

Texas-Specific Ethics for LPCs - Course 2G
A Compendium of Ethics Documents for LPCs



Texas Department of State
Health Services

**Texas State Board of Examiners of Professional Counselors About the Profession -
Scope of Practice**

By law, the practice of professional counseling is defined as the application of mental health, psychotherapeutic, and human development principles to facilitate human development and adjustment throughout the life span; prevent, assess, evaluate, and treat mental, emotional, or behavioral disorders and associated distresses that interfere with mental health; conduct assessments and evaluations to establish treatment goals and objectives; and plan, implement, and evaluate treatment plans using counseling treatment interventions that include:

1. "counseling" which means assisting one or more clients through the therapeutic relationship, using a combination of mental health and human development principles, methods, and techniques, including the use of psychotherapy, to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life;
2. "assessment" which means selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievements, interests, personal characteristics, disabilities, and mental, emotional, and behavioral disorders and the use of methods and techniques for understanding human behavior that may include the evaluation, assessment, and treatment by counseling methods, techniques, and procedures for mental and emotional disorders, alcoholism and substance abuse, and conduct disorders, but does not include the use of standardized projective techniques or permit the diagnosis of a physical condition or disorder;
3. "consulting" which means the application of scientific principles and procedures in counseling and human development to provide assistance in understanding and solving current or potential problems that the person seeking consultation may have with regard to a third party, including an individual, group, or an organization; and
4. "referral" which means evaluating and identifying needs of a counselee to determine the advisability of referral to other specialists, informing the counselee of such judgement, and communicating as requested or deemed appropriate to such referral sources.

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**Scope of Practice
for Texas LPCs**

**Subchapter C
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Texas State Board of Examiners of Professional Counselors About the Profession - Code of Ethics

SUBCHAPTER C. CODE OF ETHICS.

§681.41. General Ethical Requirements.

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

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

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

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

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

(e) Regardless of setting, a licensee shall provide counseling only in the context of a professional relationship. Prior to providing services a licensee shall inform an individual in writing of the following:

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

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

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

process. Counselors engaging in interactive distance counseling must adhere to each provision of the rules and statutes of the board.

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

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

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

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

(l) A licensee shall set and maintain professional boundaries.

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

(1) A non-therapeutic relationship is any non-counseling activity initiated by either the licensee or client that results in a relationship unrelated to therapy.

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

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

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

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

- (A) family members;
- (B) personal friends;
- (C) educational associates; or
- (D) business associates.

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

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

(n) The licensee shall not knowingly offer or provide counseling to an individual concurrently

receiving counseling treatment intervention from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy, the licensee shall request release from the client to inform the other professional and strive to establish positive and collaborative professional relationships.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§681.42. Sexual Misconduct.

(a) For the purpose of this section the following terms shall 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, which may include sexual contact that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a client's sexual history within standard accepted practice 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 shall not engage in sexual contact with or sexual exploitation of a person who is:

(1) a client as defined in §681.2(6) of this title (relating to Definitions);

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

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

(4) Sexual contact that occurs more than five years after the termination of the client relationship, an LPC Intern, or 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 that 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 personal history;

(E) the client's current mental status;

(F) the likelihood of adverse impact on the client and others; and

(G) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client.

(c) A licensee shall not practice therapeutic deception of a person who is a client as defined in §681.2(7) of this title (relating to Definitions).

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

- (1) with the consent of the client;
- (2) outside the professional counseling sessions of the client; or

(3) off the premises regularly used by the licensee for the professional counseling sessions of the client.

(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 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) Examples of sexual contact are those activities and behaviors described in the Texas Penal Code, §21.01.

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

(1) If a licensee has reasonable cause to suspect that a client has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health provider, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee shall 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;

(B) the board if the conduct involves a licensee and any other state licensing agency which licenses the mental health provider; and

(C) to the appropriate agency listed in §681.45 of this title (relating to Confidentiality and Required Reporting).

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

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

- (A) identify the reporter;
- (B) identify the alleged victim, unless the alleged victim has requested anonymity;
- (C) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and
- (D) provide the name of the alleged perpetrator.

§681.43. Testing.

