

# **2022 Update: Course 2G - Texas Ethics for LPCs**

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**'Scope of Practice' . . .**

**What Is That?**



### **Ethical Standards of Practice For LPCs**

### **Notice of Changes to Federal 42 CFR, Part 2: Release of Protected Health Information for Clients with SUD.**

Introduction: You DO NOT need to remain online and connected to the Internet to study this '2022 Update of Course 2G - Texas LPC. As with all of our courses, you can save this Study Guide to your computer or other device to study off-line and to refer to in the future, and to print it if you wish.

However, to enroll in this course and to take the quiz online, you will need to log in to your CEU By Net account. Enrollment in the course is confirmed when you see the name of this course on your My Home Page. It's an active link. Click it to save the course to your computer and to print and take the quiz online. You can also click the name of the course to re-download your certificate later if needed. .

New LPC Rule Books were posted online on the Behavioral Health Executive Counsel's website in March 2022 and September 2022, and will be updated periodically. However, the BHEC and the LPC Board have alerted us that the official, current version of the Rules of Practice *will always be those that appear on the Texas Secretary of State's (SOS) website*. Therefore, CEU By Net has inserted ACTIVE LINKS in this document that will take you directly to specific rules on the SOS website in the future, when you want to be certain of the most recent version of a Rule of Practice.

Where are these links to the SOS website in this Study Guide document? Beginning on page 6, on the left side of the page, there are ACTIVE LINKS to specific sections of the Rules of Practice (e.g., §681.31) that will take you directly to the current version of the rule on the Texas Secretary of State (SOS) website when you are connected to the Internet. However, *there is no need to consult the SOS website to take this course*. These links are for your use *at any time in the future*, when you want to check the most current version of Chapter 681, Subchapter B Rules of Practice for LPCs.

Please note: The TITLES of the sections on page 6 (e.g., 'Counseling Methods' and 'Confidentiality and Required Reporting') are INTERNAL links that will help you to find specific Rules within this Study Guide. There is no need to be connected to the Internet to use these Title Links.

# Scope of Practice - What Is That?

The acronym 'SOP' is commonly used in industrial and military settings to mean 'standard operating procedure' - a set of step-by-step instructions compiled by an organization to help employees carry out routine operations efficiently and correctly.

However, in the field of health care - both behavioral and physical medicine - 'SOP' is the conventional acronym for '*Scope of Practice*.' Scope of Practice pertains to the **methods, techniques, and modalities** that a licensed healthcare provider is *legally authorized* to use. The authorization is predicated on possessing an active **license** to practice, a specified level of **training**, and a demonstrated level of **competence**.

The specific terminology 'Scope of Practice' does not appear frequently in the BHEC and LPC Rules. Therefore, how significant is this concept in Texas statute? You will find the term 'Scope of Practice' appearing repeatedly in the Texas Occupations Code. All licensed healthcare professionals in Texas - whether they are a dentist, dental assistant, veterinarian, MD, nurse, nurse practitioner, midwife, social worker, LMFT, LPC, psychologist or other - *are ethically and legally obligated to work within the scope of practice* which has been defined by the Board which licenses the profession.

**Working beyond the 'Scope of Practice' of a professional license is an ethics violation which can result in loss or suspension of the license. Compliance or non-compliance with the 'Scope of Practice' can also have a significant impact on the outcome of lawsuits which may be filed against a behavioral health provider.**

The term '***scope of practice***' was used in the creation of the Behavioral Health Executive Council (BHEC) in Texas House Bill 1501. It was then embedded in the Texas Occupations Code §503.2015 which states that the *LPC Board shall propose rules to the Executive Council pertaining to scope of practice, standards of care, and ethical practice*. It is also noted in statute that the BHEC shall not propose and adopt a rule unless the rule has been proposed by the LPC Board.

Texas Occupations Code: Subchapter E, Chapter 503, Occupations Code, is amended by adding Section 503.2015 to read as follows:

Sec. 503.2015. BOARD DUTIES. The Board shall propose to the Executive Council:

(1) rules regarding:

- A) the qualifications necessary to obtain a license, including rules limiting an applicant's eligibility for a license based on the applicant's criminal history;
- B) **the scope of practice and standards of care and ethical practice for professional counseling, and**
- C) continuing education requirements for license holders.

Understanding the meaning of Scope of Practice is important. *There are three primary components to Scope of Practice.* **The first component** is the designation of specific *methods, techniques, and modalities* which the healthcare provider is legally authorized to provide. The designation of the approved professional services is *specific to the type of license that is held*.

