



Proposed Rule Changes

12.16.22 Social Work

781.404 Recognition as Council Approved Supervisor and the Supervision Process

(3) The Council-approved supervisor must have completed a 40-hour supervisor's training program acceptable to the Council.

(A) At a minimum, the 40-hour supervisor's training program must meet each of the following requirements:

(i) the course must be taught by a licensed social worker holding both the appropriate license classification, and supervisor status issued by the Council;

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

(iii) the 40-hour supervision training must include at least:

(I) three (3) hours for defining and conceptualizing supervision and models of supervision;

(II) three (3) hours for supervisory relationship and social worker development;

(III) twelve (12) hours for supervision methods and techniques, covering roles, focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (race, ethnic, and gender issues), and evaluation methods;

(IV) twelve (12) hours for supervision and standards of practice, codes of ethics, and legal and professional issues; and

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

(B) Subparagraph (A) of this paragraph is effective May 1, 2023.

(N) Providing supervision without Council-approved supervisor status is grounds for disciplinary action. [The Council may deny, revoke, or suspend Council approved supervisory status for violation of the Act or rules. Continuing to supervise after the Council has denied, revoked, or suspended Council approved supervisor status, or after the supervisor's supervisory status expires, may be grounds for disciplinary action against the supervisor.]

(O) [If a supervisor's Council approved status is expired, suspended, or revoked, the] A supervisor shall refund all supervisory fees the supervisee paid after the date the supervisor ceased to be Council-approved.

(P) A supervisor is responsible for developing a well-conceptualized supervision plan with the supervisee, and for updating that plan whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided.

[(Q) All Council approved supervisors shall have taken a Council approved supervision training course by January 1, 2014 in order to renew Council approved supervisor status. The Council recognizes that many licensees have had little, if any, formal education about supervision theories, strategies, problem solving, and accountability, particularly LBSWs who may supervise licensees toward the IPR. Though some supervisors have functioned as employment supervisors for some time and have acquired practical knowledge, their practical supervision skills may be focused in one practice area, and may not include current skills in various supervision methods or familiarity with emerging supervisory theories, strategies, and regulations. Therefore, the Council values high quality, contemporary, multi-modality

~~supervision training to ensure that all supervisors have refreshed their supervisory skills and knowledge in order to help supervisees practice safely and effectively.]~~

781.421 Remedy for Incomplete License Requirements

(a) An applicant who does not meet all of the prerequisites for a particular license under Chapter 505 of the Occupations Code, may petition the Council for a waiver or modification of the prerequisite(s). An applicant may not petition for the waiver or modification of the degree required for the particular license sought or passage of the requisite examinations.

(b) The Council may waive or modify a prerequisite for obtaining a license under Chapter 505 of the Occupations Code, subject to subsection (a) of this section, if:

(1) the prerequisite is not mandated by federal law, the state constitution or statute, or 22 TAC Part 41; and

(2) the failure or inability to meet the prerequisite was due to a disaster declared under Chapter 418 of the Government Code or under similar authority in another jurisdiction.

(c) The Council may approve or deny a petition under this rule, and in the case of approval, may condition the approval on reasonable terms and conditions designed to ensure the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice under the license sought.

02. 2023

BHEC

882.10 Applicants with Pending Complaints.

Comment: The proposed repeal of this rule is necessary because it is proposed to be replaced with a new rule. The new rule will allow for the abeyance of an application up to 180 days when there is a pending complaint against the applicant that involves sexual misconduct or imminent physical harm to the public. All other applicants with complaints will have their application processed as normal, the complaint will not impact the licensure application. The pending complaint will still be investigated and processed according to the normal route as well.