(a) Prior to or following the administration of any test, a licensee shall 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 shall not appropriate, reproduce, or modify copyrighted tests or any parts thereof without the acknowledgment and permission of the copyright owner.

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

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

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

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

- (1) use alcohol or drugs in a manner that adversely affects the licensee's ability to provide counseling;
- (2) use illegal drugs of any kind; or
- (3) promote, encourage, or concur in the illegal use or possession of alcohol or drugs.

§681.45. Confidentiality and Required Reporting.

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

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

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

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

- (1) Texas Family Code, Chapter 261, concerning abuse or neglect of minors;
- (2) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons;

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

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

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

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

- (1) an arrest of the licensee, other than for a Class C misdemeanor traffic offense;
- (2) the filing of a criminal case against the licensee;
- (3) a criminal conviction of the licensee other than for a Class C misdemeanor traffic offense;

or

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

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

§681.46. Licensees and the Board.

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

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

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

(d) A licensee shall cooperate with the board by furnishing documents or information and by responding to a request for information from or a subpoena issued by the board or its authorized representative.

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

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

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

§681.47. Assumed Names.

(a) An individual practice by a licensee may be established as a corporation, a limited liability partnership, a limited liability company, or other business entity in accordance with state or federal law.

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

§681.48. Consumer Information.

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

- (1) on each application or written contract for services; or
- (2) on a sign prominently displayed in the primary place of business; or
- (3) on a bill for counseling provided to a client.

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

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

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

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

§681.49. Advertising and Announcements.

(a) Information used by a licensee in any advertisement or announcement shall 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 earned from an accredited college or university in counseling or a counseling-related field as reported by the American Association of Collegiate Registrars and Admissions Officers may be used when advertising or announcing counseling treatment intervention to the public or in counseling-related professional representations. A degree received at a foreign university may be used if the degree could be accepted as a transfer degree by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(e) Notwithstanding the foregoing, a licensee may advertise or announce his or her other degrees from accredited colleges or universities if the subject of the degree is specified.

(f) The board imposes no restrictions on advertising by a licensee with regard to the use of any medium, the licensee's personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a licensee, or the use of a trade name.

(g) All advertisements or announcements of counseling including telephone directory listings by a person licensed by the board shall clearly state the licensee's licensure status by the use of a title such as "Licensed Counselor", or "Licensed Professional Counselor", or "LPC", or a statement such as "licensed by the Texas State Board of Examiners of Professional Counselors."

(h) LPC Interns holding a temporary license shall indicate intern status on all advertisements, billing, and announcements of counseling treatment by the use of the term "LPC Intern." On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the intern's name shall be followed by the name of the supervisor in the same type size and font.

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

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

§681.50. Research and Publications.

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

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

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

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

§681.51. Finding of Misconduct Occurring before Licensure.

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

(b) The board may consider conduct prior to licensure in determining whether an applicant or licensee is qualified to practice counseling, including conduct that would have been a violation of the code of ethics if the person had been licensed.

(c) The board may deny a license, license renewal, or specialty recognition if it substantiates that the applicant lacks the necessary skills and abilities to provide adequate counseling; has misrepresented any materials in the licensure application or renewal application, or any materials submitted to the board; has violated any provision of the Act in effect when the applicant applied; or has violated the code of ethics, or any other section of this chapter which would have applied had the applicant been licensed when he/she committed the violation.

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

§681.52. LPC Interns.

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

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

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

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

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

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

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

Last updated January 28, 2015

CONSENT FOR EMERGENCY MEDICAL CARE OF A MINOR IN A DISASTER

Prepared by: Office of General Counsel, Texas Department of State Health Services
April 14, 2006

ISSUE: May a health care professional provide emergency medical care to a minor during a natural or man-made disaster without first obtaining the consent of the minor's parent, guardian, or managing conservator?

ANSWER: Yes.

DISCUSSION: A "minor" is a person under 18 years of age who is not and has not been married or who has not been declared an adult by a court for general purposes. *Family Code, §101.003(a)*.

State law defines "emergency medical care" as services provided after the sudden onset of a medical or traumatic condition with acute symptoms of sufficient severity that the absence of immediate medical attention might reasonably be expected to place the patient's health in serious jeopardy, or result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part. *Civil Practice and Remedies Code, §74.001(a)(7)*.

