

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

Adoption Preamble

The Texas State Board of Examiners of Professional Counselors (board) adopts amendments to §§681.2, 681.31, 681.41, 681.52, 681.92, 681.93, 681.114, 681.161, and 681.171, concerning the licensing and regulation of professional counselors. Sections 681.2, 681.41, and 681.114 are adopted with changes to the proposed text as published in the July 11, 2014 issue of the *Texas Register* (39 TexReg 5280). Sections 681.31, 681.52, 681.92, 681.93, 681.161, and 681.171 are adopted without changes, and the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are adopted to specify new methods of counseling, requirements associated with the new counseling methods, limitations on Licensed Professional Counselor (LPC) Interns and the acceptance of post graduate supervised experience hours. The amendments specify responsibilities of a board approved supervisor; the amendments also set forth licensing procedures required under Occupations Code, Chapter 55 for licensing military service members, military veterans and military spouses. The amendments specify the procedure for processing a complaint filed against and LPC. Finally, the amendments ensure that the rules are updated to reflect current legal, policy, and operational considerations; to improve draftsmanship; and to make the rules more accessible, understandable, and usable.

SECTION-BY-SECTION SUMMARY

The following amendment is adopted concerning Subchapter A (relating to The Board).

The definition of “distance counseling” is revised in §681.2 to define how counseling can be conducted if the counselor and client are not in the same location when the counseling is provided.

The following amendment is adopted concerning Subchapter B (relating to Authorized Counseling Methods and Practices).

Section 681.31 adds the term marriage/couples counseling to the approved modalities used by a licensed counselor.

The following amendments are adopted concerning Subchapter C (relating to Code of Ethics).

Section 681.41 is amended to allow technological means of communication as a permitted type of counseling, provided certain conditions are met in most cases.

Amendments to §681.52(e) preclude an LPC Intern from holding oneself out as being in independent practice; this limitation applies but is not limited to websites, advertisements, or intake documents.

The following amendment is adopted concerning Subchapter F (relating to Experience Requirements for Licensure).

Amendments to §681.92 prohibit the acceptance of post graduate supervised experience hours earned with a previous temporary license if those hours were earned over 5 years ago.

Section 681.93 is amended to specify the responsibility of the board approved supervisor to ensure the supervised hours of the LPC Intern are earned in accordance with board rules.

The following amendments are adopted concerning Subchapter H (relating to Licensing).

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

The following amendments are adopted concerning Subchapter K (relating to Complaints and Violations).

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

Section 681.171 is amended to remove the reference to the Act (Texas Occupations Code), Chapter 503, Subchapter K, in order to provide the board with more flexibility regarding administrative penalties.

COMMENTS

The board received many comments to the proposed rules and prepared responses to the comments received. There were 28 commenters included multiple individuals and the following associations, organizations and universities including the Texas Counseling Association, and the

Texas Association for Counselor Education and Supervision. Commenters were generally in favor of the rules; however, some commenters suggested recommendations for change as discussed in the summary of comments.

COMMENT: There were 28 commenters, including the Texas Counseling Association, Texas Association for Counselor Education and Supervision and multiple individuals, opposing the definition of distance counseling which requires that the counselor and client be within the State of Texas.

RESPONSE: The board agrees and amended §681.2(10) to require that the client be a resident of or within the State of Texas and the counselor be licensed in the State of Texas.

COMMENT: There were 28 commenters, including the Texas Counseling Association, Texas Association for Counselor Education and Supervision and multiple individuals, opposing the recommendation that an LPC have a face to face session with a client before beginning a distance counseling relationship; these commenters also opposed the requirement that the counselor and client be within the borders of Texas at the time the counseling session is conducted.

RESPONSE: The board agrees in part, and §681.41(g) was revised and now allows technological means of communication as long as all rules of the board are followed.

COMMENT: A commenter stated that §681.114(f) needs to be revised to correct a grammatical statement.

RESPONSE: The rule was revised to state that “The board shall issue a license...” instead of “The license issue a license...”

COMMENT: There were 3 commenters opposing the requirement that the Executive Director request the entire client file when a complaint is filed against a licensee.

