individuals, families or couples in a therapeutic relationship in the resolution of cognitive, affective, behavioral or relational dysfunctions within the context of marriage or family systems.

(e) Examples of degrees in a related mental health field may include but are not limited to counseling, psychology, social work, or family studies with an emphasis on Marriage and Family Therapy. Degrees in fields other than those listed may be reviewed by an appropriate committee of the board for eligibility toward course equivalency.

§801.114. Academic Course Content. An applicant who holds a graduate degree in a mental health-related field must have course work in each of the following areas (one course is equal to three semester hours):

(1) theoretical foundations of marriage and family therapy--one course;

(2) assessment and treatment in marriage and family therapy--four courses;

(3) human development, gender, multicultural issues and family studies--two courses;

(4) psychopathology--one course;

(5) professional ethics--one course;

(6) applied professional research--one course; and

(7) supervised clinical practicum--12 months or nine hours.

§801.115. Academic Requirements and Supervised Clinical Practicum Equivalency for Applicants Currently Licensed in Another Jurisdiction. An applicant currently licensed as a marriage and family therapist in another jurisdiction of the United States, who does not meet the academic requirements in §801.114 of this title (relating to Academic Course Content) may be considered to have met the requirements according to the following.

(1) If an applicant has been licensed as a marriage and family therapist in a United States jurisdiction for the 5 years preceding the application, the academic requirements (including the practicum) will be considered to have been met. If licensed for any other period of 5 years, the board will determine whether academic requirements have been met.

(2) If an applicant has been licensed as a marriage and family therapist in a United States jurisdiction for less than 5 consecutive years, the applicant may make up any deficit in the practicum requirement by receiving 1 month of credit toward the requirement for every 2 months of independent licensed marriage and family therapy experience.

(3) If an applicant is licensed as a marriage and family therapist associate in another United States jurisdiction or has been licensed as a marriage and family therapist for less than 5 consecutive years, the applicant must meet all academic

course requirements, including the practicum. The applicant may make up any deficit in the practicum requirement by applying post-graduate supervised experience accrued toward licensure as a licensed marriage and family therapist in another jurisdiction on a month for month equivalency by endorsement.

SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR LICENSURE.

§801.141. Purpose. The purpose of this subchapter establishes the minimum experience requirements for licensure as a marriage and family therapist.

§801.142. Supervised Clinical Experience Requirements and Conditions. The following supervised clinical experience requirements and conditions shall apply.

(1) Supervised clinical experience accrued in Texas may only be accrued under licensure as a Licensed Marriage and Family Therapist Associate (with the exceptions noted in subparagraph (A)(i)(III) and (iii)(II) of this paragraph.

(A) The applicant must have completed a minimum of two years of work experience in marriage and family therapy services after conferral of the master's or doctoral degree in accordance with this chapter and must include the following:

(i) 3,000 hours of board-approved marriage and family therapy practice:

(I) of the 3,000 required hours, 1,500 hours must be direct clinical services, and 750 hours of the 1,500 hours shall be provided to couples or families;

(II) of the 3,000 required hours, the remaining 1,500 hours may come from related experiences that may include but not be limited to workshops, public relations, writing case notes, consulting with referral sources, etc.;

(III) of the 3,000 hours, no more than 500 hours may be transferred from a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited doctoral program; and

(IV) the 3,000 hours cannot begin accumulating before the issuance date of the license, except as described in subclause (III) of this clause.

(ii) a board-approved Supervisory Agreement Form, which requires the following:

(I) submission of a Supervisory Agreement Form to the board which designates the supervisor and the location of practice and which must be submitted to the board with the license application along with a copy of the license certificate of the supervisor, indicating that the supervisor's license is current and the supervisor is a board-approved supervisor; or if one or more Supervisory Agreement Form(s) are submitted after licensure, submission of a Supervisory Agreement Form(s) within 60 days of commencement of supervised services, accompanied by a copy of the license certificate of the supervisor, indicating that the supervisor's license is current and the supervisor is a board-approved supervisor;

(II) official board approval of the completed Supervisory Agreement Form after submission, as evidenced by receipt of an associate license for which the application package included a completed Supervisory Agreement Form, or by written verification from the board; and

(III) submission of additional Supervisory Agreement Form(s) and verification of the supervisor's license and board-approved supervisor status to the board if there is more than one location of practice, if there is a change in practice location, or if supervisors are added or changed. Additional forms must be approved in writing by the board at the beginning of the supervision process.

(iii) at least 200 hours of board-approved supervision, which requires:

(I) at least 100 hours of individual supervision;

(II) no more than 100 hours being transferred from the graduate program;

(III) at least 50 hours of the post-graduate supervision must be individual supervision;

(IV) of the 200 hours, no more than 50 hours may be by telephonic or electronic media;

(V) a minimum of one hour of supervision every two weeks; and

(VI) a supervision hour is no less than 50 minutes.

(B) An associate may practice marriage and family therapy in any setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(C) During the post graduate supervision, both the supervisor and the associate may have disciplinary actions taken against their licenses for violations of the Act or this chapter.

(D) Supervision must be conducted under a supervision contract, which must be submitted to the board on the official form within 60 days of the initiation of supervision. The supervision contract submitted to the board must be approved by the board. Fees charged by a supervisor during the course of supervision, which occurred without a board-approved supervision contract in place and subsequently resulted in the supervised experience hours of the supervisee being denied by the board solely on the basis that there was no board approved supervision contract in place within 60 days of the initiation of supervision, must be reimbursed to the supervisee.

(E) Group supervised experience of an associate may count toward an associate's supervision requirement only if the supervision group consisted of a minimum of three and no more than six associates during the supervision hour.

(F) Individual supervised experience of an associate may count toward the associate's supervision requirement only if the supervision consisted of no more than two associates.

(G) An associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.

(H) The associate may receive credit for up to 500 clock hours toward the required 3,000 hours of supervised clinical services by providing services via telephonic or other electronic media, as approved by the supervisor.

(2) Supervision and supervised clinical experience accrued toward licensure as a Licensed Marriage and Family Therapist in another jurisdiction are accepted by endorsement only (except as noted in paragraph (1)(A)(i)(III) and (iii)(II) of this section.

(A) It is the applicant's responsibility to ensure that supervision and supervised experience accrued in another jurisdiction is verified by the jurisdiction in which it occurred and that the other jurisdiction provides verification of supervision to the board.

(B) If an applicant has been licensed as a marriage and family therapist in a United States jurisdiction for the 5 years preceding the application, the supervised clinical experience requirements will be considered to have been met. If licensed for any other period of 5 years, the board will determine whether clinical experience requirements have been met.

§801.143. Supervisor Requirements.

(a) Supervisors are recognized by the board when subsection (a) or (b) of this section is met by submitting an application which includes the applicable fee and the following:

(1) a license as a marriage and family therapist (which is not a provisional or an associate license) issued by the board;

(2) one of the following:

(A) successful completion of a one-semester graduate course in marriage and family therapy supervision from an accredited institution; or

(B) a 40-hour continuing education course in clinical supervision that meets the minimum requirements of the board and is offered by a board-approved provider; and

(3) a master's degree and at least 3,000 hours of practice of marriage and family therapy over a minimum of three years as a licensed marriage and family therapist, or a doctoral degree recognized by the board and at least 1,000 hours of practice of marriage and family therapy over a minimum of one year as a licensed marriage and family therapist.