- For example, LPCs in Texas are not allowed to use standardized 'projective' assessment techniques such as the Rorschach Inkblot Test, the Holtzman Inkblot Test, the Thematic Apperception Test, and the Children's Apperception Test when assessing the mental or emotional status of an individual. Licensed Psychologists may use these projective techniques. If a Texas LPC who is not also a Licensed Psychologist in Texas uses projective techniques to assess the status of a client, the LPC has committed an ETHICS violation.

In Texas, the methods, techniques, and modalities which are approved for use by LPCs are: 1. counseling in multiple formats, 2. assessment, 3. consulting, and 4. referral.

But limiting our work to these four primary service components is not all there is to 'scope of practice.' *The demonstration of competence in the delivery of these services* - reflected in the effectiveness of what we do - is also an essential element. This moves us to the second component of Scope of Practice.

**The second component** of 'scope of practice' is the demonstration of SKILL and COMPETENCE in the methods, techniques, and modalities that are used in clinical work. SKILL and COMPETENCE in professional counseling is mentioned several times in the LPC Rule Book.

*What does 'Skill and Competence' mean in practical terms, where the rubber meets the road?* It's the effectiveness (outcome) of the services we deliver to clients, how we handle situations when there are challenges, issues, or problems, and whether services are delivered in conformity with the Rules of Practice. Are our actions ethical? Attentive to client safety? Performed with documented consent for treatment? Are we acting in the best interest of the client? Do we make referrals when clinically indicated? Are we maintaining confidentiality?

- Competence is reflected in the documentation within the client's treatment record of (a) the specific methods and techniques that are used to address specific problems, (b) clarity about the client's progress or lack of progress in response to the interventions, and (c) the subsequent modification of treatment plans as clinically indicated to address progress or lack of progress.

Further, does the diagnosis correlate with the client's history and the current descriptors in the DSM? Does our work reflect a sound clinical knowledge base? Are we using treatment methods that are supported in empirically-validated research and other published professional findings?

Aside from these Rule-related demonstrations of competence, are there other basic skills and competencies which are important in day-to-day functioning, which are important to include in training and clinical supervision of licensees - and if not included, the lack reflects negatively on the competence of the supervisor? Yes, there are such 'basics' - and they are often referred to as KSAs.

**KSAs.** The Federal office of SAMHSA (Substance Abuse and Mental Health Services Administration) and its Center for Substance Abuse Treatment (CSAT), have published a list of essential skills for counselors, known as KSAs - Knowledge, Skills, and Abilities. The list of KSAs developed by SAMHSA [below] define skills which behavioral health experts, educators, and litigators expect counselors to use *in their everyday work*. With the expansion of telehealth services, knowledge of the safe and ethical use of technology in service delivery will no doubt be added to this list of essential KSAs. Several of these skills have been mentioned in the LPC Rules of Practice.

1. Ability to engage in information gathering, problem identification, diagnosis, treatment planning, implementation, evaluation and follow-up.
2. Knowledge of the current Diagnostic and Statistical Manual (DSM) of Mental Disorders in formulation of treatment goals and application of appropriate clinical interventions using professional counseling practices.
3. Basic knowledge of professional counseling practice with emphasis on human development principles through cognitive, affective, behavioral or systemic interventions, and strategies that address high risk behaviors, wellness, personal growth, and career development across the life span.
4. Ability to use a wide variety of individual, group, or family counseling interventions; demonstrates sensitivity to diversity, and possesses multicultural counseling skills.
5. Ability to serve on an interdisciplinary team with focus on the intrapersonal, interpersonal, and relational functioning of individuals, groups and families and on the counseling approaches, strategies, and techniques that will best help patients function effectively.

*In Clinical Supervision*, basic SKILLS and CLINICAL COMPETENCIES such as these are modeled and nurtured by the Clinical Supervisor. As needed, a plan of correction and development is devised to improve the supervisee's skills. Ultimately, an assessment is made by the Clinical Supervisor as to the SKILL and COMPETENCE of the LPC Associate and his or her readiness for full LPC licensure.

- NOTE: In the event of an investigation or complaint, or if a lawsuit is filed, legal representatives on both sides [those representing the Plaintiff or State board and those representing the licensee] will call attention to the 'presence' or 'absence' of the basic clinical competencies in the work performed by the licensee. Training, clinical supervision, and the documentation of supervision activities are therefore crucial in the development of a licensed professional's clinical competence.

