



**Title 22 (Examining Boards)  
Texas Administrative Code  
Part 30, Chapter 681**

**Rules Relating to the Licensing and  
Regulation of Professional Counselors**

Adopted by the Texas State Board of Examiners of Professional Counselors

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Texas State Board of Examiners of Professional Counselors  
Health & Human Services Commission  
P.O. Box 149347 - Mail Code 1982  
Austin, Texas 78714-9347  
(512) 834-6658  
Fax: (512) 834-6677

[lpc@dshs.texas.gov](mailto:lpc@dshs.texas.gov)  
<http://dshs.texas.gov/counselor/>

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## SUBCHAPTER A THE BOARD

### §681.1 Purpose

The purpose of this chapter is to implement the provisions of Texas Occupations Code, Chapter 503 (the Licensed Professional Counselor Act, or the Act), concerning the licensing and regulation of professional counselors.

### §681.2 Definitions

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

**(1) Accredited school**--An institution of higher education accredited by a regionally accrediting agency recognized by the Texas Higher Education Coordinating Board.

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

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

**(4) Art therapy**--A human service profession in which clients, facilitated by the art therapist, use art media, the creative process, and the resulting artwork to explore their feelings, reconcile emotional conflicts, foster self-awareness, manage behavior, develop social skills, improve reality orientation, reduce anxiety and increase self-esteem.

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

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

**(7) Commission**--Health and Human Services Commission.

**(8) Consent for services**--Process for receiving permission from the legally authorized person who agrees to services.

**(9) Consent Form**--A document signed by the legally authorized person to ensure the client is aware of fees and arrangements for

payment; counseling purposes, goals, and techniques; restrictions placed on the license by the board; limits on confidentiality; intent of the licensee to use another individual to provide counseling treatment intervention to the client; supervision of the licensee by another licensed health care professional including the name, address, contact information, and qualifications of the supervisor; and the name, address, and telephone number of the board for the purpose of reporting violations of the Act or this chapter.

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

**(11) Direct client contact**--Time spent counseling clients.

**(12) Health care professional**--Any person licensed, certified, or registered by the state in a health related profession.

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

**(14) Jurisprudence exam**--The Texas State Board of Examiners of Licensed Professional Counselors Jurisprudence exam.

**(15) License**--An LPC license, LPC license with art therapy specialty designation, provisional license, or LPC Intern license issued by the board.

**(16) Licensee**---A person who holds an LPC license, LPC license with art therapy specialty designation, provisional license, or LPC Intern license.

**(17) LPC--Licensed Professional Counselor.** A person holding an LPC license as a professional counselor with authority to practice in independent practice.

**(18) LPC Intern--Licensed Professional Counselor Intern.** A person who holds an LPC Intern license to practice counseling only under a board-approved supervisor and not as an independent practitioner.

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

**(A)** the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of the legally recognized denomination, church, sect, religious organization or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, §1.6033-2(g)(i) (2012);

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

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

**(20) Supervisor--**An LPC approved by the board as meeting the requirements set out in §681.93 of this title (relating to Supervisor Requirements) to supervise an LPC Intern.

### **§681.3 Meetings**

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

**(b)** The chair may call meetings after consultation with board members or by a

majority of members voting at a regular meeting.

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

### **§681.4 Transaction of Official Business**

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

**(b)** The board will not be bound in any way by any statement or action on the part of any board or staff member except when a statement or action is pursuant to specific instructions of the board or in accordance with board rules in this chapter. Board or staff member opinions about ethical dilemmas or practice issues can never be substituted for appropriate professional consultation or legal advice.

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

### **§681.5 Agendas**

**(a)** Prior to each meeting the executive director will prepare and submit an agenda to each member of the board which includes items requested by members, items required by law, and other matters of board business which have been approved for discussion by the chair.

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

### **§681.6 Minutes**

**(a)** The minutes of a board meeting are official only if affixed with the original signature of the chair or the chair's designee.

**(b)** Drafts of the minutes of each meeting will be forwarded to each member of the board

for review and comments or corrections prior to approval by the board.

(c) The official minutes of the board meetings will be posted on the publicly-accessible board website.

#### **§681.7 Elections**

(a) At the meeting held nearest to August 31 of each year, the board will elect a vice-chair.

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

#### **§681.8 Officers**

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

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

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

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

#### **§681.9 Committees**

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

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

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

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

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

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

(g) Each committee will consist of at least one public member and one professional member, unless the board chair or vice chair authorizes otherwise.

#### **§681.10 Executive Director**

(a) The executive commissioner of the commission with the advice and consent of the board, shall appoint an executive director for the board. The executive director must be an employee of the commission.

(b) The executive director may delegate responsibilities to other staff members.

(c) The executive director will keep the minutes of the meetings and proceedings of the board and is the custodian of the files and records of the board.

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

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

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

#### **§681.11 Reimbursement for Expenses**

A board member is entitled to receive per diem and transportation expenses as provided by the Texas General Appropriations Act.

#### **§681.12 Official Records of the Board**



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

(b) Costs of duplication will be paid by the requester at the time of or before the duplicated records are sent or given to the requester.

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

#### **§681.13 Impartiality and Non-discrimination**

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

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

(c) A person needing accommodations under the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) in order to access board services must request reasonable 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.

#### **§681.14 Fees**

(a) The schedule of fees includes the following:

(1) Application, LPC Intern, and LPC license fee--\$190;

(2) Provisional license fee--\$50;

(3) Supervisor status application fee--\$100;

(4) LPC renewal fee--\$100;

(5) Supervisor status renewal fee--\$100;

(6) LPC late renewal fee:

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

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

(7) LPC active to inactive status conversion fee--\$50;

(8) Supervisor status active to inactive status conversion fee--\$100;

(9) License certificate or renewal card duplication or replacement fee--\$10;

(10) Returned check fee--\$25;

(11) Art therapy specialty designation application fee--\$30;

(12) Criminal history evaluation letter fee--\$50; and

(13) License verification fee--\$10.

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

(c) Fees paid to the board are not refundable.

(d) For all applications and renewal applications, the commission is authorized to collect subscription and convenience fees in amounts approved by the Texas Department of Information Resources to recover costs associated with application and renewal application processing through the state electronic Internet portal.

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

#### **§681.15 Processing Procedures**

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

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

(A) issuance of temporary license - 20 working days; or

(B) letter of application deficiency - 20 working days.

(2) The letter of denial of a license will be sent within 30 working days from the receipt of the last item necessary to complete the application.

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

#### **§681.16 Petition for the Adoption of a Rule**

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

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

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

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

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

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

(c) The petition must be submitted to the executive director.

(d) The executive director or his or her designee may determine the petition does not contain the information described in subsection (a) of this section and will return the petition to the petitioner.

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

(f) The board will deny the petition or institute rule-making procedures in accordance with the APA at the first full board meeting after receiving the petition. The board may deny parts of the petition or institute rule-making procedures on parts of the petition.

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

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

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

#### **§681.17 Request for Criminal History Evaluation Letter**

(a) In accordance with Texas Occupations Code, §53.102, a person may request the board 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 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 must submit the request on a form prescribed by the board, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request must state the basis for the person's potential ineligibility.

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

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

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

## **SUBCHAPTER B AUTHORIZED COUNSELING METHODS AND PRACTICES**

### **§681.31 Counseling Methods and Practices**

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

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

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

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

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

(5) addictions counseling which uses interpersonal, cognitive, cognitive-behavioral,

behavioral, psychodynamic, affective methods and strategies, and 12-step methods to achieve abstinence from the addictive substances and behaviors by the client;

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

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

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

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

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

**(11)** psychotherapy which uses interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and/or

strategies to assist clients in their efforts to recover from mental or emotional issues;

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

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

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

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

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

**(17)** consulting which uses the application of specific principles and procedures in counseling to provide assistance in

understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations but not considered direct client contact for LPC Interns; and

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

### **SUBCHAPTER C CODE OF ETHICS**

#### **§681.41 General Ethical Requirements**

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

- (1)** the effectiveness of services;
- (2)** the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; or
- (3)** the practice or field of counseling.

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

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

**(d)** A licensee must make reasonable efforts to discourage 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 must take immediate and reasonable action to correct the statement.