(b) In lieu of meeting the qualifications set forth in subsection (a) of this section, a person is an acceptable supervisor if the person is licensed by the board and has been designated as an approved supervisor or supervisor candidate by the American Association for Marriage and Family Therapy (AAMFT) before the person provides any supervision.

(c) A supervisor may not be employed by the person whom he or she is supervising.

(d) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(e) A board-approved supervisor shall maintain and sign a record(s) to document the date of each supervision conference and document the LMFT Associate's total number of hours of supervised experience accumulated up to the date of the conference.

(f) Both the LMFT Associate and the board-approved supervisor are fully responsible for the marriage and family therapy activities of the LMFT Associate.

(1) The supervisor shall ensure that the LMFT Associate is aware of and adheres to Subchapter C of this chapter (relating to Guidelines for Professional Therapeutic Services and Code of Ethics).

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

(3) A supervisor may not supervise more than eight persons at one time.

(4) If a supervisor determines that the LMFT Associate may not have the therapeutic skills or competence to practice marriage and family therapy under a regular license, the supervisor shall develop and implement a written plan for remediation of the LMFT Associate.

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

(g) Supervisor approval will expire on the date the licensee's regular license next expires. Renewal of supervisor approval will begin and expire on the same date as for the regular license.

(h) A licensee who is approved by the board as a supervisor whose license is not renewed due to failure to meet all requirements for licensure renewal shall not advertise or represent himself or herself as a supervisor in any manner. A licensee who lets his/her license expire and continues to provide supervision towards licensure under this chapter or the Act, or as a result of an order of the board, must reimburse all supervisees for supervision provided while the license was expired before renewal may be approved.

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

(j) A supervisor who becomes subject to a board disciplinary order is no longer an approved supervisor. The person shall inform all LMFT Associates of the board disciplinary order and assist the LMFT Associates in finding alternate supervision.

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

(l) Supervisory status may be denied, revoked, or suspended following a fair hearing for violation of the Act or rules. The fair hearing will be conducted under the fair hearing rules of the Department of State Health Services, at 25 Texas Administrative Code §§1.51 - 1.55 (relating to Fair Hearing Procedures).

(m) A supervisor whose supervisory status has expired shall refund all supervisory fees received after the expiration of the supervisory status to the LMFT Associate(s) who paid the fees.

(n) Supervision of an LMFT Associate without being approved as a supervisor, or after expiration of the supervisor status, may be grounds for disciplinary action.

SUBCHAPTER H. EXAMINATIONS.

§801.171. Purpose. The purpose of this subchapter is to establish the rules governing board-approved examinations for licensure.

§801.172. Frequency. The board, or its designee, shall administer board-approved licensure examinations at least semi-annually.

§801.173. Applying for Licensure Examination. A person must apply for the licensure examination in accordance with Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure) and §801.73 of this title (relating to Required Application Materials). The board shall notify an applicant of application approval or disapproval. If the application is disapproved, the notification shall state the reason.

(1) A person may apply to take the licensure examination after the person has submitted the necessary forms, fee and application in accordance with §801.73 of this title.

(2) At least 60 days prior to the licensure examination, the executive director or the executive director's designee shall notify an applicant in writing that an application has been approved.

(3) An applicant who wishes to take a scheduled licensure examination must complete an examination registration form and pay appropriate examination fees.

§801.174. Licensure and Jurisprudence Examinations.

(a) The board shall accept the national licensure examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

(b) An applicant shall apply to take the licensure examination on a form prescribed by the board. The applicant will pay the examination fee to the appropriate party as dictated by the current examination contract or agreement.

(c) The board, or its designee, shall determine the times and places for licensing examinations and give reasonable public notice.

(d) The board, or its designee, shall notify the examinee of the results of the licensure examination in accordance with the current examination contract or agreement. If the board is notified of a potential delay of notification of exam results, the board shall notify the examinee as soon as possible regarding the delay.

(e) Procedures for failure of an applicant to pass a licensure examination, if all minimum application and other requirements are met and current, are as follows:

(1) An applicant who fails an examination may retake the examination at the next scheduled date.

(2) Fee for the examination is in accordance with subsection (b) of this section.

(3) The applicant must reschedule the examination and resubmit the examination fee.

(4) The board shall furnish the person who failed the examination with an analysis of that person's performance on the examination if so requested in writing by the examinee.

(f) If an applicant fails the licensure examination two or more times, the board may require the applicant to identify additional courses of study which address the area(s) of deficit; and present satisfactory evidence of completion of the courses before approving the applicant to reschedule the licensure examination.

(g) Effective September 1, 2006, all applicants for licensure must submit proof of successful completion of the jurisprudence examination at the time of application.

(h) The jurisprudence examination must have been completed no more than six months prior to the licensure application date.

(i) The jurisprudence examination is available as an online learning experience and applicable fees are payable directly to the approved vendor.

(j) The jurisprudence examination content is based on the Act, the rules of the board, and other state laws and rules that relate to the practice of marriage and family therapy.

SUBCHAPTER I. LICENSING.

§801.201. General Licensing.

(a) Upon receipt and approval of application documentation and required fees, the board shall issue the person a license with a unique license number within 30 days.

(b) The board will replace a lost, damaged, or destroyed license certificate upon a written request from the licensee and payment of the duplicate license fee. Requests must include a statement detailing the loss or destruction of the licensee's original license or be accompanied by the damaged certificate.

(c) Upon the written request and payment of the license certificate duplicate fee by a licensee, the board will provide a licensee with a duplicate license within 30 days for an additional location of practice which is designated in a licensee's file.

§801.202. Associate License.

(a) An associate license shall be issued to an applicant who has:

(1) obtained a master's or doctorate degree in marriage and family therapy or a related mental health field with course work and training equivalent to a graduate degree in marriage and family therapy as set out in §801.114 of this title (relating to Academic Course Content);

(2) submitted an official graduate transcript from an accredited institution;

(3) submitted a complete application and all applicable fees to the board;

(4) submitted a supervisory contract to the board which specifies all contractual agreements with said supervisor and that the supervisor has met the requirements of §801.143 of this title (relating to Supervisor Requirements); and

(5) submitted proof of successful completion of the required examinations.

(b) The initial associate license will be issued for a period of 24 months and may be renewed biennially for a period not to exceed a total of 72 months.

(c) The only exception to the maximum period of 72 months for an LMFT Associate to satisfy all minimum requirements for licensure as an LMFT is if the LMFT Associate has completed all minimum requirements for licensure as an LMFT at or before 72 months while licensed as an LMFT Associate, with the one exception relating to experience requirements for licensure at §801.142(1)(A)(i)(I) of this title (relating to Supervised Clinical Experience Requirements and Conditions) and the "750 hours of the 1,500 hours shall be provided to couples or families." If all other minimum requirements are met at or before 72 months, an LMFT Associate may be granted one additional biennial renewal period (for a total of not more than 96 months of licensure as an LMFT Associate) for the Associate license in order to complete the experience requirements related to couples and families.