**The third component** of Scope of Practice is known as 'the *Prevailing Standard of Professional Care*.' This component refers to the extent to which the level of care, treatment methods, techniques, and modalities employed by the clinician are *generally recognized as acceptable and appropriate by reasonably prudent health care providers* for the treatment of people with specific medical or behavioral health diagnosis(es). A client's history of response to treatment and all relevant circumstances are also to be considered.

How is the 'Prevailing Standard of Care' utilized? In lawsuits and other investigations involving a licensee, the professional care that has been provided by the licensee is, in effect, COMPARED TO the 'Prevailing Standard of Professional Care' for patients who have substantially the same diagnosis(es), history of response to treatment, and circumstances as the licensee's client. Expert Witnesses are typically called by both sides, and data from recognized research and professional publications may also be presented.

The concept of 'PREVAILING STANDARD of CARE' is also utilized in the development of '*Best Practices*' by accreditation entities and governmental organizations such as the Centers for Medicare & Medicaid Services (CMS), the Center for Health Care Strategies (CHCS), the Agency for Healthcare Research and Quality (AHRQ), National Guideline Clearinghouse (NGC), and Joint Commission.

***In summary***, the LPC's 'Scope of Practice' inherently requires that (1) only the authorized methods, techniques, and modalities are used by the licensee, and (2) the manner in which they are used reflects knowledge, skill, and competence, and (3) the services delivered to individuals are consistent with the *Prevailing Standard of Care*. The Rules of Practice are intended to *strengthen* the three components of Scope of Practice described herein.

### **'Keeping Current' with the Rules of Practice**

On the Behavioral Health Executive Council's web page, we are warned that, due to unavoidable logistic issues, the Rule Books may not reflect the current state of the law, and that the Rules of Practice which appear on the Secretary of State's (SOS) website *are always the most current and 'shall control'* when conflict exists between the Rule Books and the SOS website.

**RULE BOOKS: "While the Council makes every reasonable effort to update and maintain the accuracy of these rulebooks, due to the evolving nature of the law and limited time and resources, the rulebooks may not reflect the current state of the law. You are cautioned against relying solely upon these rulebooks and are urged to review the current rules which are available online, through active links on the Secretary of State's website."**

**"Moreover, if a conflict exists between a rulebook and the rules published on the Secretary of State's website, the version on the Secretary of State's website shall control. Compliance with the law cannot be excused due to an outdated, mistaken, or erroneous reference in a rulebook."**

However, searching the SOS website for specific rules and phrases can be challenging. Why? The Rules of Practice section on the SOS website is not displayed as a single searchable document. If you enter "drugs and alcohol" in the search box on the SOS Home Page, you are likely to be shown many references to Drugs and Alcohol that have nothing to do with the LPC Rules of Practice.

Therefore, for your future use in searching the online SOS website for the MOST CURRENT VERSION of a specific Rule of Practice, we have pulled together the Subchapter B Rules of Practice for LPCs, consolidated into pages 6 through 30 of this Study Guide, which is readily searchable - and on page 6 we have retained the ACTIVE LINKS that you can use at any time in the future, which will take you *directly to the Rule you are researching* on the SOS website. These links will always take you to the MOST CURRENT VERSION of the Rule for which you are searching, when you are connected to the Internet.

Here's an example: On page 6 of this document, you will see that the Rules of Practice for LPCs are arranged in thirteen sections under Subchapter B - for example, §681.45 - Confidentiality and Required Reporting, and §681.44 - Drug and Alcohol Use, and §681.42 - Sexual Misconduct. And let's say that you want to see how sexual activity is defined in the LPC Rules of Practice. How to do this?

1. With this CE Course document open on your computer or tablet, you can search this entire document [which is the LPC Rules of Practice] for terms such as 'Sex' or 'Sexual.' But you will find at least 50 references to 'sex' and 'sexual' on pages 6 through 30, and you want to narrow the search. You also want to see the most CURRENT, OFFICIAL description of what is meant by Sexual Misconduct.
2. You return to page 6 of this document and you click the TITLE of section §681.42, which is 'Sexual Misconduct.' But clicking the title 'Sexual Misconduct' takes you to page 13 *in this course document*. Even if you have downloaded the current LPC Rule Book, you are not guaranteed that you are viewing the current and official version of §681.42 - Sexual Misconduct. For 'CURRENT' and 'OFFICIAL,' you must be *connected to the Internet* and must view the Rules of Practice on the Secretary of State's (SOS) website.
3. How to get there quickly? First, connect to the Internet and return to page 6 of this course document. Click the section number - §681.42. This section number is an ACTIVE LINK that will take you directly to the CURRENT and OFFICIAL Rule pertaining to Sexual Misconduct on the SOS website.