~~882.10. Applicants with Pending Complaints.~~

~~The Council may hold an application in abeyance up to 180 days if there is a complaint pending against the applicant concerning an alleged violation listed in §507.301 of the Occupations Code. A final decision on the application may not be rendered until the Council has made a final determination on the pending complaint. The applicant will be permitted to take all required exams while the complaint is pending, but will not be licensed unless approved by the Council.~~

884.10. Investigation of Complaints.

Comment: The proposed amendments reduce the priority rating system for complaints from four levels to two. The high priority shall be for all complaints involving sexual misconduct or imminent physical harm and all other complaints shall be a normal priority.

(a) The following priority rating system shall serve to distinguish between categories of complaints. The priority rating system is as follows:

(1) High Priority - cases involving sexual misconduct or a probability of imminent physical harm to the public or a member of the public; and

~~(2) cases involving sexual misconduct;~~

~~(3) cases involving applicants for licensure; and~~

~~(2)(4) Regular Priority - cases involving all other violations of state or federal law.~~

LPC

§681.35. Informed Consent.

(a) 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 Council;

(4) the limits on confidentiality;

(5) any intent of the licensee to use another individual to provide counseling treatment intervention to the client;

(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 Council 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.

(b) A licensee must inform the client in writing of any changes to the items in subsection (a) of this section, prior to initiating the change.

(c) 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.

(d) A licensee acting within the scope of employment with an agency or institution is not required to obtain a signed informed consent, but must document, in writing, that the licensee informed the client of the information

§681.36. Client Records.

(a) 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.

(b) In the absence of applicable state and federal laws, rules or regulations, records held by a licensee must be kept for a minimum of seven (7) years from the date of termination of services with the client, or five (5) years after the client reaches the age of majority, whichever is greater.

(c) Records created by a licensee licensees during the scope of their employment with an agency or institution by agencies or institutions must be maintained by the licensee unless the records are maintained by the employer that maintain client records are not required to comply with (a) and (b) of this section.

§681.37. Billing and Financial Arrangements.

(a) 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.

(b) 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.

(c) 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.

§681.38. Conflicts, Boundaries, Dual Relationships, and Termination of Relationships.

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

- (b) 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.
- (c) A licensee must set and maintain professional boundaries.
- (d) 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 a romantic relationship or sexual contact with a client within 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 the relationship was consensual, not the result of exploitation by or on the part of the licensee, and that ~~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.
- (e) 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.
- (f) A licensee must terminate a professional counseling relationship when it is reasonably clear the client is not benefiting from the relationship.
- (g) Upon termination of a relationship if professional counseling is still necessary, the licensee must take reasonable steps to facilitate the transfer to appropriate care.

681.41 General Ethical Requirements

~~(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 Council;~~
- ~~(4) the limits on confidentiality;~~
- ~~(5) any intent of the licensee to use another individual to provide counseling treatment intervention to the client;~~
- ~~(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 Council 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.~~

~~(e)(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.~~

~~(f)(e) 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.~~

~~(g)(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) In the absence of applicable state and federal laws, rules or regulations, records held by a licensee must be kept for a minimum of seven (7) years from the date of termination of services with the client, or five (5) years after the client reaches the age of majority, whichever is greater.

(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.
- ~~(h)~~(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.
- ~~(i)~~(z) A licensee must not knowingly overtreat a client.
- ~~(j)~~(aa) A licensee must not aid or abet the unlicensed practice of professional counseling by a person required to be licensed under the Act.
- ~~(k)~~(bb) A licensee must report to the Council knowledge of any unlicensed practice of counseling.
- ~~(l)~~(ee) A licensee or an applicant must not participate in the falsification of any materials submitted to the Council.
- ~~(m)~~(dd) A licensee must not provide services while impaired by a physical, mental, or medical condition or by medication, drugs or alcohol.

681.52 Parenting Facilitation

At a minimum, records must be maintained for the period of time described in §681.36 ~~§681.41~~(r) of this title (relating to Client Records ~~General Ethical Requirements~~), or as otherwise directed by the court.

681.205 Schedule of Sanctions

Changes due to rule number changes on proposed rules