RESPONSE: The board disagrees. The board feels that in order to determine if a rule or statutory violation occurred, the complaints committee members need all documentation in the client file for review by the committee. No changes were made to §681.161 as a result of these comments.

STATUTORY AUTHORITY

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

SUBCHAPTER A. THE BOARD.

§681.2 Definitions.

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

(1) Accredited universities--Universities as reported by the American Association of Collegiate Registrars and Admission Officers.

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

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

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

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

(10) Distance counseling--Where the client is a resident of or within the State of Texas and the counselor is licensed by the State of Texas.

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

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

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

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

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

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

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

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

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

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

(18) Supervisor--A person approved by the board as meeting the requirements set out in §681.93 of this title (relating to Supervisor Requirements), to supervise an LPC Intern.

SUBCHAPTER B. AUTHORIZED COUNSELING METHODS AND PRACTICES.

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties.

§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 utilizes 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 utilizes 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 utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, affective and family systems methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples;

(4) family counseling which utilizes 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 utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, affective methods and strategies, and 12-step methods to achieve abstinence from the addictive substances and behaviors by the client;

(6) rehabilitation counseling which utilizes 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 utilizes 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 utilizes 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 utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psychodynamic, and affective methods and strategies in the resolution of sexual disorders;

(10) referral counseling which utilizes 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 utilizes 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 utilizes play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors as a part of the therapist's role in helping children overcome their social, emotional, and mental issues;

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

(14) expressive modalities utilized 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 utilizes 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 utilizes formal and informal instruments and procedures, for which the counselor has received appropriate training and supervision, in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental disorders; but does not permit the diagnosis of a physical condition or physical disorder;

(17) consulting which utilizes the application of specific principles and procedures in counseling to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations but not considered direct client contact for LPC Interns; and

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

SUBCHAPTER C. CODE OF ETHICS.

STATUTORY AUTHORITY

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

§681.41. General Ethical Requirements.

(a) A licensee shall 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 shall 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 shall 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 shall take immediate and reasonable action to correct the ideas held.

(d) A licensee shall 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 shall take immediate and reasonable action to correct the statement.

(e) Regardless of setting, a licensee shall provide counseling only in the context of a professional relationship. Prior to providing services a licensee shall inform an individual in writing of 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 shall 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. Counselors engaging in interactive distance counseling must adhere to each provision of the rules and statutes of the board.

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

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

(j) A licensee shall 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 shall first inform the client of the licensee's personal and/or business interest therein. A licensee shall not exert undue influence in promoting such activities, services or products.

(l) A licensee shall 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 engage in a non-therapeutic relationship with a client if the relationship begins more than two years after the end of the counseling relationship and the non-

therapeutic relationship is consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

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

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

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

(A) family members;

(B) personal friends;

(C) educational associates; or

(D) business associates.

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

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

(n) The licensee shall 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 shall 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 that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(p) In individual and group counseling settings, the licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within a group or from individual counseling.

(q) For each client, a licensee shall keep accurate records of the intake assessment, the dates of counseling treatment intervention, principal treatment methods, progress notes, treatment plan, and billing information.

(r) Records held by a licensee shall be kept for a minimum of five years from the date of the last contact with the client.

(s) Records created by licensees during the scope of their employment by educational institutions; by federal, state, or local governmental agencies; or their political subdivisions or programs are not required to comply with subsections (q) and (r) of this section.

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

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

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

(3) A licensee may not knowingly overcharge a client.

(4) With the exception of an unkept appointment, a licensee may not submit to a client or a third party payor a bill for counseling treatment intervention that the licensee knows was not provided or knows was improper, unreasonable, or unnecessary.

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

(6) Prior to the commencement of counseling services to a minor client who is named in a custody agreement or court order, a licensee shall obtain and review a current copy of the custody agreement or court order, as well as any applicable part of the divorce decree. A licensee shall maintain these documents in the client's record. When federal or state statutes provide an exemption to secure consent of a parent or guardian prior to providing services to a minor, a licensee shall follow the protocol set forth in such federal or state statutes.

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

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

(w) A licensee shall not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the evaluation that the licensee has not personally interviewed the individual.

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

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

(z) A licensee or an applicant for licensure shall not participate in any way in the falsification of applications for licensure or renewal of license.

§681.52. LPC Interns.