**When you are connected to the Internet, ALL of the section numbers prefaced by the symbol § on page 6 of this course document are active links that will take you directly to the SOS website, to view the current and official version of the Rules of Practice.**

**There is no need to visit the SOS website to complete this course.  
These links are intended for your convenience to use at any time in the future, to access the most recent status of the LPC Rules.**

*Continue to the next page of this course.  
You will be answering questions about  
specific rules when you take the quiz.*



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### Rules

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[RULE §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 Associates; and

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

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**Source Note:** The provisions of this §681.31 adopted to be effective November 19, 2020, 45 TexReg 8139

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[RULE §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 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 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.

(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) 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.

(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 Council 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 Council.

(dd) A licensee must not provide services while impaired by a physical, mental, or medical condition or by medication, drugs or alcohol

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**Source Note:** The provisions of this §681.41 adopted to be effective November 19, 2020, 45 TexReg 8139; amended to be effective November 21, 2021, 46 TexReg 7783

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## RULES OF PRACTICE

## RULE §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 Associate 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 Associate, 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 Associate's, or student's personal history;

(E) the client's, LPC Associate's, or student's current mental status;

(F) the likelihood of adverse impact on the client, LPC Associate, 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 Associate, 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 Associate, or student occurred:

(1) with the consent of the client, LPC Associate, 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 Associate, 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 Associate, 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 Associate, 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 Council 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.

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**Source Note:** The provisions of this §681.42 adopted to be effective November 19, 2020, 45 TexReg 8139



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RULE §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 licensee 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.

**Source Note:** The provisions of this §681.43 adopted to be effective November 19, 2020, 45 TexReg 8139

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RULE §681.44

EXAMINING BOARDS

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RULES OF PRACTICE

Drug and Alcohol Use

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A licensee must not use alcohol or drugs in a manner that adversely affects the licensee's ability to provide counseling.

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**Source Note:** The provisions of this §681.44 adopted to be effective November 19, 2020, 45 TexReg 8139

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## RULE §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 Council §§882.36 (relating to Compliance with State and Federal Law) and 884.32 (relating to Reportable Legal Action and Discipline) and 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;

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

(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.

**Source Note:** The provisions of this §681.45 adopted to be effective November 19, 2020, 45 TexReg 8139

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RULE §681.46

EXAMINING BOARDS

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Licensees and the Council

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(a) Licensees are bound by the provisions of the Act and this chapter as well as the Council's rules and statutes.

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

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**Source Note:** The provisions of this §681.46 adopted to be effective November 19, 2020, 45 TexReg 8139

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RULE §681.47

Assumed Names

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(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).

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**Source Note:** The provisions of this §681.47 adopted to be effective November 19, 2020, 45 TexReg 8139

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There is currently no statute numbered  
RULE §681.48

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## RULE §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 Council 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 Council 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 Behavioral Executive Council" with reference to the "Texas State Board of Examiners of Professional Counselors."
- (h) An LPC Associate must indicate Associate status on all advertisements, billing, and announcements of counseling treatment by the use of the term "LPC Associate. "On all advertisements, billings and announcements of counseling treatment by an LPC Associate, the Associate's name must be followed by the name of the supervisor.
- (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 Council-approved supervisor may use the designation "LPC-S" when advertising their supervisory status.

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**Source Note:** The provisions of this §681.49 adopted to be effective November 19, 2020, 45 TexReg 8139

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RULE §681.50

Research and Publications

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(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.

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**Source Note:** The provisions of this §681.50 adopted to be effective November 19, 2020, 45 TexReg 8139

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RULE §681.51

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 Council 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 Council, 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.

(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.

**Source Note:** The provisions of this §681.51 adopted to be effective November 19, 2020, 45 TexReg 8139

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## RULES OF PRACTICE

## RULE §681.52

## 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 associate 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 Council.

(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 Council.

(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 Council 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.

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**Source Note:** The provisions of this §681.52 adopted to be effective November 19, 2020, 45 TexReg 8139

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## RULES OF PRACTICE

## RULE §681.53

## 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, see Council §884.3.

(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 Council.