(d) An LMFT Associate who has not met the minimum requirements for licensure as an LMFT after holding the Associate license for 72 months (or 96 months if subsection (c) of this section applies), may not reapply for licensure as an LMFT Associate for a minimum period of two years from the date of expiration of the initial LMFT Associate license.

(e) If an applicant for licensure as an LMFT Associate has previously held the Associate license but did not achieve licensure as an LMFT under the initial Associate license reapplies for licensure, the appropriate committee of the board will determine if any of the previously acquired supervised experience and supervision hours may be counted towards minimum requirements for licensure as an LMFT under a subsequently issued Associate license or under a subsequently granted reactivation of the initial LMFT Associate license.

§801.203. Provisional License.

(a) A provisional license may be granted to a person who:

(1) is licensed or otherwise registered as a marriage and family therapist by another state or other jurisdiction, whose requirements for licensure or registration, at the time the license or registration was obtained, were substantially equivalent to the requirements set out in §801.73 of this title (relating to Required Application Materials);

(2) has successfully passed a national examination relating to marriage and family therapy or an examination approved by the board;

(3) is sponsored by a licensed marriage and family therapist in Texas with whom the provisional license holder may practice under this section;

(4) provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter (relating to Experience Requirements for Licensure); and

(5) meets any other requirements set forth under the Act.

(b) Upon formal written request, the board may waive the requirement set out in subsection (a)(3) of this section if the board determines that compliance with subsection (a)(3) of this section would cause undue hardship to the applicant.

(c) The board shall issue a license to a holder of a provisional license if:

(1) the provisional license holder passes the examination required by Subchapter H of this chapter (relating to Licensure Examinations);

(2) the provisional license holder provides official graduate transcripts meeting the requirements set forth in Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure);

(3) the provisional license holder provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter; and

(4) the provisional license holder meets any other requirements set forth under the Act.

(d) The board must complete the processing of a provisional license holder's application for license within 180 days after the provisional license was issued. The board may extend the 180-day deadline to allow for the receipt and tabulation of pending examination results.

§801.204. Licensing of Military Spouses.

(a) This section sets out the alternative license procedure for a military spouse required under Occupations Code, Chapter 55 (relating to License While on Military Duty and for Military Spouse).

(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license issued by another state that has licensing requirements shall complete and submit an application form and fee to the department. In accordance with Occupations

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

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

SUBCHAPTER J. LICENSE RENEWAL AND INACTIVE STATUS.

§801.231. Purpose. The purpose of this subchapter is to establish the rules governing licensure renewal, late renewal, surrender of license, and inactive status.

§801.232. General.

(a) A licensee must renew the license biennially or by the expiration date, whichever comes first.

(b) Each licensee is responsible for renewing licensure and paying the renewal fee before the expiration date and shall not be excused from paying late renewal fees or renewal penalty fees.

(c) A licensee must have fulfilled continuing education requirements prescribed by the board rule in order to renew licensure.

(d) A licensee whose license is not renewed due to failure to meet all requirements for licensure renewal shall return his or her license certificate to the board and shall not advertise or represent himself or herself as a licensed marriage and family therapist in any manner.

(e) The board shall deny renewal if required by the Texas Education Code, §57.491, relating to defaults on guaranteed student loans.

(f) The board may refuse to renew the license of a person who fails to pay an administrative penalty imposed in accordance with the Act unless the enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

§801.233. Staggered Renewals. The board shall use a staggered system for licensure renewals; the renewal date of a marriage and family therapist license shall be the last day of the licensee's birth month.

§801.234. Licensure Renewal.

(a) At least 30 days prior to the expiration date of a person's license, the board will send notice to the licensee of the expiration date of the license, the amount of the renewal fee due, and a licensure renewal form which the licensee must complete and return to the board with the required fee. The licensure renewal form may be completed electronically if available. Failure to receive notice does not relieve the licensee from the responsibility to timely renew.

(b) The licensure renewal form shall require the licensee to provide current addresses, telephone numbers, and information regarding completion of continuing education requirements.

(c) A license is not renewed until the board receives the completed licensure renewal form and the renewal fee, and the licensee has complied with the continuing education requirements. The board or its designee may grant the licensee additional time to complete continuing education requirements based on extraordinary circumstances, such as medical complications.

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

§801.235. Late Renewal.

(a) A person who renews a license after the expiration date but on or within 90 days after the expiration date shall pay the renewal fee plus one-fourth of the current biennial license renewal fee. If a person's license has been expired for 90 days but less than one year the person may renew the license by paying to the board the renewal fee and a fee that is equal to one-fourth of the current biennial license renewal fee.

(b) A person whose license was not renewed within one year of the expiration date may seek to obtain a new license by reapplying for licensure, submitting to examination, and complying with current requirements and procedures for obtaining an original license.

(c) The board may renew without re-examination an expired license of a person who was licensed as a Marriage and Family Therapist in this state, moved to another state, and is currently licensed as a Marriage and Family Therapist and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee equal to the examination fee for the license.

§801.236. Inactive Status.

(a) A licensee may request that his or her license be declared inactive by written request to the board prior to the expiration of the license. Inactive status periods shall not be granted to persons whose licenses are not current and in good standing. Inactive status periods shall not exceed 24 months. Licenses on inactive status shall be renewed biennially, or in a time period as appropriate for renewal, and shall include payment of any applicable fee, such as the inactive status fee.

(b) If a licensee fails to renew his or her license because the licensee is called to or on active duty with the armed forces of the United States, the licensee or the licensee's authorized representative may request that the license be declared inactive or be renewed. A request for inactive status shall be made in writing to the board prior to expiration of the license or within one year from the expiration date. This subsection is an exception to the requirement in subsection (a) of this section that the request be made prior to expiration of the license. A request for renewal may be made before or after the expiration date when related to active duty with the armed forces of the United States.

(1) If the request is made by the licensee's authorized representative, the request must 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.

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

(4) An active duty licensee shall be allowed to renew under this subsection without proof of continuing education hours if proof is required for renewal; however, the licensee must submit proof of completion of the required number of continuing education hours by the end of the following time period. The time period shall start on the actual date of renewal of the license and be equal to the length of time the licensee was on active duty during the continuing education period or following expiration of the license. If the licensee fails to submit proof of continuing education by the end of the time period, the board may suspend or revoke or deny renewal of the license.

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

(6) The board may periodically notify the licensee or the licensee's authorized representative that the license of the licensee remains in inactive status, if applicable.

(7) Except in extraordinary circumstances, a licensee on active duty shall notify the board that the licensee is on active duty. The board shall note in the licensee's file that the licensee may be eligible for renewal under this subsection.

(8) If a licensee is a civilian impacted or displaced for business purposes due to a national emergency or war, the licensee or the licensee's authorized representative may request that the license be declared inactive in the same manner as described in this subsection for military personnel. The written request shall include an explanation of how the licensee is impacted or displaced, which explanation shall be on the official letterhead of the licensee's business.

(c) An inactive status period shall begin on the first day of the month following board approval and payment of an inactive status fee.

(d) All privileges, fees, and continuing education requirements are not applicable during the period of inactive status. A person may not act as a therapist or represent himself or herself as a therapist during the period of inactive status.

(e) Continuing education credit cannot be earned while on inactive status.