**(e)** Regardless of setting, a licensee must provide counseling only in the context of a professional relationship. Prior to providing services, a licensee must obtain from an individual a signed informed consent, signed written receipt of information, or in the case of involuntary treatment a copy of the appropriate court order, including the following:

- (1)** fees and arrangements for payment;
- (2)** counseling purposes, goals, and techniques;
- (3)** any restrictions placed on the license by the board;
- (4)** the limits on confidentiality;
- (5)** any intent of the licensee to use another individual to provide counseling treatment intervention to the client; and
- (6)** supervision of the licensee by another licensed health care professional including the name, address, contact information and qualifications of the supervisor;
- (7)** the name, address and telephone number of the board for the purpose of reporting violations of the Act or this chapter; and
- (8)** the established plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice.

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

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

**(h)** In accordance with §503.401(a)(4) of the Act, a licensee must not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage.

**(i)** A licensee employed or under contract with a chemical dependency facility or a mental health facility must comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code Chapter 164, will not be considered as a violation of state law relating to illegal remuneration.

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

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

**(l)** A licensee must set and maintain professional boundaries.

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

**(1)** A non-therapeutic relationship is any non-counseling activity initiated by either

the licensee or client that results in a relationship unrelated to therapy.

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

**(3)** A licensee may not engage in sexual contact with a client if the contact begins less than five (5) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

**(4)** For purposes of paragraphs (2) and (3) of this subsection, the licensee must be able to demonstrate there has been no exploitation and the non-therapeutic relationship is not detrimental to the client in light of all relevant factors, including, but not limited to, the factors set forth in §681.42(b)(4)(A) - (G) of this title (relating to Sexual Misconduct).

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

**(A)** family members;

**(B)** personal friends;

**(C)** educational associates; or

**(D)** business associates.

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

**(7)** The licensee must not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a

client if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

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

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

**(p)** The licensee must take reasonable precautions to protect clients from physical or emotional harm resulting from interaction:

**(1)** within a group; or

**(2)** individual counseling.

**(q)** For each client, a licensee must keep accurate records of:

**(1)** signed informed consent, signed written receipt of information, or, in the case of involuntary treatment, a copy of the appropriate court order

**(2)** intake assessment;

**(3)** dates of counseling treatment intervention;

**(4)** principal treatment methods;

**(5)** progress notes;

**(6)** treatment plan; and

**(7)** billing information.

**(r)** Records held by a licensee must be kept for a minimum of six (6) years from the date of the last contact with the client.

**(s)** Records created by licensees during the scope of their employment by agencies or institutions that maintain client records are not required to comply with (q) and (r) of this section.

**(t)** Billing Requirements.

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

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

**(3)** Pursuant to Texas Health and Safety Code, Chapter 611, on the written request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, a licensee must provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

**(4)** A licensee may not knowingly overcharge a client.

**(5)** With the exception of an unkept appointment, a licensee may not submit to a client or a third party payor a bill for counseling treatment intervention the licensee knows or should know is improper, unreasonable, or unnecessary.

**(u)** A licensee must comply with all requirements of Texas Health and Safety Code Chapters 611 and 181 concerning the release of mental health records and confidential information.

**(v)** Prior to the commencement of counseling services to a minor client who is named in a custody agreement or court order, a licensee

must obtain and review a current copy of the custody agreement or court order, as well as any applicable part of the divorce decree. A licensee must maintain these documents in the client's record and abide by the documents at all times. When federal or state statutes provide an exemption to secure consent of a parent or guardian prior to providing services to a minor, a licensee must follow the protocol set forth in such federal or state statutes.

**(w)** A licensee must terminate a professional counseling relationship when it is reasonably clear the client is not benefiting from the relationship.

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

**(y)** A licensee must not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses in the evaluation the licensee has not personally interviewed the individual.

**(z)** A licensee must not knowingly overtreat a client.

**(aa)** A licensee must not aid or abet the unlicensed practice of professional counseling by a person required to be licensed under the Act.

**(bb)** A licensee must report to the board knowledge of any unlicensed practice of counseling.

**(cc)** A licensee or an applicant must not participate in the falsification of any materials submitted to the board.

**(dd)** A licensee must not provide services while impaired.

#### **§681.42 Sexual Misconduct**

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

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

**(2)** Sexual contact means:

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

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

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

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

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

**(4)** "Therapeutic deception" means a representation by a licensee that sexual contact with, or sexual exploitation by, the licensee is consistent with, or a part of, a client's or former client's counseling.

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

**(1)** a client

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

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



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

- (A)** the amount of time that has passed since therapy terminated;
- (B)** the nature and duration of the therapy;
- (C)** the circumstances of termination;
- (D)** the client's, LPC Intern's, or student's personal history;
- (E)** the client's, LPC Intern's, or student's current mental status;
- (F)** the likelihood of adverse impact on the client, LPC Intern, or student and others; and
- (G)** any statements or actions made by the licensee during the course of therapy, supervision, or educational services suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client, LPC Intern, or student.

**(c)** A licensee must not practice therapeutic deception of a client.

**(d)** It is not a defense under subsections (b) - (c) of this section the sexual contact, sexual exploitation, or therapeutic deception with the client, LPC Intern, or student occurred:

- (1)** with the consent of the client, LPC Intern, or student;
- (2)** outside the professional counseling sessions of the client or student; or

**(3)** off the premises regularly used by the licensee for the professional, supervisory, or educational services provided to the client, LPC Intern, or student.

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

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

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

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

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

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

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

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

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

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

**(8)** kissing or fondling;

**(9)** making a request for a date;

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

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

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

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

**(f)** A licensee must report sexual misconduct as follows:

**(1)** If a licensee has reasonable cause to suspect a client, LPC Intern, or student has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health provider, or if a client, LPC Intern, or student alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee must report the alleged conduct not later than the third business day after the date the licensee became aware of the conduct or the allegations to:

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

**(B)** the board and any other state licensing agency which licenses the mental health provider if the conduct involves a licensed individual.

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

**(3)** A report under this subsection must:

**(A)** identify the reporter;

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

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

**(D)** provide the name of the alleged perpetrator.

#### **§681.43 Testing**

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

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

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

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

**(e)** In accordance with the §503.003(b)(1) of the Act, the use of standardized projective techniques is prohibited. This prohibition includes, but is not limited to, the Rorschach Inkblot Test, the Holtzman Inkblot Test, the Thematic Apperception Test, the Children's Apperception Test, and the Senior Apperception Test.

#### **§681.44 Drug and Alcohol Use**

A licensee must not:

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

**(2)** use illegal drugs of any kind; or

**(3)** promote or encourage the illegal use, distribution, sale, or possession of alcohol or drugs.

#### **§681.45 Confidentiality and Required Reporting**

**(a)** Communication between a licensee and client and the client's records, however created or stored, are confidential under the

provisions of the Texas Health and Safety Code Chapter 611 and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice.

**(b)** A licensee must 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 must comply with Texas Health and Safety Code, Chapters 181 and 611, concerning access to mental health records and confidential information.

**(d)** A licensee must report information as required by the following statutes:

**(1)** Texas Family Code Chapter 261, Subchapter B, concerning report of abuse or neglect of minors;

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

**(3)** Texas Health and Safety Code Chapter 161, Subchapter L, concerning abuse, neglect, and unprofessional or unethical conduct in health care facilities; and

**(4)** Texas Civil Practice and Remedies Code, §81.006, concerning duty to report sexual exploitation by a mental health provider.

**(5)** A licensee must comply with Texas Occupations Code §109.051 relating to the release of treatment information concerning the treatment of a sex offender.

**(e)** A licensee must submit a written report to the board office within 30 days of the following:

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

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

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

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

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

#### **§681.46 Licensees and the Board**

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

**(b)** A licensee has the responsibility of reporting alleged violations of the Act or this chapter to the board.

**(c)** The licensee must submit a written report of any name changes, any changes in home or business address or phone number, employment setting, or other relevant changes to the board in writing within 30 days of the change.

**(d)** A licensee must provide a written response to the board's request for information or other correspondence in a timely manner. The board may consider a licensee's failure to respond in a timely manner as grounds for disciplinary action.