(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 Council 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, cancelation 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 Associate (LPC Associate) must not conduct child custody evaluations or adoption evaluations unless qualified by another professional license to provide such services.

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**Source Note:** The provisions of this §681.53 adopted to be effective November 19, 2020, 45 TexReg 8139



**GENERAL INFORMATION about the *recent changes* in Federal statute '42 CFR, Part 2,' pertaining to confidentiality of patient records of persons receiving treatment for SUD. The changes in 42 CFR, Part 2, will bring about better alignment with HIPAA.**

CEU By Net inserts the following information into this Ethics Course, as a **general alert** to the fact that there have been changes in 42 CFR, Part 2 pertaining to Confidentiality of Patient Records of persons receiving treatment for substance use disorders. In addition to the newly published regulations, SAMHSA has announced that there may be additional changes in the near future to 42 CFR Part 2, to blend with new Federal activity intended to address the opioid drug crisis. The current details of these changes - plus any additional changes that will likely occur - can be accessed on the SAMHSA website at

<https://www.samhsa.gov>

Since 1978, confidentiality in the substance abuse treatment field has been defined by Federal law: 42 CFR, Part 2 and the Health Insurance Portability and Accountability Act (HIPAA). However, on July 13, 2020, the Department of Health and Human Services' Substance Abuse and Mental Health Services (SAMHSA) announced that the agency has revised the Confidentiality of Substance Use Disorder Patient Records regulation, 42 CFR Part 2.

In Texas, LPCs frequently provide counseling to persons with Substance Use Disorders (SUD) and have a need to coordinate care with other providers, including sharing of treatment records. This change therefore affects LPCs as well as SUD treatment programs. The changes to 42 CFR Part 2 remove some of the barriers to exchange of treatment information between programs and facilities which receive Federal SUD treatment funds and those who do not. The changes to 42 CFR Part 2 are intended to improve care coordination between 42 CFR and non-42 CFR providers.

This shift was ultimately precipitated by the opioid crisis in America, in which thousands have died from overdoses. However, in the last few years, industry stakeholders and lawmakers have also asked for an update to 42 CFR Part 2, which was seen as outdated and burdensome for providers when it comes to sharing the patient records of SUD patients. Other leaders have pressed for an alignment with HIPAA to reduce those challenges.

The announcement by SAMHSA about this change, published online on July 13, 2020, and referenced repeatedly in Federal news blocks, contained the following statement:

"The new rule advances the integration of healthcare for individuals with substance use disorders while maintaining critical privacy and confidentiality protections. Under the original Part 2, a federally assisted substance use disorder program may only disclose patient identifying information with the individual's written consent, as part of a court order, or under a few limited exceptions. Health care providers, with patients' consent, will be able to more easily conduct such activities as quality improvement, claims management, patient safety, training, and program integrity efforts."



“As part of our Regulatory Sprint to Coordinated Care, these changes are just the beginning of a comprehensive agenda for reforming regulations that govern the delivery and financing of American healthcare, with the ultimate goal of better care, and better health, at a lower cost.”

“The adoption of this rule means Americans will be better able to receive integrated and coordinated care in the treatment of their substance use disorders,” said HHS Assistant Secretary for Mental Health and Substance Use Elinore McCance-Katz, MD, PhD, the head of SAMHSA. “We are grateful to the individuals and organizations that contributed their input to the rule-making process. This is great news for our nation’s families and communities.”

“Modernizing 42 CFR Part 2 will strengthen the nation’s efforts to reduce opioid misuse and abuse and to support patients and their families confronting substance use disorders,” the Assistant Secretary said. “The rule will make it easier for primary care clinicians to treat individuals with substance use disorders.”

“We need an all-hands-on-deck approach to treating substance use disorders,” said McCance-Katz. “We must do all we can to ensure the greatest access and availability to care for individuals living with Substance Use Disorders.”

**In the future, to learn more and see details of the new 42 CFR Part 2, you can go to the SAMHSA website at any time. To do that, copy this website address into your browser: <https://www.samhsa.gov>. When on that page, click the search icon and enter 42 CFR, Part 2**

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This is the end of this course, '2022 Update of Course 2G - Texas Specific Ethics for LPC.' You must now take and pass the quiz for this course and complete the Feedback Form, in order to download your CE Certificate for 2.5 CEUs.

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