(f) A person is subject to investigation and action under Subchapter L of this chapter (relating to Complaints and Violations) during the period of inactive status.

(g) A licensee may return to active status by written request to, and approval by, the board. Active status shall begin the first day of the month following board approval and payment of a license fee.

(h) Upon return to active status, the licensee must begin accruing continuing education hours in order to fulfill the continuing education requirements prior to the next licensure renewal.

§801.237. Surrender of License.

(a) A licensee may at any time voluntarily offer to surrender his or her license for any reason, without compulsion. If there is no complaint pending, board staff shall accept the surrender and void the license.

(b) When a licensee has offered the surrender of his or her license after a complaint has been filed which alleges violations of the Act or this chapter, the board shall consider

whether to accept the license surrender. If the board accepts such a surrender, that surrender is deemed to be the result of a formal disciplinary action and shall be reported as formal disciplinary action. Surrender of a license without acceptance by the board shall not deprive the board of jurisdiction over the licensee in accordance with the Act or other law.

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

SUBCHAPTER K. CONTINUING EDUCATION REQUIREMENTS.

§801.261. Purpose. The purpose of this subchapter is to establish the continuing education requirements for the renewal of licensure which a licensee must complete biennially or as appropriate for licensure renewal. These requirements are intended to maintain and improve the quality of professional services in marriage and family therapy provided to the public; and keep the licensee knowledgeable of current research, techniques, and practice; and provide other resources which will improve skill and competence in marriage and family therapy. Continuing education hours must be relevant to the practice of marriage and family therapy.

§801.262. Deadlines. Continuing education requirements for renewal shall be fulfilled during board-designated periods beginning on the first day of a licensee's renewal period and ending on the last day of the licensee's renewal period. These renewal periods are generally biennial, but if the renewal is related to the issuance of an initial license, the period shall be for a period of 13 to 24 months, depending on the licensee's birth month.

§801.263. Requirements for Continuing Education. A Licensed Marriage and Family Therapist must complete 30 clock hours of continuing education which is acceptable to the board each renewal period as described in §801.262 of this title (relating to Deadlines). A Licensed Marriage and Family Therapist Associate must complete 15 clock hours of continuing education which is acceptable to the board each renewal period as described in §801.262 of this title. All licensees are required to complete 6 hours of ethics each renewal period. A board-approved supervisor must complete at least 3 hours of clinical supervision continuing education each renewal period.

§801.264. Types of Acceptable Continuing Education. Continuing education undertaken by a licensee shall be acceptable to the board as credit hours towards licensure renewal or a request or order of the board under two circumstances:

(1) if it is offered by an approved sponsor(s) in the following categories:

(A) participation in state and national conferences such as the American Association for Marriage and Family Therapists (AAMFT) and Texas Association for Marriage and Family Therapy (TAMFT);

(B) participation in local seminars relevant to marriage and family therapy;

(C) completing a graduate or institute course in the field of marriage and family therapy;

(D) presenting workshops, seminars, or lectures relevant to marriage and family therapy (the same seminar may not be used more than once biennially);

(E) completing correspondence courses, satellite or distance learning courses, audio-video courses, and/or other learning formats in which real-time interaction with a facilitator(s) is not possible, including a re-broadcast of a webinar conducted in the past, relative to marriage and family therapy (no more than 12 hours per renewal period);

(F) completing the jurisprudence examination may count for one hour of the ethics requirement described in §801.263 of this title (relating to Requirements for Continuing Education); and

(G) attendance at a meeting of the Ethics Committee of the board from the beginning of the meeting to the end of the meeting by individuals who are not parties to any of the complaint cases may count for two hours of the ethics requirements described in §801.263 of this title. The board shall issue a continuing education certificate for board-approved attendance. A licensee may use only two hours of ethics continuing education credits related to attendance at an Ethics Committee meeting once per biennial renewal period; and

(2) if it is provided by a board-approved provider of continuing education by the Texas State Board of Examiners of Professional Counselors, the Texas State Board of Social Worker Examiners, or the Texas State Board of Examiners of Psychologists, and it is relevant to the practice of marriage and family therapy.

§801.265. Continuing Education Sponsor. The board is not responsible for approving individual continuing education programs. The board will approve an institute, agency, organization, association, or individual as a continuing education sponsor of continuing education units. The board will grant approval to organizations that pay the continuing education sponsor fee, which shall permit the organizations to

approve continuing education units for their marriage and family therapy courses, seminars, and conferences. These organizations do not need prior permission from the board but must submit an annual list of their seminars, workshops, and courses with the presenter's name to the board. Any university, professional organization, or individual who meets the required criteria may advertise as approved sponsors of continuing education for licensed marriage and family therapists.

(1) Sponsors shall verify attendance of participants and provide participants with a letter or certificate of attendance.

(2) Sponsors shall maintain all continuing education records and documentation for at least three years.

(3) Sponsors shall provide participants a mechanism for evaluation of each continuing education activity.

(4) Sponsors shall pay a continuing education sponsor fee which will be effective for one year from the last day of the approval issue month.

(5) The board may evaluate approved sponsors or applicants on a regular or random basis to ensure compliance with the requirements of this subchapter.

(6) Complaints regarding continuing education programs offerings may be submitted in writing to the executive director.

(7) The board may rescind the approval status of a continuing education sponsor at any time for failure to comply with this subchapter.

(8) The board may randomly audit continuing education providers for compliance with this subchapter.

(9) A sponsor whose approval is rescinded by the board may reapply for approval the 91st day following the board action. The sponsor shall be required to submit a plan of correction regarding the non-compliance that was previously identified. The sponsor's application shall be reviewed by the appropriate committee of the board.

(10) Continuing education hours received from a sponsor whose approval has been rescinded shall not be acceptable to fulfill the continuing education requirements of this subchapter.

(11) Continuing education hours received from a sponsor who failed to renew the sponsor's approval status shall not be acceptable to fulfill the continuing education requirements of this subchapter.

(12) Fees paid by a sponsor who has been denied or whose approval has been rescinded are not refundable.

§801.266. Criteria for Approval of Continuing Education Activities. Each continuing education experience submitted by a licensee will be evaluated on the basis of the following criteria.

(1) Attendance at programs shall be in accordance with §801.264 of this title (relating to Types of Acceptable Continuing Education).

(2) Completion of academic work shall be in accordance with §801.264 of this title. Official graduate transcript(s) from an accredited school showing completion of graduate hours in appropriate areas for which the licensee received at least a grade of "B" or "pass."

(3) Credit may be earned for clinical supervision of marriage and family therapy interns and associates. Supervision may count for no more than one-half of the biennial continuing education requirement.

(4) A presenter of a continuing education activity may earn 1.5 hours for each approved hour of continuing education presented, not to exceed one-half of the biennial continuing education requirement.

(5) An author of a book or peer reviewed article which enhances a marriage and family licensee's knowledge or skill may be granted continuing education credit not to exceed one-half of the biennial continuing education requirement.

§801.267. Determination of Clock Hour Credits. The board shall credit continuing education as follows: programs which meet the criteria §801.264 of this title (relating to Types of Continuing Education) shall be credited on a one-for-one basis with one clock-hour credit for each clock-hour spent in the continuing education activity, unless otherwise designated in §801.266 of this title (relating to Criteria for Approval of Continuing Education Activities).