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

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

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

#### **§681.47 Assumed Names**

**(a)** An individual practice by a licensee may be established as a corporation, a limited liability

partnership, a limited liability company, or other business entity in accordance with state or federal law.

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

#### **§681.48 Consumer Information**

**(a)** A licensee must inform each client of the name, address, and telephone number of the board for the purpose of reporting violations of the Act or this chapter on:

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

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

**(3)** a bill for counseling provided to a client.

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

**(c)** The legal name of the licensee appears on the license certificate and renewal card. Licensees must include their license number on all marketing and client resource materials if they do not use their legal name in their practice.

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

**(e)** A licensee must not make any alteration to a license certificate or renewal card issued by the board.

**(f)** On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the intern's name must be followed by the name of the supervisor in the same type size and font.

#### **§681.49 Advertising and Announcements**

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

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

**(1)** makes any misrepresentation of fact or omits a fact necessary to make the statement misleading;

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

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

**(4)** 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 mental 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 for or used by another profession or professional.
- (c) A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations.
- (d) The highest academic degree in counseling or a counseling-related field earned from an accredited school may be used when advertising or announcing counseling treatment intervention to the public or in counseling-related professional representations. A degree in counseling or a counseling-related field received at a foreign university may be used if the degree would be accepted as a transfer degree by an accredited school.
- (e) Notwithstanding the foregoing, a licensee may advertise or announce his or her other degrees from an accredited school if the subject of the degree is specified.
- (f) The board imposes no restrictions on advertising by a licensee with regard to the use of any medium, the licensee's personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a licensee, or the use of a trade name.
- (g) All advertisements or announcements of counseling including telephone directory listings by a person licensed by the board must clearly state the licensee's licensure status by the use of a title such as "Licensed Counselor", or "Licensed Professional Counselor", or "LPC", or a statement such as "licensed by the Texas State Board of Examiners of Professional Counselors."
- (h) An LPC Intern must indicate intern status on all advertisements, billing, and announcements of counseling treatment by the use of the term "LPC Intern." On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the

intern's name must be followed by the name of the supervisor in the same type size and font.

(i) A licensee is required to hold the art therapy specialty designation in order to use the title "art therapist" or the initials "AT." A licensee who does not hold the designation may use art therapy as a counseling method but may not use the title or initials.

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

#### **§681.50 Research and Publications**

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

(b) A licensee must ensure the full protection of a client's identity when using data obtained from a professional counseling relationship for the purposes of education or research.

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

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

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

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

(b) The board may consider conduct prior to licensure in determining whether an applicant or licensee is qualified to practice counseling,

including conduct that would have been a violation of the code of ethics if the person had been licensed.

**(c)** The board may deny a license or specialty recognition if it substantiates the applicant lacks the necessary skills and abilities to provide adequate counseling, the applicant has misrepresented any materials submitted to the board, or violated any provision of the Act or board rule in this chapter.

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

**§681.52 LPC Interns [repealed, effective 02/28/2019]**

**SUBCHAPTER D  
APPLICATION PROCEDURES**

**§681.71 General Application Procedures**

**(a)** An applicant must submit a complete application with all supporting documentation and all applicable fees to the board. Complete applications will consist of the required application materials described in §681.72 of this title (relating to Required Application Materials).

**(b)** An application is officially submitted when all applicable fees are received.

**(c)** To upgrade from LPC Intern status to LPC, an LPC Intern must submit the supervised experience documentation form, proof of passing the jurisprudence exam within the two years prior to upgrade, and the upgrade fee, if applicable.

**(d)** Staff will mail notice of deficiencies found on the application to the last reported address. The applicant must resolve all deficiencies within one year of the date of the deficiency notice.

**(e)** One year after the date of the deficiency notice, an application with an unresolved deficiency is null and void. Applicants may reapply by submitting a new application with supporting documents demonstrating satisfaction of all current licensing requirements, including examination requirements, and all applicable fees.

**(f)** Applicants who held a Texas license previously may reapply by submitting a new application with supporting documents demonstrating satisfaction of all current requirements, including examination requirements, and all applicable fees.

**§681.72 Required Application Materials**

**(a)** To apply for LPC Intern, the applicant must submit:

- (1)** the board's application form;
- (2)** all applicable fees;
- (3)** official examination results from the National Board of Certified Counselors verifying a passing score on the National Counselor Exam (NCE) or National Clinical Mental Health Counselor Exam (NCMHCE) issued no more than five (5) years before the date the application was received;
- (4)** completion certificate for the jurisprudence exam dated no more than two years before the date the application is submitted;
- (5)** an official graduate transcript(s) sent either:
  - (A)** directly to the board from the school(s) either by mail or e-transcript; or
  - (B)** attached to the application in a sealed school envelope;
- (6)** a practicum/graduate intern documentation form; and
- (7)** a supervisory agreement form.
- (8)** The holder of a current license in good standing issued by another jurisdiction equivalent to the Texas LPC Intern license

must submit official verification of his or her license, including official verification of any supervised experience recognized by the issuing jurisdiction. If supervised experience cannot be verified by the issuing jurisdiction, the board may consider a supervised experience documentation form with verification of the supervisor's credentials.

**(b)** To apply for LPC as the holder of a current Texas LPC Intern license, the applicant must submit:

- (1)** the board's application form;
- (2)** all applicable fees, unless paid in full when the current LPC Intern license was issued;
- (3)** completion certificate for the jurisprudence exam dated no more than two years before the date the application for LPC was received;
- (4)** a supervised experience documentation form; and
- (5)** other information or forms as requested by the board.

**(c)** To apply for LPC as the holder of a current license equivalent to a Texas LPC license issued by another jurisdiction, the applicant's license must be in good standing and must submit:

- (1)** all of the items listed in subsection (a)(1)-(6) of this section;
- (2)** official verification of the license, including official verification of any supervised experience recognized by the issuing jurisdiction; and
- (3)** other information or forms as requested by the board.
- (4)** The five-year expiration of the NCE or NCMHCE score does not apply to an applicant who has held a license issued by a United States jurisdiction in good standing for at least two (2) years before the date the application for LPC was received.

**(d)** To apply for supervisor status, an LPC must:

- (1)** have held the LPC license in good standing for at least 60 months;
- (2)** submit an application and all applicable fees; and
- (3)** submit a completion certificate for an acceptable supervisor training. An acceptable supervisor training is:
  - (A)** a doctoral level course in the supervision of professional counseling or mental health services which was taken for credit at an accredited school and documented on an official transcript; the qualifying doctoral level course may have been completed no more than five (5) years before the date the application for supervisor status was received; or
  - (B)** a 40-clock-hour supervision course as set forth in §681.147 of this title (relating to 40-Clock-Hour Supervisor Training Course); the qualifying 40-clock-hour supervision course may have been completed no more than two (2) years before the date the application for supervisor status was received.

#### **§681.73 Application for Art Therapy Specialty Designation**

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

- (1)** meet the requirements for an LPC license set out in this chapter;
- (2)** hold either:
  - (A)** a master's or doctoral degree in art therapy that includes 700 hours of supervised practicum from an accredited school; or
  - (B)** all of the following:
    - (i)** a master's degree in a counseling-related field;
    - (ii)** a minimum of 21 semester hours or the equivalent of sequential course work

in the history, theory, and practice of art therapy;

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

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

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

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

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

(1) 1,500 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's or doctoral degree in art therapy that includes 700 hours of practicum; or

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

#### **SUBCHAPTER E ACADEMIC REQUIREMENTS FOR LICENSURE**

#### **§681.81 General Academic Requirements**

(a) The board will accept as meeting academic requirements graduate degrees from accredited schools that meet the requirements of §681.82 of this title (relating to Academic Requirements) and §681.83 of this title (relating to Academic Course Content).

(b) Degrees and course work received at foreign universities will be acceptable only if such course work would be counted as transfer credit by an accredited school. The applicant must provide the board with documents and evidence to establish his or her formal education is equivalent to at least a master's degree granted by an accredited school. Documentation must include:

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

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

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

(c) If degrees or course work cannot be documented because the foreign university refuses to issue a transcript or other evidence of the degrees or course work, the board may consider, on a case-by-case basis, accepting degrees or course work based on other evidence presented by the foreign graduate applicant.