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

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

(c) No payment for services will be made directly by a client to the LPC Intern.

(d) Client records are not the property of the LPC Intern.

(e) All billing documents for services provided by an LPC Intern shall reflect that the LPC Intern holds a temporary license and is under supervision. The LPC Intern shall not hold oneself out to be in independent practice, including but not limited to websites, advertisements, or intake documents. On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the LPC Intern's name shall be followed by the name of the supervisor in the same type size and font.

(f) A supervisor may not be an employee of an LPC Intern.

(g) The LPC Intern 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.

SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE.

STATUTORY AUTHORITY

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

§681.92. Experience Requirements (Internship).

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

(b) The supervised experience must include at least 1,500 clock-hours of direct client counseling contact. Experience hours earned via counseling by technological means of communication may count for no more than 10% of the total supervised experience hours. 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 a time period less than 18 months.

(d) The 18 month time period shall not be decreased by excess practicum hours that are applied toward the supervised experience hours.

(e) The internship may only commence after:

(1) the completion of a graduate degree in counseling or a related field;

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

(3) the completion of the examinations required.

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

(g) The experience must consist primarily of the provision of direct counseling services within a professional relationship to individuals, families, couples, or groups by using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(h) The LPC Intern must receive direct supervision consisting of a minimum of four hours per month of face to face or live Internet webcam supervision in individual (up to two Interns) or group (three or more) settings for each week the intern is engaged in counseling. No more than 50% of the total hours of supervision can be live Internet webcam supervision and no more than 50% of the total hours of supervision may be received in group supervision. No more than 50% of the total hours of group supervision may be live Internet webcam supervision.

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

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

(k) The board may count excess practicum hours toward the experience requirements of this subchapter if:

(1) the hours were part of the applicant's academic practicum or internship accumulated after the commencement of the applicant's planned graduate program;

(2) the hours are in excess of the 300-hour practicum required by §681.82(c) of this title (relating to Academic Requirements); and

(3) no more than 400 hours can be counted for excess practicum.

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

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

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

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

§681.93. Supervisor Requirements.

(a) All internships physically occurring in the State of Texas must be completed under the supervision of a board approved supervisor. The supervisor must have held the regular license in good standing for at least 36 months from the date of issuance.

(b) For all internships physically completed in a state or jurisdiction other than Texas, the supervisor must be a person licensed or certified by the state or jurisdiction in a profession that provides counseling and who has the academic training and experience to supervise the counseling services offered by the intern.

(c) A supervisor under this section must have met the following requirements.

(1) A licensee seeking approval to be a supervisor must meet the requirements of subsection (a) of this section, successfully complete 40 clock-hours of training in the supervision

of professional counseling or mental health services as set forth in this subsection; and shall submit a \$100 processing fee. Application for supervision status must be submitted within 2 years of completing the 40-hour supervision course or within 5 years of completing a doctoral level supervision course from an accredited university. The initial supervisor approval will expire on the day the licensee's regular license next expires. Renewal of supervisor approval will begin and expire on the same dates as for the regular license. A renewal application must be filed with the board, accompanied by a \$100 renewal processing fee. The 40 clock-hours of training shall be met through the following:

(A) a graduate course in counselor supervision taken for credit at an accredited college or university; or

(B) continuing education programs meeting the requirements of §681.142 of this title (relating to Types of Acceptable Continuing Education).

(2) The 40 clock-hours shall be completed over a time period not to exceed 90 days and shall include at least the following:

(A) defining and conceptualizing supervision and models of supervision for at least three clock-hours;

(B) supervisory relationship and counselor development for at least three clock-hours;

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

(D) ethical, legal, and professional issues for at least 12 clock-hours, covering roles for supervision and standards of practice, Subchapter B of this title (relating to Authorized Counseling Methods and Practices), §681.92 of this title (relating to Experience Requirements (Internship)), and §681.93 of this title (relating to Supervisor Requirements), other codes of ethics, and ethical and legal dilemmas; and

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

(3) At the time of application for a license, a person must submit required documentation showing that the person's supervisor meets the requirements of this section.

(d) A board approved supervisor shall maintain and sign a record(s) to document the date of each supervision conference and document the LPC Intern's total number of hours of supervised experience accumulated up to the date of the conference. The record shall reflect the approved site where the hours were accrued and the content of the supervision.