§801.268. Reporting and Auditing of Continuing Education.

(a) Completion of approved continuing education of no less than 30 hours must be reported by the licensee at the time of renewal.

(b) The board shall conduct random audits of compliance with the continuing education requirements by licensees. A licensee selected for audit shall submit continuing education documentation upon request. Individual continuing education certificates of attendance shall not be submitted unless the licensee is requested to do so by the board.

SUBCHAPTER L. COMPLAINTS AND VIOLATIONS.

§801.291. General. The purpose of this subchapter is to establish procedures for the denial, revocation, probation, or suspension of a license, reprimand of a licensee, or imposition of an administrative penalty, and the procedures for filing complaints and allegations of statutory or rule violations.

(1) The following shall be grounds for revocation, probation or suspension of a license, imposition of an administrative penalty, refusal to renew a license, or reprimand of a licensee if a licensee has:

(A) been convicted of a felony or a misdemeanor involving moral turpitude;

(B) obtained or attempted to obtain a license by fraud or deception;

(C) used drugs or alcohol to an extent that affects professional competence;

(D) been grossly negligent in performing professional duties;

(E) been adjudicated mentally incompetent by a court of competent jurisdiction;

(F) practiced in a manner detrimental to the public health or welfare;

(G) advertised in a manner that tends to deceive or defraud the public;

(H) had a license or certification revoked by a licensing agency or by a certifying professional organization or by a governmental agency;

(I) otherwise violated the Act or board rules;

(J) committed an act for which liability exists under the Civil Practice and Remedies Code, Chapter 81;

(K) violated an order of the board; or

(L) engaged in conduct that discredits or tends to discredit the profession of marriage and family therapy.

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

(3) If a suspension overlaps a license renewal date, the suspended marriage and family licensee shall comply with the renewal procedures in this chapter; however, the suspension shall remain in effect pursuant to paragraph (2) of this subsection.

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

§801.292. Criteria for Denial of a License. The substantiation of any of the following related to an applicant may be, as the board determines, the basis for the denial of the licensure of the applicant:

(1) lack of the necessary skills and abilities to provide adequate therapeutic services;

(2) misrepresentation of professional qualifications or associations;

(3) misrepresentation of services and efficacy of services to clients;

(4) use of misleading or false advertising;

(5) use of relationships with clients to promote personal gain or for the profit of an agency or commercial enterprises of any kind;

(6) engaging in sexual contact or intimacies of any kind with any client or former client except as noted in §801.45 of this title (relating to Sexual Misconduct);

(7) a breach of confidentiality of a client except where allowed by law;

(8) abuse of the use of alcohol or drugs or the use of illegal drugs of any kind;

(9) any misrepresentation in the application or other materials submitted to the board;

(10) the violation of any provision of the Licensed Marriage and Family Therapist Act or this chapter; and

(11) any other criteria listed in §801.291 of this title (relating to General).

§801.293. Procedures for Revoking, Suspending, Probating or Denying a License, or Reprimanding a Licensee.

(a) The board's executive director or his/her designee shall give written notice to the person that the board proposes

to deny, suspend, probate, or revoke the license, impose an administrative penalty, or reprimand the licensee, after a hearing in accordance with the provisions of the Administrative Procedure Act (APA), and the board's hearing procedures in Subchapter O of this chapter (relating to Formal Hearings).

(b) Prior to denying, revoking, probating or suspending a license; imposing an administrative penalty; or reprimanding a licensee, the ethics committee shall give the applicant or licensee the opportunity for an informal conference or a formal hearing or both in accordance with the provisions of this subchapter, Subchapter N of this chapter (relating to Informal Conferences), and Subchapter O of this chapter (relating to Formal Hearings).

§801.294. Violations by an Unlicensed Person.

(a) A person commits an offense if the person knowingly or intentionally acts as a licensed marriage and family therapist without being licensed by the board. Such an offense is a Class B misdemeanor.

(b) An unlicensed person who facilitates or coordinates the provision of professional marriage and family therapy services but does not act as a licensed marriage and family therapist is not in violation of the Act.

(c) If it appears to the board that a person who is not licensed under the Act is violating the Act, a rule adopted under the Act, or another state statute or rule relating to the practice of marriage and family therapy, the board after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity. A violation of a cease and desist order constitutes grounds for the imposition of an administrative penalty by the board.

§801.295. Power to Sue. The board may institute a law suit in its own name. The board may avail itself of any other action, proceeding, or remedy authorized by law to enjoin a violation of the Act.

§801.296. Complaint Procedures.

(a) A person wishing to report a complaint or allege a violation of the Act or this chapter by a licensee or other person may notify the department staff. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the board office. A complaint shall not be accepted by the board office if the official complaint form is not filed within 5 years of the date of termination of the licensee-client relationship which gave rise to the alleged violations. If the client was a minor at the time of the alleged violation, this time limitation does not begin to run until the client reaches the age of 18 years. A complainant shall be notified of the non-acceptance of untimely complaints. This time limitation shall not apply to complaints involving violations of §801.45 of this title (relating to Sexual Misconduct) or any of the board's other rules relating to sexual misconduct. The board may waive this time limit in cases of egregious acts or continuing threats to public health or safety when presented with evidence that warrants such action.

(b) Upon learning of a complaint, the department staff may assist the person to obtain an official complaint form from the board's web site or offer to send to the complainant an official form which the complainant should complete and return to the board office. The executive director may refer an anonymous complaint for an investigation, if it appears that enough information has been provided regarding the alleged violation to conduct an investigation.

(c) Upon receipt of a written complaint, the department staff shall send an acknowledgment letter to the complainant. The executive director or executive director's designee shall determine whether the complaint appears to be within the jurisdiction of the board. If the complaint does not appear to be within the jurisdiction of the board or if the matters alleged in the complaint would not constitute a violation of the Act or this chapter, the executive director may dismiss the complaint and give written notice of dismissal to the licensee or person against whom the complaint has been filed, the complainant, and the ethics committee. The ethics committee, upon review, may reverse or amend the decision of the executive director and reopen the case. If the complaint does appear to be within the jurisdiction of the board, the executive director shall refer the complaint for an investigation and determine whether to notify the alleged violator of the complaint by mail within 45 days and request that the alleged violator submit a written response regarding the complaint within 15 days of receipt of the notice. For any complaint, the board or executive director or his/her designee may request that all relevant client records be submitted for consideration in conjunction with the investigation of an allegation. The board may consider failure to respond to a request for a response to a complaint or failure to respond to a request for information to be evidence of failure to cooperate in an investigation. If the executive director determines that the respondent to the complaint should not be notified within 45 days by mail, an investigator of the department shall notify the respondent of the complaint by letter, by telephone, or in person.

(d) Department investigative staff shall collect all information related to the complaint. Department investigative staff shall prepare an investigative report or summary. The chair shall appoint an ethics committee, which shall include at least one public board member, to review the complaint and the supporting documentation. The ethics committee shall be appointed to work with the executive director to:

(1) review each complaint and determine what action to take, if any;

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

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

(4) dismiss complaint cases on which no formal action will be taken or recommend formal action to be taken and participate in subsequent due processes afforded to the respondent under the Act or this chapter.