(d) Applicants must provide upon request a course description from an official school catalog or bulletin or a course syllabus to substantiate the relevance of the course to the academic requirements of §681.83 of this title.

(e) The board will not consider undergraduate level courses as meeting any academic requirements for licensure unless the applicant's official transcript clearly shows the course was awarded graduate credit by the school.



**(f)** The board will consider courses for which an applicant's official transcript indicates a passing grade or credit was earned.

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

#### **§681.82 Academic Requirements**

**(a)** Persons applying for licensure must have a graduate degree in counseling or a counseling-related field of:

**(1)** at least 48 semester hours of coursework in a counseling-related field for applicants who began the qualifying program before August 1, 2017; and

**(2)** at least 60 semester hours of coursework in a counseling-related field for applicants who began the qualifying program on or after August 1, 2017.

**(b)** An applicant who holds a graduate degree in a counseling-related field must have an official transcript documenting satisfaction of the requirements described in §681.83 of this title (relating to Academic Course Content).

**(c)** An applicant who has held a full LPC in good standing issued by a United States jurisdiction for at least two (2) years immediately preceding the date the application was received is deemed to have met all academic requirements, including the practicum.

**(d)** The 48/60 semester hours must be designed to train a person to provide direct services to assist clients in a professional counseling relationship using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life. The 48/60 semester hours may be course work that was part of the graduate degree in a counseling-related field, may be in addition to course

work taken for the qualifying program, or a combination of both.

#### **§681.83 Academic Course Content**

**(a)** An applicant who holds a graduate degree in counseling from an accredited school is presumed to have satisfied the academic course content requirements described in this section.

**(b)** An applicant who holds a graduate degree in a counseling-related field must complete at least one course in each of the following areas:

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

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

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

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

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

**(A)** counseling individuals; and

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

**(6)** research - the methods of research which may include the study of statistics or a thesis project;

**(7)** life style and career development - the theories of vocational choice, career choice

and life style, sources of occupational and educational information, and career decision-making processes;

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

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

**(10)** practicum (internship) - supervised practicum experience primarily counseling in nature which includes:

**(A)** At least 300 clock-hours, of which at least 100 hours must be direct client counseling.

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

**(c)** The remaining courses needed to meet the 48/60 graduate semester hour requirement must be counseling-related course work in areas directly supporting the development of an applicant's professional counseling skills and must be courses related primarily to professional counseling.

**(d)** As of August 1, 2017, the following courses to meet the 60 semester hour requirement must include:

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

**(2)** an additional course in counselor ethics; to include records management, an overview of business/family law and professional practice, and the study of current board rules in this chapter;

**(3)** couples, marriage, or family counseling; and

**(4)** a course in psychopathology to include such content as criteria of psychiatric diagnosis, use of the current Diagnostic and Statistical Manual of Mental Disorders and the theories of psychopathology. The course should also include the basic knowledge of types of psychopharmacological medications.

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

**(e)** Passing the National Counselor Exam or National Clinical Mental Health Counselor Exam does not guarantee Texas state licensure requirements have been satisfied.

**(f)** An applicant may appeal to the board but does not have the right to a formal hearing before the State Office of Administrative Hearings if his or her application for licensure is denied based on the applicant's failure to meet academic requirements.

## **SUBCHAPTER F**

### **EXPERIENCE REQUIREMENTS FOR LICENSURE**

#### **§681.91 LPC Intern License**

**(a)** The board may issue an LPC Intern license to an applicant who has:

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

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

**(3)** completed the required examinations with the requisite score as described in §681.72(a)(3) and (a)(4) of this title (relating to Required Application Materials);

**(4)** entered into a supervisory agreement with a Licensed Professional Counselor Supervisor (LPC-S); and

**(5)** not completed the supervised experience described in §681.92 of this title (relating to Experience Requirements (Internship)).

**(b)** An LPC Intern must comply with all provisions of the Act and board rules in this chapter.

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

**(d)** An LPC Intern may practice counseling only as part of his or her internship and only under the supervision of a Licensed Professional Counselor Supervisor (LPC-S). The LPC Intern may not own an independent professional counseling practice.

**(e)** An LPC Intern may have no more than two (2) board-approved LPC supervisors at any given time.

**(f)** An LPC Intern must maintain their LPC Intern license during his or her supervised experience.

**(g)** An LPC Intern license will expire 60 months from the date of issuance.

**(h)** An LPC Intern who does not complete the required supervised experience hours during the 60-month time period must reapply for licensure.

**(i)** An LPC Intern must continue to be supervised after completion of the 3,000 hours of supervised experience and until the LPC Intern receives his or her LPC license. Supervision is complete upon the LPC Intern receiving the LPC license.

**(j)** An LPC Intern does not own client records; they are the property of the agency or organization.

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

**(l)** An LPC Intern must not accept direct payment for services from a client.

**(m)** All billing documents for services provided by an LPC Intern must reflect the LPC Intern holds an LPC Intern license and is under supervision.

**(n)** The LPC Intern must not represent himself or herself as an independent practitioner. The LPC Intern's name must be followed by the name of the supervisor in the same type size and font on all advertisements, billings, and announcements, including but not limited to websites and intake documents.

### **§681.92 Experience Requirements (Internship)**

**(a)** All applicants for LPC licensure must complete supervised experience acceptable to the board of 3,000 clock-hours under a board-approved supervisor.

**(1)** All internships physically occurring in Texas must be completed under the supervision of a board-approved supervisor.

**(2)** For all internships physically completed in a jurisdiction other than Texas, the supervisor must be a person licensed or certified by that jurisdiction in a profession that provides counseling and who has the academic training and experience to supervise the counseling services offered by the intern. The applicant must provide documentation acceptable to the board regarding the supervisor's qualifications.

**(b)** The supervised experience must include at least 1,500 clock-hours of direct client counseling contact. Only actual time spent counseling may be counted.

**(c)** An LPC Intern may not complete the required 3,000 clock-hours of supervised experience in less than 18 months.

**(d)** The experience must consist primarily of the provision of direct counseling services within a professional relationship to clients by using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional,

physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

**(e)** The LPC Intern must receive direct supervision consisting of a minimum of four (4) hours per month of supervision in individual (up to two Interns) or group (three or more) settings while the intern is engaged in counseling unless an extended leave of one month or more is approved in writing by the board approved supervisor. No more than 50% of the total hours of supervision may be received in group supervision.

**(f)** An LPC Intern may have up to two (2) supervisors at one time.

### **§681.93 Supervisor Requirements**

**(a)** A supervisor must keep a written record of each supervisory session in the file for the LPC Intern.

**(1)** The supervisory written record must contain:

- (A)** a signed and dated copy of the board's supervisory agreement form for each of the LPC Intern's supervisors;
- (B)** a copy of the LPC Intern's wall certificate noting the dates of issuance and expiration;
- (C)** fees and record of payment;
- (D)** the date of each supervisory session;
- (E)** a record of an LPC Intern's leave of one month or more, documenting the supervisor's approval and signed by both the LPC Intern and the supervisor; and
- (F)** a record of any concerns the supervisor discussed with the LPC Intern, including a written remediation plan as prescribed in subsection (e) of this section.

**(2)** The supervisor must provide a copy of all records to the LPC Intern upon request.

**(b)** The full professional responsibility for the counseling activities of the LPC Intern rests

with the LPC Intern's board approved supervisor(s). If the LPC Intern receives disciplinary action by the board, the supervisor may also be subject to disciplinary action.

**(1)** Supervisors must review all provisions of the Act and board rules in this chapter during supervision.

**(2)** The supervisor must ensure the LPC Intern is aware of and adheres to all provisions of the Act and board rules in this chapter.

**(c)** The supervisor must avoid any relationship that impairs the supervisor's objective, professional judgment.

**(1)** The supervisor may not be related to the LPC Intern within the second degree of affinity or within the third degree of consanguinity.

**(2)** The supervisor may not be an employee of his or her LPC Intern.

**(d)** The supervisor must submit to the board accurate documentation of the LPC Intern's supervised experience within 30 days of the end of supervision or the completion of the LPC Intern's required hours, whichever comes first.