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

(1) The supervisor shall ensure that the LPC Intern is aware of and adheres to Subchapter C of this chapter (relating to Code of Ethics).

(2) a relationship between the supervisor and the LPC Intern that impairs the supervisor's objective, professional judgment shall be avoided.

(3) A supervisor may not be related within the second degree by affinity or within the third degree by consanguinity to the LPC Intern.

(4) If a supervisor determines that the LPC Intern may not have the counseling skills or competence to practice professional counseling under a regular license, the supervisor shall develop and implement a written plan for remediation of the LPC Intern.

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

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

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

(B) in not less than 18 months.

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

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

(g) A supervisor who becomes subject to a board disciplinary order is no longer an approved supervisor. The person shall immediately inform all LPC Interns under their supervision of the board disciplinary order and assist the LPC Interns in finding alternate supervision.

(h) A supervisor may not be an employee of an LPC Intern.

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

(j) Supervisory status may be denied, revoked, or suspended following a fair hearing for violation of the Act or rules. The fair hearing will be conducted under the fair hearing rules of the Department of State Health Services.

(k) A supervisor whose supervisory status has expired may be required to refund all supervisory fees received after the expiration of the supervisory status to the intern(s) who paid the fees.

(l) Supervision of the intern without being approved as a supervisor or after expiration of the supervisor status may be grounds for disciplinary action.

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

SUBCHAPTER H. LICENSING.

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER K. COMPLAINTS AND VIOLATIONS.

STATUTORY AUTHORITY

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

§681.161. Complaint Procedures.

(a) A complaint may be filed in writing with the board.

(b) A complaint shall not be accepted by the board office if it is not filed within five years of the date of termination of the counseling relationship which gave rise to the alleged violations. If the client was a minor at the time of the alleged violation, this time limitation does not begin to run until the client reaches the age of 18 years. A complainant shall be notified of the non-acceptance of untimely complaints. This time limitation shall not apply to complaints involving violations of §681.42 of this title (relating to Sexual Misconduct) or the board's previous rules relating to sexual activities.

(c) Upon receipt of a complaint, the executive director shall send an acknowledgment letter to the complainant. The executive director may accept an anonymous complaint if sufficient information has been provided regarding the alleged violation to conduct an investigation.

(d) A complaints committee shall be appointed to work with the executive director to:

(1) review each complaint and determine whether the complaint fits within the category of a serious complaint affecting the health and safety of clients or other persons;

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

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

(4) resolve the issues of the complaint which arise under the Act or this chapter.

(e) The executive director initially reviews the complaint to determine jurisdiction. If a complaint appears to be within the board's jurisdiction, the executive director shall decide whether to authorize sending a copy of the complaint to the respondent and requesting a response, which may include but not be limited to requesting that a copy of the client's records be attached to the response. If the executive director does not authorize written notification of the respondent, the complaint will be referred for an investigation and the assigned investigator will determine whether the respondent will be notified by letter, phone call, site visit, or some other appropriate means. If the complaint is against a person licensed by another board, the department staff will forward the complaint to that board not later than the 15th day after the date the agency determines that the information shall be referred to the appropriate agency as provided in Government Code, Chapter 774, relating to exchange of information between regulatory agencies.

(f) If it is determined that the matters alleged in the complaint are non-jurisdictional, or if the matters alleged in the complaint would not constitute a violation of the Act or this chapter, the executive director may dismiss the complaint and give written notice of dismissal to the licensee or person against whom the complaint has been filed, the complainant, and the complaints committee.

(g) If it is determined that there are sufficient grounds to support the complaint, the matters in question shall be investigated. The executive director or the committee may initiate the investigation.

(h) If the committee determines that there are insufficient grounds to support the complaint, the committee shall dismiss the complaint and give written notice of the dismissal to the complainant and licensee or person against whom the complaint has been filed.

(i) The board shall use a private investigator only if the department's investigators available to the board have a conflict of interest.

(j) If a written complaint is filed with the board which the board has the authority to resolve, the board, periodically, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

§681.171. Assessment of Administrative Penalties.

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

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

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

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

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

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

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

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

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

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

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

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