(e) Department staff shall keep an information file about each complaint which will include the following:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made in each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(f) Department staff shall periodically notify the parties to the complaint of status of the complaint until the complaint is resolved.

(g) The ethics committee, executive director, or executive director's designee may request further investigation of the complaint.

(h) After an investigation has been completed, the person completing the investigation shall submit the findings to the ethics committee, executive director, or executive director's designee. The written investigative report shall set out all facts obtained during the investigation. If the ethics committee determines that there are insufficient grounds to support the finding of a violation or act upon the complaint, the ethics committee may dismiss the complaint with a finding of no violation. Department staff shall give written notice of the dismissal to the complainant and the licensee or person against whom the complaint has been filed.

(i) If the ethics committee determines that there are sufficient grounds to support the finding of one or more violations, the ethics committee will consider the relevant factors identified in §801.301 of this title (relating to Relevant Factors) and the severity level and sanction guide in §801.302 of this title (relating to Severity Level and Sanction Guide) and determine what recommended action to take against the respondent to the complaint, if any. The ethics committee will report to the board any proposed disciplinary actions to be taken against a licensee. If the respondent is not a licensee of the board or a person whose expired license is no longer renewable and is found to have violated the Texas Occupations Code, Chapter 502, the board may issue an order to cease and desist and may refer the case to the Office of Attorney General for appropriate action.

(j) If the committee determines that a violation exists and that the circumstances surrounding the violation did not involve a serious risk of or did not result in significantly affecting the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as an advisory notice, warning letter, "Conditional Letter of Agreement," or other action which is not a formal disciplinary action but which constitutes a formal board request. The committee may also issue an advisory notice or a warning letter if the complaint did not result in a violation, but the circumstances surrounding the complaint are of concern of the board.

(k) If the executive director receives credible evidence that a licensee is engaging in acts that pose an immediate and significant threat of physical or emotional harm to the public, the executive director shall consult with the members of the ethics committee for authorization for an emergency suspension of the license.

(l) Ethics committee meetings and policy.

(1) The ethics committee will meet on a regular basis to review and recommend action on complaints filed against licensees. Additionally, the committee will hold informal hearings to review previous committee actions at the request of a respondent.

(2) An agenda and completed reports of complaint investigations will be sent to committee members approximately two weeks prior to each meeting. The agenda will list all items to be considered by the committee. Complaints will be listed on the agenda by the assigned complaint tracking number. At the discretion of the executive director or the ethics committee members, a recording may be made of the ethics committee meeting, with the exception that an executive session may not be recorded.

(3) Persons who are not members of the committee are permitted to observe committee work unless the committee enters into executive session for legal consultation. Committee members, staff, consultants and licensees against whom the complaint is filed and the person filing the complaint may participate in the discussion of a complaint pending action

before the committee. The committee chair or committee by vote may impose time limitations on discussion.

(4) A report on all completed investigations will be provided to committee members. The report will include copies of information obtained in the investigation and a summary sheet with a staff recommendation for the disposition for each case. Cases that are recommended for closure may be listed together as a consent agenda item. Any committee member, consultant, or staff person may remove cases from the consent agenda for individual review upon request. All cases left on the consent agenda will be voted on as a group for closure. All other cases will be considered on an individual basis.

(5) The committee will base its decision regarding the validity of a complaint on the evidence documented in the report of the investigation. The committee may find that there is or is not evidence of a violation of licensing law or rules or the committee may request additional information of a case for later review. If the committee finds that a licensee has violated licensing law or rules, the committee will consider the established policy guidelines and other relevant factors in their recommendation of disciplinary action.

(6) All parties to a complaint will be notified of the findings and recommendations of the committee. The respondent to a complaint who disagrees with the action of the committee may submit a written statement of the reasons for his or her disagreement, and may request an informal hearing before the committee. Request for an informal hearing must be made within 10 days of the date of the letter stating the disposition of the case.

§801.297. Monitoring of Licensees.

(a) The department shall maintain a complaint tracking system.

(b) Each licensee that has had disciplinary action taken against his or her license shall be required to submit regularly scheduled reports, if ordered by the board. The report shall be scheduled at intervals appropriate to each individual situation.

(c) The executive director or executive director's designee shall review the reports and notify the ethics committee if the requirements of the disciplinary action are not met.

(d) The ethics committee may consider more severe disciplinary proceedings if non-compliance occurs.

(e) As an alternative to the denial of a license, the board may, as a condition of initial licensure, require monitoring of a licensee who may pose a potential threat to public health or safety, regardless of whether a formal complaint has been received by the board. The board may require a licensee on monitoring status to comply with specified conditions set forth by the board. A licensee placed on this type of monitoring is not considered to have formal disciplinary action taken against their license, but must comply fully with the order of the board or face possible formal disciplinary action levied by the board. Factors that may constitute a potential threat to public health or safety may include, but are not limited to, reports of chemical abuse by a licensee, mental and/or physical health concerns, and/or criminal activity or allegations, whether pending or in final disposition by a court of law.

(f) Probation. If probation is ordered or agreed to, the following terms may be required.
General conditions of probation.

(1) The licensee shall obey all federal, state and local laws and rules governing marriage and family practice in this state.

(2) Under penalty of perjury, the licensee shall submit periodic reports as the board requests on forms provided by the board, stating whether the licensee has complied with all conditions of probation.

(3) The licensee shall comply with the board's probation monitoring program.

(4) The licensee shall appear in person for interviews with the board or its designee at various intervals and with reasonable notice.

(5) If the licensee leaves this state to reside or to practice outside the state, the licensee must notify the board in writing of the dates of departure and return. Periods of practice outside this state will not count toward the time of this probationary period. The marriage and family therapist licensing authorities of the jurisdiction to which the licensee is moving or has moved must be promptly notified of the licensee's probationary status in this state. The probationary period will resume when the licensee returns to the state to reside or practice.

(6) If the licensee violates probation in any respect, the board, after giving formal notice and the opportunity to be heard, may revoke the licensee's license and/or board-approved supervisor status or take other appropriate disciplinary action. The period of probation shall be extended until the matter is final.

(7) The licensee shall promptly notify in writing all settings in which the licensee practices marriage and family therapy of his or her probationary status.

(8) While on probation, the licensee shall not act as a supervisor or gain any hours of supervised practice required for any board-issued license.

(9) The licensee is responsible for paying the costs of complying with conditions of probation.

(10) The licensee shall comply with the renewal requirements in the Act and the board rules.

(11) A licensee on probation shall not practice marriage and family therapy except under the conditions described in the probation order.

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

(A) submit one supervisory plan for each practice location to the board for approval by the board or executive director/designee within 30 days of initiating supervision;

(B) submit a current job description from the agency in which the Marriage and Family Therapist or Associate is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(C) ensure that the supervisor submits reports to the board on a schedule determined by the board. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(D) notify the board immediately if there is a disruption in the supervisory relationship or change in practice location, and submit a new supervisory plan within 30 days of the break or change in practice location.

(g) Release from Probation.

(1) If the executive director believes that a licensee has satisfied the terms of probation, the executive director shall report to the ethics committee the status of the licensee's probation.