**(e)** If a supervisor determines the LPC Intern may not have the counseling skills or competence to practice professional counseling under an LPC license, the supervisor will develop and implement a written plan for remediation of the LPC Intern, which must be reviewed and signed by the LPC Intern and maintained as part of the LPC Intern's file.

**(f)** The supervisor must ensure the supervised counseling experience of the LPC Intern were earned:

**(1)** after the LPC Intern license was issued; and

**(2)** in not less than 18 months of supervised counseling experience.

**(g)** A supervisor whose license has expired is no longer an approved supervisor and:

**(1)** must immediately inform all LPC Interns under his or her supervision and assist the LPC Interns in finding alternate supervisors; and

**(2)** must refund all supervisory fees for supervision after the expiration of the supervisor status.

**(3)** Hours accumulated under the person's supervision after the date of license expiration may not count as acceptable hours.

**(h)** Upon execution of a board order for probated suspension, suspension, or revocation of the LPC license with supervisor status, the supervisor status is revoked. A licensee whose supervisor status is revoked:

**(1)** must immediately inform all LPC Interns under his or her supervision and assist the LPC Interns in finding alternate supervisors; and

**(2)** must refund all supervisory fees for supervision after the date the supervisor status is revoked; and

**(3)** hours accumulated under the person's supervision after the date of license expiration may not count as acceptable hours.

**(i)** Supervision of an LPC Intern without having board approved supervisor status is grounds for disciplinary action.

## **SUBCHAPTER G LICENSURE EXAMINATIONS**

### **§681.101 Examinations**

**(a)** Each applicant for licensure is required to take and pass the National Counselor Exam or the National Clinical Mental Health Counselor Exam and complete the jurisprudence exam prior to application.

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

**(c)** The National Counselor Examination and the National Clinical Mental Health Counselor Exam are administered at testing centers located in various cities throughout the state. The jurisprudence exam is available online at the board's website.

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

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

### **§681.102 Notice of Results**

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

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

### **§681.103 Reexamination**

**(a)** A person who fails the licensure examination may schedule the next examination no sooner than 90 days after the prior exam.

**(b)** A person who fails the exam three times will be required to either wait until two years have elapsed from the date of the last examination or until the person has completed nine (9) graduate semester hours in the applicant's weakest portions of the examination. The hours must be counseling or

counseling-related courses with a grade of "B" or better. Research and practicum courses will not be accepted as meeting the nine (9) graduate semester hours.

#### **SUBCHAPTER H LICENSING**

##### **§681.111 Issuance of Licenses**

- (a) The board will issue a license to each applicant who has satisfactorily fulfilled all requirements for licensure.
- (b) All licenses will bear the signature of the board chair.
- (c) Any license certificate or renewal card issued by the board remains the property of the board and must be surrendered to the board on demand.
- (d) The board will replace a lost, damaged, or destroyed license certificate or renewal cards upon a written request from the licensee and payment of all applicable fees.
- (e) Upon the written request and payment of all applicable fees, the board will provide a licensee with a duplicate for a second place of practice designated in a licensee's file.
- (f) Only degrees earned in counseling or a counseling-related field from an accredited school may appear on the license certificate.

##### **§681.112 Provisional Licensing**

- a) The board may issue a provisional license to a person who:
  - (1) submits an application and all applicable fees;
  - (2) is currently licensed in good standing as a counselor or art therapist in another United States jurisdiction that has licensing requirements substantially equivalent to the regular licensing requirements of the Act and submits documentation of such licensure including a letter of good standing and a copy of the licensure file from the other United States jurisdiction or from the National Credentials Registry;

- (3) has passed the National Counselor Exam or the National Clinical Mental Health Counselor Exam and completed the jurisprudence exam; and

- (4) has a supervisory agreement form.

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

- (c) The board will issue an LPC license to the holder of a provisional license if the board verifies the provisional licensee has the academic and experience requirements for an LPC license.

##### **§681.113 Surrender of License**

- (a) A licensee may voluntarily offer to surrender his or her license for any reason.
- (b) The license may be delivered to the board office by hand or certified mail.
- (c) If there is no complaint pending, the board office may accept the surrender and void the license.
- (d) If a complaint is pending, the procedures for acceptance of a license surrender are set out in §681.168 of this title (relating to Surrender of License when Complaint is Pending).
- (e) A license which has been surrendered and accepted by the board may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

##### **§681.114 Licensing of Military Service Members, Military Veterans, and Military Spouses**

- (a) This section sets out initial licensing and license renewal procedures specific to military service members, military veterans, and military spouses pursuant to Texas Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses) as well as provisions concerning Inactive Status

for Military Service Members. For purposes of this section:

- (1)** "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Texas Government Code §437.001 or similar military service of another state.
  - (2)** "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.
  - (3)** "Designated representative" is a person authorized in writing by the military service member to act on behalf of the military service member. A copy of the written authorization must be provided to the board with the request for inactive status.
  - (4)** "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business.
  - (5)** "Military service member" means a person who is on active duty.
  - (6)** "Military spouse" means a person who is married to a military service member.
  - (7)** "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.
- (b)** An applicant must provide documentation acceptable to the board of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status must not be processed under this section.

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

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

**(e)** For an application for a license submitted by a verified military service member or military veteran, the applicant must receive credit towards any licensing requirements, except an examination requirement, for verified military service, training, or education that the board determines is relevant to the licensing requirements, unless he or she holds a restricted license issued by another jurisdiction or has a criminal history for which adverse licensure action is authorized by law.

**(f)** An applicant who is a military service member, military veteran, or military spouse holding a current, unrestricted license issued by another jurisdiction that has substantially equivalent requirements to the requirements for licensure in this state must complete and submit an application form and a supplemental application form for military service member, veteran, or military spouse. As soon as practicable after a complete application under this subsection is filed, the board will process and issue a license to an applicant who holds such a license, satisfies the application and supplemental application requirements, and meets the requisite substantial equivalency requirements of the other state, if the applicant has no unresolved allegations or criminal background relevant to the license, and there are no other facts or circumstances providing grounds for denial of the license. The license will have the same term as the applicable license type issued

under the Act and this subchapter. Renewal of the license will be in accordance with subsection (i) of this section.

**(g)** An applicant who is a military service member, military veteran, or military spouse who held a license under the Act and this subchapter within the five years preceding the application date, and without restriction, must complete and submit an application form and a supplemental application form for military service member, veteran, or military spouse. As soon as practicable after a complete application under this subsection is filed, the board will process and issue a license under the Act and this subchapter to an applicant who held such a license and who satisfies the application and supplemental application requirements, if the applicant has no unresolved allegations or criminal background relevant to the license, and there are no other facts or circumstances providing grounds for denial of the license. The license will have the same term as a license for the same license type otherwise issued under the Act or this subchapter. Renewal of the license will be in accordance with subsection (i) of this section.

**(h)** In accordance with Texas Occupations Code §55.004(b), the board or its designee may waive any prerequisite to obtaining a license after reviewing the credentials of an applicant who is eligible to apply under subsection (f) or (g) of this section.

**(i)** If the board issues an initial license pursuant to subsection (f) or (g) of this section to an applicant who is a military service member, military veteran, or military spouse, the board will assess whether the applicant has met all licensing requirements of this state. The board will provide this assessment in writing, which may be by electronic means, to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide proof of completion at the time of the first application for license renewal. A license under this subchapter will

not be renewed, will be allowed to expire, and will become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.

**(j)** Notwithstanding any other law, the board will waive the registration application fees paid to the state for an applicant described in paragraph (1) or (2) of this subsection. An applicant must provide any proof requested by the board that the applicant is:

**(1)** A military service member or military veteran whose military service, training, or education substantially meets all applicable requirements for the license; or

**(2)** A military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

**(k)** For license renewal, the board will exempt an individual who holds a license issued by the board from any increased fee or other penalty imposed for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the board that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

**(l)** A military service member who holds a license is entitled to two years of additional time beyond the expiration date of the license to complete:

**(1)** any continuing education requirements; and

**(2)** any other requirement related to the renewal of the military service member's license.

**(m)** A military service member or his or her designated representative may submit a request for inactive status in writing to the board.

**(1)** A written request for inactive status must be received by the board prior to expiration



of the license or within one year from the expiration date and must include:

- (A) a copy of the official transfer orders of the military service member or other official military documentation; and
- (B) a current address and telephone number for the military service member or the military service member's designated representative.

(2) The payment of the inactive status fee is waived for a military service member under this subsection.

**SUBCHAPTER I  
REGULAR LICENSE RENEWAL;  
INACTIVE AND RETIREMENT STATUS**

**§681.121 General Renewal Requirements**

- (a) The license expiration date is the last day of the licensee's birth month. The initial expiration date is 12 months after the first birth month following the issuance of the license.
- (b) Except for the initial expiration date, an LPC license must be renewed every two years.
- (c) A licensee who holds an LPC license must have fulfilled all continuing education requirements prescribed by board rule in order to renew a license.
- (d) A person whose license has expired for more than one year must return his or her license certificate to the board.
- (e) A person whose license has expired must not practice professional counseling or advertise counseling treatment interventions, unless exempted by the Act.
- (f) The deadlines established for renewals, late renewals, and license renewal penalty fees in this subchapter are based on the postmark date of the documentation submitted by the licensee.
- (g) The board will deny renewal in accordance with Texas Education Code, §57.491, relating to defaults on guaranteed student loans.

**§681.122 [does not exist]**

**§681.123 License Renewal**

- (a) At least 30 days prior to the expiration of an LPC license, the board will send to the licensee at the last known address notice that includes the expiration date of the license and instructions for renewing the license.
- (b) Failure to receive notice does not relieve the licensee from the responsibility to timely renew.
- (c) The board will not renew a license until it receives the renewal fee and the completed board renewal form including criminal history information, changes of address, continuing education information and other required information.
- (d) The board will issue a renewal card to a licensee who has met all requirements for renewal. The licensee must display the renewal card with the license.
- (e) A license for which a timely request for renewal has been submitted does not expire until the renewal license has been issued or until the renewal application has been denied.

**§681.124 Late Renewal**

- (a) A person who renews a license after the expiration date but within 90 days after the expiration date must pay the 2-year renewal fee plus the appropriate late renewal fee.
- (b) A person who renews a license 91 days to no more than one year after the expiration date must pay the 2-year renewal fee plus the appropriate late renewal fee.
- (c) If a person did not have the required continuing education at the time of expiration of the license, the person must file evidence of completion of the required continuing education before the license can be renewed. A license is considered expired until all requirements for renewal are met.
- (d) The board may renew without reexamination an expired license of a person who was licensed in this state, moved to

another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applied for renewal. The person must pay to the board a fee that is equal to the amount of the license examination fee.

(e) On or after one year from the expiration date, a person must reapply by submitting a new application, paying the required fees, and meeting the current requirements for licensure including passing all required examinations.

#### **§681.125 Inactive Status**

(a) A licensee may request their active license be placed on inactive status by submitting to the board the designated form and fee.

(b) A licensee cannot practice while the license is inactive.

(c) Board-approved supervisory authority is relinquished upon moving the license to inactive status.

(d) Inactive licenses remain subject to disciplinary action by the board.

(e) No continuing education is required while a license is inactive.

(f) To return an inactive license to active status the licensee must submit:

- (1) a reactivation form designated by the board;
- (2) a reactivation fee as set forth in this chapter; and
- (3) proof of completion of continuing education for the licensee's current two-year renewal period.

(g) Neither continuing education nor fees will be prorated.

(h) To regain board-approved supervisory authority, the licensee must re-apply under current rules.

#### **§681.126 Retired Status**

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

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

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

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

#### **§681.127 [repealed, effective 7/16/2017]**

### **SUBCHAPTER J**

### **CONTINUING EDUCATION REQUIREMENTS**

#### **§681.141 General Continuing Education Requirements**

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

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

(c) A licensee must complete 24 clock-hours of continuing education acceptable to the board

during each 24-month period. A clock-hour is 60 minutes of attendance and participation in an acceptable continuing education experience. A licensee must complete:

- (1) at least four hours of continuing education in ethics, two of which must be directly related to Texas LPC ethics, each renewal period; and
- (2) successfully the jurisprudence exam each renewal period. Completion of the jurisprudence examination will count as one hour of continuing education in Texas LPC ethics.

(d) A licensee holding the supervisor status must complete 6 hours of continuing education in supervision every 2 years.

#### **§681.142 Acceptable Continuing Education**

To be acceptable for the purposes of license renewal or satisfaction of disciplinary stipulations, the education must be received from a continuing education provider that:

- (1) ensures the education provided is related to the practice of professional counseling;
- (2) ensures the individual(s) presenting the information have the necessary experience and knowledge in the topic(s) presented;
- (3) verifies attendance of participants and provides participants with a letter or certificate of attendance displaying the licensee's name, topic covered, date course was taken, and hours of credit earned; and
- (4) provides participants a mechanism for evaluation of each continuing education activity.

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

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

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

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

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

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

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

#### **§681.144 [repealed, effective 02/28/2019]**

#### **§681.145 Determination of Clock-hour Credits**

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

(b) Teaching in programs not part of the licensee's employment which meet the board's criteria as set out in §681.142 of this title will be credited on the basis of one clock-hour of credit for one clock-hour taught plus two clock-hours credit for preparation for each hour taught. No more than 9 hours of the 24 clock-hour continuing education requirement can be credited under this option. Credit may be granted for the same presentation only once during a two-year period.

(c) Completion of academic work with a passing grade in subject areas supporting the development of skills and competence in professional counseling at an accredited school will be credited on the basis of 15 clock-hours of credit for each semester hour or 10 clock-hours of credit for each quarter hour completed.

#### **§681.146 Reporting of Continuing Education**

(a) The board will monitor a licensee's compliance with continuing education

requirements by random audit. Licensees will be notified in writing if they have been selected for a continuing education audit. Individual supporting documents of participation in continuing education activities are not to be submitted to the board unless a written Notice of Audit is received informing the licensee that he or she has been randomly selected for a document audit. Upon receipt of a Notice of Audit the licensee will be required to submit all appropriate documentation to substantiate compliance with the board's continuing education requirements within 15 working days of receipt of notice.

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

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

**(d)** Appropriate continuing education supporting documentation include:

**(1)** program attended, certificate of attendance;

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

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

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

**(e)** Failure to meet the continuing education requirement, provide documentation as requested by the board, or providing fraudulent documentation is a violation of

board rules in this chapter and grounds for disciplinary action.

#### **§681.147 40-Clock-Hour Supervisor Training Course**

The 40-clock-hour supervision training must comply with §681.142 of this title (relating to Acceptable Continuing Education) and:

**(1)** the course must be taught by a full LPC with supervisor status;

**(2)** all related coursework and assignments must be completed over a time period not to exceed 90 days; and

**(3)** the 40-clock-hour supervision training must include at least:

**(A)** three (3) clock-hours for defining and conceptualizing supervision and models of supervision;

**(B)** three (3) clock-hours for supervisory relationship and counselor development;

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

**(D)** twelve (12) clock-hours covering roles for supervision and standards of practice; Subchapter B (relating to Authorized Counseling Methods and Practices); Subchapter C (relating to Code of Ethics); §681.91 of this title (relating to LPC Intern License); §681.92 of this title (relating to Experience Requirements (Internship)); §681.93 of this title (relating to Supervisor Requirements); other codes of ethics; and legal and professional issues; and

**(E)** three (3) clock-hours for executive and administrative tasks, covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

#### **SUBCHAPTER K COMPLAINTS AND VIOLATIONS**

### §681.161 Complaint Procedures

(a) A complaint must be submitted to the board office on a form prescribed by the board to be an eligible complaint for board action.

(b) Allegations not involving violations of §681.42 of this title (relating to Sexual Misconduct) must be filed within 5 years of the date of termination of professional services or within 5 years of a minor client's 18th birthday, whichever is later.

(c) The commission will send acknowledgement to the complainant upon receipt of an eligible complaint.

(d) Eligible complaints will be reviewed by the review team whose members are designated in board policy to determine if the board has jurisdiction over the complaint and to determine the nature of the allegations.

(1) Complaints outside of the jurisdiction of the board will be dismissed.

(2) Jurisdictional complaints will be reviewed by the team to determine if the complaint states an allegation which, if true, constitutes a violation of the Act or board rules in this chapter.