(2) If the executive director does not believe that the licensee has successfully completed probation, the executive director shall so notify the licensee and shall refer the matter to the ethics committee for review and recommendations. The licensee shall continue supervision and all requirements set forth in the board order, including periodic reports, until the ethics committee reviews and disposes of the case.

(h) Board-Ordered Supervision.

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

(A) submit one supervisory plan for each practice location to the board for approval by the board or executive director/designee within 30 days of initiating supervision;

(B) submit a current job description from the agency in which the marriage and family therapist or associate is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(C) ensure that the supervisor submits reports to the board on a schedule determined by the board. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(D) notify the board immediately if there is a disruption in the supervisory relationship or change in practice location, and submit a new supervisory plan within 30 days of the break or change in practice location.

(2) The supervisor who agrees to provide board-ordered supervision of a licensee who is under board disciplinary action must understand the board order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to board discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(3) Board-ordered and mandated supervision timeframes are specified in the board order.

§801.298. Default Orders.

(a) If a right to a hearing is waived, the board shall consider an order taking disciplinary action as described in the written notice to the licensee or applicant.

(b) The respondent, usually a licensee or applicant, and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(c) Upon an affirmative majority vote, the board shall enter an order imposing appropriate disciplinary action.

§801.299. Administrative Penalties.

(a) The assessment of an administrative penalty is governed by the Act.

(b) References in the Act to the "commissioner of health" or the "department" are references to the commissioner of health or his/her designee. The board shall request that the commissioner of health appoint the executive director of the board as his/her designee.

(c) References in the Act to a "hearing examiner designated by the department" are references to an administrative law judge from the State Office of Administrative Hearings.

(d) A hearing to assess administrative penalties shall be governed by Subchapter O of this chapter (relating to Formal Hearings) except where the subchapter is in conflict with the Act.

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

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

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

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

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

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

(A) Level I--$500 - $5,000;

(B) Level II--$250 - $2,500; or

(C) Level III--no more than $250.

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

§801.300. Suspension of License for Failure to Pay Child Support or Non-Compliance with Child Custody Order.

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support, or failure to be in compliance with a court order relating to child custody, the executive director shall immediately determine if the board has issued a license to the obligator named on the order, and, if a license has been issued, shall:

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

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

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

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Texas Family Code, Chapter 232 as added by Acts 1995, 74th Legislature Chapter 751, §85 (HB

433) and may not review, vacate, or reconsider the terms of an order.

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

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to use the titles "licensed marriage and family therapist," "provisional licensed marriage and family therapist," or "licensed marriage and family therapist associate" after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any license holder of the board.

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

(h) The individual must pay a reinstatement fee set out in §801.18 of this title (relating to Fees) prior to issuance of the license under subsection (g) of this section.

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

(1) Seriousness of Violation. The following factors are identified:

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

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

(C) the frequency and time-periods covered by the violations, such as whether there were multiple violations, or a single violation, and the period of time over which the violations occurred.

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

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

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

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

(i) intentional or premeditated;

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

(iii) resulted from simple error or inadvertence; and

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

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

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

(B) appropriate degree of remorse or concern;

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

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

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

(4) Deterrence. The following factors are identified:

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

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

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

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

(A) age and experience at time of violation;

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

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

(D) character references; and

(E) any other factors justice may require.

§801.302. Severity Level and Sanction Guide. The following severity levels and sanction guides are based on the relevant factors in §801.301 of this title (relating to Relevant Factors).

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

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

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

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

(5) Level Five--Reprimand. These violations involve inadvertent or relatively minor misconduct and/or rule violations not directly involving the health, safety and welfare of the public.

(6) An administrative penalty may be assessed for any violation, as determined by the ethics committee. An administrative penalty may be assessed in lieu of, or in addition to, other disciplinary actions.

§801.303. Other Actions. The ethics committee may resolve pending complaints with actions which are not considered formal disciplinary actions. These include: issuance of an advisory notice, warning letter; or informal reminder; issuance of a "Conditional Letter of Agreement;" and/or other actions as deemed appropriate by the ethics committee. The licensee is not entitled to a hearing on the matters set forth in the notice, letter, reminder, "Conditional Letter of Agreement," or other action but may submit a written response to be included in the complaint record. Such actions by the ethics committee may be introduced as evidence in any subsequent disciplinary action involving acts or omissions after receipt of the notice, letter, reminder, "Conditional Letter of Agreement," or other action which is does not involve a formal disciplinary action.

(1) An advisory notice, warning letter or informal reminder. The ethics committee may resolve pending complaints by issuance of a formal advisory notice, warning letter, or informal reminder informing licensees of their duties under the Act or this chapter, whether the conduct or omission complained of appears to violate such duties, and whether the board has a concern about the circumstances surrounding the complaint.

(2) A "Conditional Letter of Agreement." The ethics committee may resolve pending complaints by issuance of a "Conditional Letter of Agreement" informing licensees of their duties under the Act or this chapter, whether the conduct or omission complained of appears to violate such duties, and creating board-ordered conditions for the long-term resolution of the issues in the complaint. This "Conditional Letter of Agreement" specifies the immediate disposition of the complaint. The licensee is issued the "Conditional Letter of Agreement" by the ethics committee, executive director, or designee; a signature of agreement by the licensee is not required. If the licensee fails to comply with all the board-ordered conditions in the specified time frame outlined in the "Conditional Letter of Agreement," the licensee will not have a right to a subsequent review of the issues in the original complaint by the ethics committee, but rather, a new complaint will be opened for the original violation(s), and notice of the violation(s) will be issued to the licensee, proposing to impose a formal disciplinary action as the resolution. The disciplinary action proposed for failure to comply with a "Conditional Letter of Agreement" will be a reprimand, unless otherwise specified by the ethics committee. "Procedures for Revoking, Suspending, Probating or Denying a License, or Reprimanding a Licensee" shall apply when a formal disciplinary action is proposed.

(3) Other actions. The ethics committee may resolve pending complaints with other actions which are not considered formal disciplinary actions.

SUBCHAPTER M. LICENSING OF PERSONS WITH CRIMINAL BACKGROUNDS.

§801.331. Purpose. The purpose of this subchapter is to comply Texas with Occupations Code, Chapter 53 (relating to Consequences of Criminal Conviction) by establishing guidelines and criteria regarding the eligibility of persons with criminal backgrounds to obtain licenses as a marriage and family therapist.

§801.332. Criminal Conviction.

(a) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee or if the crime involves moral turpitude.

(b) In considering whether a criminal conviction directly relates to the occupation of a licensee, the board shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to be a licensed marriage and family therapist or licensed marriage and family therapist associate. The following felonies and misdemeanors relate to the license of a licensed marriage and family therapist or licensed marriage and family therapist associate because these criminal offenses indicate an inability to perform as a therapist or a tendency to be unable to perform as a licensed marriage and family therapist or licensed marriage and family therapist associate:

(A) the misdemeanor of knowingly or intentionally acting as a therapist without a license;

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

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

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

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

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

(v) concerning Title 4, which relates to offenses of attempting or conspiring to commit any of the offenses of this subparagraph; and

(3) other misdemeanors and felonies that the board may consider in order to promote the intent of the Act and this chapter;

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

(5) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed marriage and family therapist or licensed marriage and family therapist associate. In making this determination, the board will apply the criteria outlined in Texas Occupations Code, Chapter 53.