(A) Complaints that do not state a violation of the Act or board rules in this chapter will be dismissed.

(B) Complaints that state a violation of the Act or board rules in this chapter will be investigated by the commission.

(3) Complaints under the jurisdiction of another agency will be referred to that agency.

(e) Licensees will receive notice of an investigation in writing. Notice to a licensee is effective and service is complete when sent by certified or registered mail to the licensee's address of record at the time of the mailing.

(f) Following completion of the investigation, the commission will draft a report. This report will include a recommendation as to whether

the investigation has produced sufficient evidence to establish by a preponderance of the evidence there was a violation of the Act or board rules in this chapter.

(g) The review team and counsel for the board will review the complaint's case file, including the investigation report and all evidence, to determine if there is sufficient evidence to demonstrate by a preponderance of the evidence a violation of the Act or board rules in this chapter occurred.

(1) A complaint for which the team and counsel determines the preponderance of the evidence indicates a violation of the Act or board rules in this chapter occurred will result in the commission issuing a Notice of Violation to the Respondent proposing disciplinary action based on the penalty matrix set by board policy and the Respondent will be given an opportunity to request an Informal Settlement Conference.

(2) A complaint for which staff determines the preponderance of the evidence indicates a violation of the Act or board rules in this chapter did not occur will be dismissed.

(h) At each board meeting, staff will provide the board with a list of complaints dismissed for lack of jurisdiction or lack of violation since the previous meeting of the board.

### §681.162 Disciplinary Action; Notices

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

(1) violates a provision of the Act;

(2) violates a rule adopted by the board;

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

(4) offers to pay or agrees to accept any remuneration, directly or indirectly, to or

from any person or entity for securing or soliciting a client or patronage; or

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

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

(c) Receipt of a notice under §681.161(g)(1) of this title (relating to Complaint Procedures) is presumed to occur on the tenth working day after the notice is mailed to the last address known to the board unless another date is reported by the United States Postal Service.

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

**§681.163** [does not exist]

**§681.164 Licensing of Persons with Criminal Convictions**

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

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

(c) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee or if the crime involves moral turpitude which are those crimes including but not limited to dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflect adversely on a licensee's honesty, trustworthiness, or fitness to practice under the scope of the person's license. In considering whether a criminal conviction directly relates to the profession of counseling, the board will consider but not limited to:

(1) the nature and seriousness of the crime;

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

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

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

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

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

(2) an offense involving moral turpitude;

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

(4) a misdemeanor involving deceptive business practices;

- (5) the offense of assault or sexual assault;
- (6) the felony offense of fraud;
- (7) a misdemeanor and/or a felony offense under various titles of the Texas Penal Code:
  - (A) concerning Title 5 which relates to offenses against the person;
  - (B) concerning Title 7 which relates to offenses against property;
  - (C) concerning Title 8 which relates to offenses against public administration;
  - (D) concerning Title 9 which relates to offenses against public order and decency;
  - (E) concerning Title 10 which relates to offenses against public health, safety, and morals; and
  - (F) concerning Title 4 which relates to offenses of attempting or conspiring to commit any of the offenses in subparagraphs (A) - (E) of this paragraph; or
- (8) any other misdemeanor or felony directly relating to the duties and responsibilities of a licensee.

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

- (1) The board's executive director will give written notice to the person the board intends to take disciplinary action or deny the application after a hearing in accordance with the provisions of the APA and the board's hearing procedures in Subchapter L of this chapter (relating to Formal Hearings).
- (2) If the board takes disciplinary action or denies an application under these sections, the executive director will give the person written notice of the reasons for the decisions.

**§681.165 Suspension, Emergency Suspension, Revocation, or Denial**

(a) If the board suspends a license, the suspension remains in effect for the period of

time stated in the order or until the board determines that the reason for the suspension no longer exists.

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

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

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

(1) The license may be suspended without prior notice to the licensee and without a prior hearing.

(2) In order to suspend a license on an emergency basis, the board or complaints committee must determine whether continued practice by a license holder would constitute a continuing and imminent threat to the public welfare.

(3) This determination will be made from the evidence or information presented to the board or complaints committee.

(4) The board or complaints committee will issue an order suspending the license. The order will be effective upon delivery to the licensee or at a later date specified in the order.

(5) Proceedings for a formal hearing under Subchapter L of this chapter must be initiated prior to, or simultaneously on, the effective date of the emergency suspension.

(A) The APA to a hearing under this subsection.

(B) If there is a conflict between the requirement of the APA and the requirements of the Act, §503.403, the Act governs.

**(6)** A preliminary hearing will be held not later than the 30th day after the effective date of the emergency suspension to determine if probable cause exists to find a continuing and imminent threat to the public welfare still exists. The State Office of Administrative Hearings is hereby authorized to determine if probable cause exists.

**(7)** A final hearing will be held not later than the 61st day after the effective date of the emergency suspension.

**(A)** The purpose of the hearing is to determine whether continued practice of the licensee would constitute a continuing and imminent threat to the public welfare.

**(B)** In determining whether there is a continuing and imminent threat to the public welfare, the board may consider whether a violation of state law or this chapter exists.

**(C)** If such a threat exists, the board will enter an order suspending the license of the licensee.

**(D)** A suspension remains in effect in accordance with subsection (a) of this section.

**(8)** The time periods for holding a preliminary hearing or a final hearing will toll during the period of time in which the licensee makes discovery requests or requests a continuance. The time periods may also be waived by mutual agreement of the licensee and the authorized representative of the board. If a preliminary hearing or final hearing is not held in accordance with the time periods stated in this subsection (unless tolled or waived), the emergency suspension becomes null and void upon the date on which the hearing was required to be held under the Act, §503.403.

#### **§681.166 Informal Disposition**

**(a)** Informal disposition of any complaint or contested case involving a licensee or an

applicant for licensure may be made through an informal conference held to determine whether the matters in controversy can be resolved without further proceedings.

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

**(c)** An informal conference is voluntary and not a prerequisite to a formal hearing.

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

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

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

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



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

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

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

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

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

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

**(n)** The licensee or applicant may either accept or reject the recommendations at the informal conference. If the recommendations are accepted, an agreed order will be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order may contain agreed findings of fact and conclusions of law. The licensee or applicant must execute the order and return the signed order to the board

office within 10 working days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction constitutes rejection of the recommendations.

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

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

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

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

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

**(t)** A licensee's opportunity for an informal conference under this section will satisfy the requirement of the APA §2001.054(c).

**(u)** If a licensee who has requested an informal conference fails to appear at the conference and fails to provide notice of the

licensee's inability to attend the conference at least 24 hours in advance of the time the conference is scheduled, such action may constitute a withdrawal of the request for a formal hearing.

**(v) Refund Order.**

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

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

**§681.167 Waiver of Right to Hearing**

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

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

**§681.168 Surrender of License when Complaint is Pending**

**(a)** When a licensee has offered the surrender of his or her license after a complaint has been filed, alleging violations of the Act or this chapter, the board will consider whether to accept the surrender of the license.

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

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

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

**§681.169 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 for failure to comply with the terms of a court order providing for the possession of or access to a child, the executive director will immediately determine if the board has issued a license to the obligator named in the order, and, if a license has been issued:

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

**(2)** report the suspension as appropriate; and

**(3)** demand surrender of the suspended license.

**(b)** The board will 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.

**(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 must comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to engage in the practice of counseling or continues to use the titles "Licensed Professional Counselor," "Licensed Counselor," "Licensed Professional Counselor - Art Therapist," "Art Therapist" or the initials "L.P.C.," "L.P.C.-A.T.," or "A.T." after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the board.

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

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

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

### **§681.170 Monitoring of Licensees**

(a) The executive director will maintain a complaint tracking system.

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

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

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

### **§681.171 Assessment of Administrative Penalties**

The amount of an administrative penalty will be based on the following criteria.

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

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

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

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

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

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

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

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

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

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

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

(5) Supervisors who are in violation of a board rule in this chapter may be subject to an administrative penalty of up to \$5,000 per day depending on the level of severity of the violation and/or be required to refund all or a portion of the fees received by the supervisor to his or her LPC Intern(s).

#### **§681.172 Due Process Following Violation of an Order**

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

- (1) a brief statement of the acts or omissions believed to constitute a violation, including information sufficient to inform the licensee about the date and nature of the violation;
- (2) a statement that, within 10 days of receiving the Notice of Violation, the licensee must respond in writing to explain why the licensee believes he or she did not violate the Order, or if such violations did occur, why the disciplinary action proposed in the Order should not be imposed; and
- (3) a statement in bold letters of at least 10 point font that, if the licensee fails to respond, the disciplinary action described in the Order will be imposed, and further that additional disciplinary actions may be taken if the conduct constituting the violation of the Order also violates a board rule or statute: "FAILURE TO RESPOND. YOUR FAILURE TO RESPOND WILL BE CONSIDERED A WAIVER OF YOUR RIGHT TO A HEARING. THE FACTUAL ALLEGATIONS IN THIS NOTICE

OF VIOLATION WILL BE DEEMED ADMITTED AS TRUE AND THE PROPOSED DISCIPLINARY ACTION WILL BE IMPOSED BY DEFAULT. ADDITIONAL DISCIPLINARY ACTIONS MAY BE TAKEN."

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

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

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

#### **SUBCHAPTER L FORMAL HEARINGS**

##### **§681.181 Purpose**

This subchapter covers the hearing practices and procedures that are available to persons or parties who request formal hearings. The intended effect of this subchapter is to supplement the contested case provisions of the APA and the hearing procedures of the State Office of Administrative Hearings (Texas Government Code, Chapter 2003).

##### **§681.182 Formal Hearing Procedures**

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

(b) Remedies available upon default. The Administrative Law Judge (ALJ) may proceed in the party's absence and such failure to appear entitles the commission to seek

informal disposition as provided by the APA. The ALJ may grant any motion by the commission to remove the case from the contested hearing docket and allow for informal disposition by the commissioner.

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

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

**(1)** A motion to set aside the default order and reopen the record must 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.

**(e)** This subsection also applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the notice was sent to the party's last known address as shown on the commission's records, with no

showing of actual receipt by the defaulting party or the defaulting party's agent. In that situation, the default procedures described in subsection (c) of this section may be used if there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to the defaulting party's last known address.

**§681.183** [does not exist]

#### **§681.184 Action After the Hearing**

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

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

### **SUBCHAPTER M SCHEDULE OF SANCTIONS**

#### **§681.201 Purpose of Subchapter M**

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

#### **§681.202 Relevant Factors**

When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction which includes: the culpability of the licensee; the harm caused or posed; and the requisite

deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the complaints committee or the administrative law judge. Specific factors are to be considered as set forth in paragraphs (1) - (5) of this section.

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

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

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

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

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

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

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

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

**(i)** intentional or premeditated;

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

**(iii)** resulted from simple error or inadvertence; and

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

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

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

**(B)** appropriate degree of remorse or concern;

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

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

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

**(4) Deterrence.** The following factors are identified:

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

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

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

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

**(A)** age and experience of the licensee at time of violation;

**(B)** presence or absence of prior or subsequent violations committed by the licensee;

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

**(D)** character references; and

**(E)** any other factors justice may require.

### **§681.203 Severity Levels and Sanction Guide**

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

**(1) Level One - revocation of license.** These violations evidence intentional or gross misconduct on the part of the licensee and/or cause or pose a high degree of harm to the public and/or require severe punishment as a

deterrent to the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure.

**(2)** Level Two - extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but 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 license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate.

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

#### **§681.204 Other Actions**

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

may submit a written response to be included with such letters in the licensing record.

### **SUBCHAPTER N PARENTING COORDINATION AND FACILITATION AND CHILD CUSTODY AND ADOPTION EVALUATIONS**

#### **§681.251 Parenting Coordination**

**(a)** In accordance with 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 Texas Family Code, §153.606, in a suit; and

**(2)** who:

**(A)** is appointed under Texas Family Code, Chapter 153, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion or on a motion or agreement of the parties to assist parties in resolving parenting issues through confidential procedures; and

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

**(b)** A licensee who serves as a parenting coordinator has a duty to provide the following information in writing to the parties of the suit about the responsibility of the licensee and the role of the appointed court.

**(1)** 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 professional counseling. 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.

**(2)** Records of a licensee serving as a parenting coordinator are confidential under Texas Civil Practice and Remedies Code,

§154.073. Licensees serving as a confidential parenting coordinator must comply with the Texas Civil Practice and Remedies Code, Chapter 154, relating to the release of information.

**(3)** A licensee must not provide professional counseling services to any person while simultaneously providing parenting coordination services. This section does not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

### **§681.252 Parenting Facilitation**

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

**(b)** In accordance with 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 Texas Family Code, §153.6061, in a suit; and

**(2)** who:

**(A)** is appointed under Texas Family Code, Chapter 153, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion or on a motion or agreement of the parties to assist parties in resolving parenting issues through procedures that are not confidential; and

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

**(c)** Notwithstanding any other provision of this chapter, licensees who desire to serve as parenting facilitators must comply with all applicable requirements of the Texas Family Code, Chapter 153, and this section. Licensees must 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 Texas Family Code, §153.6102(e), a licensee serving as a parenting facilitator must not provide other professional counseling services to any person while simultaneously providing parent facilitation services. This section does 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 Texas Family Code, §153.6101(b)(1), a licensed professional counselor intern must 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 Texas Family Code, Chapter 153.

**(g)** A licensee serving as a parent facilitator must 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 must 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 must 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 must 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, must be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parenting facilitator must 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 must tailor the techniques used so as to avoid offering the opportunity for further coercion.

**(k)** A licensee serving as a parent facilitator must 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 must not provide legal advice.

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

**(n)** A licensee serving as a parenting facilitator must 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 must 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)** must terminate or withdraw services if the licensee determines the licensee cannot act in an impartial or objective manner;

**(2)** must 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)** must not coerce or improperly influence any party to make a decision;

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

**(5)** must 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 must avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration must 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 must 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 must, 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 must 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 must 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)** must comply with all mandatory reporting requirements, including but not limited to Texas Family Code Chapter 261, concerning abuse or neglect of minors;

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

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

**(5)** must 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 must be maintained for the period of time described in §681.41(r) of this title (relating to General Ethical Requirements), or as otherwise directed by the court.

**(z)** Records of a licensee serving as a parenting facilitator must 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 must 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 must be appropriately divided between the parties as directed by the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

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

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

**(ee)** The minimum training for a licensee serving as a parent facilitator that is required by Texas Family Code, §153.6101(b)(2) is:

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

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

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

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

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

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

### **§681.253 Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions**

**(a)** Licensees must comply with Texas Family Code, Chapter 107, Subchapters D, E, and F concerning Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.

**(b)** A licensee who has completed a doctoral degree and at least 10 court-ordered child custody evaluations under the supervision of an individual qualified by Texas Family Code, Chapter 107 to perform child custody evaluations is qualified to conduct child custody evaluations under Texas Family Code, Chapter 107. All other licensees must comply with qualifications stipulated in Texas Family Code, Chapter 107.

**(c)** Any complaint relating to the outcome of a child custody evaluation or adoption evaluation conducted by a licensee must be reported to the court that ordered the evaluation. The board only reviews complaints regarding forensic evaluations addressing violation of specific board rules.

**(d)** Disclosure of confidential information in violation of Texas Family Code, §107.111 or §107.163 is grounds for disciplinary action, up to and including revocation of license, by the board.

**(e)** A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal

proceeding, such as a divorce, child custody determination, disability claim, or criminal prosecution, must comply with all applicable board rules regardless of whether the licensee is acting as a factual witness or an expert.

**(f)** A licensee may not provide therapy and any other type of service, including but not limited to a child custody evaluation or parenting facilitation, in the same case, whether such services are delivered sequentially or simultaneously.

**(g)** Licensees may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child unless the licensee has conducted a child custody evaluation relating to the child under Texas Family Code, Subchapter D, Chapter 107.

**(h)** Licensees providing child custody evaluations or adoption evaluations must, prior to beginning the evaluation, in writing inform the parties of:

**(1)** The limitations on confidentiality in the evaluation 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.

**(i)** A Licensed Professional Counselor Intern (LPC Intern) must not conduct child custody evaluations or adoption evaluations unless qualified by another professional license to provide such services.