SUBCHAPTER N. INFORMAL CONFERENCES.

§801.351. Informal Conference.

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal conference held to determine whether an agreed order may be approved.

(b) If the executive director or the ethics committee determines that the public interest may be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing, the provisions of this subchapter shall apply. A licensee or applicant may request an informal conference; however, the decision to hold a conference shall be made by the executive director or the ethics committee.

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

(d) The executive director shall decide upon the time, date and place of the informal conference, and provide written notice to the licensee or applicant. Notice shall be provided no less than ten days prior to the date of the conference to the last known address of the licensee or applicant or by personal delivery. The ten days shall begin on the date of mailing or delivery. The licensee or applicant may waive the ten-day notice requirement.

(e) A copy of the board's rules concerning informal conference may be enclosed with the notice of the informal conference. The notice shall inform the licensee or applicant of the following:

(1) that the licensee may be represented by legal counsel;

(2) that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate;

(3) that at least one member of the ethics committee members shall be present;

(4) that the board's legal counsel or a representative of the Office of the Attorney General will be present;

(5) that the licensee's or applicant's attendance and participation is voluntary; and

(6) that the complainant and any client involved in the alleged violations may be present.

(f) The notice of the informal conference may be sent to the complainant at his or her last known address or personally delivered to the complainant. The complainant may be informed that he or she may appear and testify or may submit a written statement for consideration at the informal conference.

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

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

(i) The licensee or applicant, the licensee's or applicant's attorney, the ethics committee members, the board's legal counsel, and the executive director, may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(j) The board's legal counsel or an attorney from the Office of the Attorney General shall attend each informal conference. The ethics committee members or executive director may call upon the attorney at any time for assistance in the informal conference.

(k) Access to the board's investigative file may be prohibited or limited in accordance with the Public Information Act, the Administrative Procedure Act (APA), and other applicable law.

(l) At the discretion of the executive director or the ethics committee members, a recording may be made of some or all of the informal conference.

(m) The complainant and others present at the request of the complainant, members of the board, the licensee or applicant, the licensee's or applicant's attorney, and board staff may remain for all portions of the informal conference, except consultation between the board members, staff, and the board's legal counsel. Subject to the discretion of the board, witnesses, other than the complainant, may be allowed in the meeting only during their testimony.

(n) The complainant shall not be considered a party in the informal conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(o) At the conclusion of the informal conference, the ethics committee member(s) or executive director may make a proposal for an informal settlement of the complaint or contested case. The proposed settlement may include administrative penalties or any disciplinary action authorized by the Act. The ethics committee member(s) or executive director may also recommend that the board lacks jurisdiction, that a violation of the Act or this chapter has not been established, or that the investigation be closed.

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

(q) If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the executive director for appropriate action.

(r) If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire board for its approval. Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by the board.

(s) The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

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

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

(v) A proposed agreed order is not effective until the full board has approved the agreed order. The order shall then be effective in accordance with the APA, §2001.054(c).

(w) A licensee's opportunity for an informal conference under this subchapter shall satisfy the requirement of the APA, §2001.054(c).

(x) The board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal conference instead of or in addition to imposing an administrative penalty. The amount of a refund ordered as provided in an agreement resulting from an informal conference may not exceed the amount the consumer paid to the license holder for a service regulated by the Act and this title. The board may not require payment of other damages or estimate harm in a refund order.

(y) The following statement shall be included in to the notice of informal conference, in bold letters of at least 10 point type:

FAILURE TO APPEAR

YOUR FAILURE TO APPEAR, IN PERSON OR BY REPRESENTATIVE, ON THE ABOVE DATE, TIME, AND PLACE, WILL BE CONSIDERED A WAIVER OF YOUR RIGHT TO A HEARING. THE FACTUAL ALLEGATIONS AND THIS NOTICE OF INFORMAL CONFERENCE WILL BE DEEMED ADMITTED AS TRUE AND THE PROPOSED DISCIPLINARY ACTION WILL BE GRANTED BY DEFAULT.

SUBCHAPTER O. FORMAL HEARINGS.

§801.361. Purpose. The purpose of this subchapter is to establish rules governing the hearing procedures and practices that are available to persons or parties who request formal hearings from the board. The intended effect of these rules is to supplement the contested case provisions of the Texas Government Code, Chapter 2001, Administrative Procedure Act (APA), the hearing procedures of the State Office of Administrative Hearings (Texas Government Code, Chapter 2003 and Rules of Procedure, 1 Texas Administrative Code, Chapter 155), and to make the public aware of these procedures and practices.

§801.362. Proper Notice.

(a) For purposes of contested case proceedings before the State Office of Administrative Hearings, proper notice means notice sufficient to meet the provisions of the Texas Government Code, Chapter 2001 and the State Office of Administrative Hearings Rules of Procedure, 1 Texas Administrative Code, Chapter 155.

(b) For purposes of informal conferences, proper notice shall include the name and style of the case, the date, time, and place of the informal conference, and a short statement of the purpose of the conference.

(c) The following statement shall be attached to the notice of hearing or notice of informal conference, in bold letters of at least 10 point type:

FAILURE TO APPEAR

YOUR FAILURE TO APPEAR, IN PERSON OR BY REPRESENTATIVE, ON THE ABOVE DATE, TIME, AND PLACE, WILL BE CONSIDERED A WAIVER OF YOUR RIGHT TO A HEARING. THE FACTUAL ALLEGATIONS AND THIS NOTICE OF (EITHER HEARING OR INFORMAL CONFERENCE) WILL BE DEEMED ADMITTED AS TRUE AND THE PROPOSED DISCIPLINARY ACTION WILL BE GRANTED BY DEFAULT.

§801.363. Default.

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

(b) Remedies available upon default in a contested case before the State Office of Administrative Hearings (SOAH). The Administrative Law Judge (ALJ) shall proceed in the party's absence and such failure to appear shall entitle the department to seek informal disposition as provided by the Texas Government Code, Chapter 2001. The ALJ shall grant any motion by the department to remove the case from the

contested hearing docket and allow for informal disposition by the board.

(c) Remedies available upon default in an informal conference. The board may proceed to make such informal disposition of the case as it deems proper, as if no request for hearing had been received.

(d) The board may enter a default judgment by issuing an order against the defaulting party in which the factual allegations in the notice of violation or notice of hearing are deemed admitted as true without the requirement of submitting additional proof, upon the offer of proof that proper notice was provided to the defaulting party.

(e) Motion to set aside and reopen. A timely motion by the respondent to set aside the default order and reopen the record may be granted if the respondent establishes that the failure to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to mistake, accident, or circumstances beyond the respondent's control.

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

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

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

§801.364. Action after Hearing.

(a) Reopening of hearing for new evidence.

(1) The board may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing.

(2) The department shall reopen a hearing to include such new evidence as part of the record if the board deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(3) Notice of any reopened hearing shall be provided to all previously designated parties, by certified mail, return receipt requested.

(b) Final orders or decisions.

(1) The final order or decision of the department will be rendered by the board or its designee.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law, either in the body of the order, by attachment, or by reference to an Administrative Law Judge's proposal for decision.

(3) Unless otherwise permitted by statute or by these sections, all final orders shall be signed by the board chair, or designee.

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

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