Therefore, in Texas a physician, and by extension, other health care professionals, confronted with an emergency, may provide life-sustaining treatment for a minor without first obtaining consent from the minor's parent, guardian, or managing conservator. *Miller v. HCA, Inc., 118 S.W. 3d 758, 767 (Tex. 2003)*. However, health care professionals should carefully evaluate a minor's condition and the likely results of deferring treatment before acting without consent. The injuries and destruction caused by a disaster such as a hurricane, no matter how severe, do not automatically authorize emergency medical care without parental consent for any minor unless the minor's life or health would be jeopardized by delay.

In addition, under the supervision and control of a local health authority, communicable disease control measures, including preventive therapy, that are necessary in the administration of a regional public health response to a disaster may be administered to minors without first obtaining consent from their parents, guardians, or managing conservators. *Health and Safety Code, §81.082*. Unless preempted by a disaster declaration by the Governor, a local health authority may impose measures to arrest, control, and eradicate an outbreak of communicable disease in a quarantine area under the health authority's jurisdiction. Consent from the parents, guardians, or managing conservators, of minors subject to the control measures is not required by law. *Health and Safety Code, §81.086*. An individual minor's life or health need not be in jeopardy to authorize measures to control the spread of disease stemming from a disaster.

WAIVER OF LAW OR RULES: None.

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CONSENT FOR NONEMERGENCY MEDICAL CARE OF A MINOR IN A DISASTER

Prepared by: Office of General Counsel, Texas Department of State Health Services
April 14, 2006

ISSUE: May a health care professional provide nonemergency medical care to a minor during a natural or man-made disaster without first obtaining the consent of the minor's parent, guardian, or managing conservator?

ANSWER: Yes, in several specific circumstances.

DISCUSSION: A "minor" is a person under 18 years of age who is not and has not been married or who has not been declared an adult by a court for general purposes. *Family Code, §101.003(a)*. If the minor's parent, guardian, or managing conservator cannot be contacted, and has not specifically refused consent for the treatment, adults in several other categories may consent, including (1) grandparents; (2) adult brothers or sisters; (3) adult aunts or uncles; (4) a representative of the minor's school, if the school has previously received written authorization; (5) an adult who has actual care, control, and possession of the minor and has written authorization to consent from the minor's parent, guardian, or managing conservator; (6) a court in which a suit affecting the minor's legal relationship with his or her parents has been filed; (7) an adult responsible for the actual care and control of the minor under the jurisdiction of a juvenile court; or (8) a peace officer who has taken custody of the minor and reasonably believes the minor needs immediate treatment. *Family Code, §32.001(a)*. Nonparent adults in these categories may not consent to the immunization of a minor. *Family Code, §32.001(c)*.

A minor may consent to his or her own medical, dental, psychological, and surgical treatment if the minor (1) is on active duty with the U.S. armed services; (2) is at least 16 years old and lives separate from his or her parent, managing conservative, or guardian and manages his or her own financial affairs; (3) consents to diagnosis and treatment of an infectious, contagious, or communicable disease that must be reported by law; (4) is unmarried and pregnant and consents to treatment related to the pregnancy, other than abortion; (5) consents to examination and treatment for drug or chemical addiction or dependency; or (6) is unmarried, has actual custody of his or her own child, and has consented, as the child's parent, to medical, dental, psychological, or surgical treatment for the child. *Family Code, §32.003(a)*.

A minor 16 years of age or older may request voluntary admission to an inpatient mental health facility or to a facility for chemical dependency treatment without parental consent. *Health & Safety Code, §572.001 and §462.022*.

A minor may consent to, and a physician, psychologist, counselor, or social worker having reasonable grounds to believe the minor has been (1) sexually, physically, or emotionally abused; (2) is contemplating suicide; or (3) is suffering from chemical or drug addiction or dependency may counsel the minor without parental consent. *Family Code, §32.004(b)*.

WAIVER OF LAW OR RULES: None.

CONTACT: Michael G. Young, Assistant General Counsel, 458-7111, extension 3809, Room M-540.

HIPAA Exceptions Regarding Release of Protected Health Information



Texas Department of State
Health Services

Professional Licensing and Certification Unit - Health Insurance Portability and Accountability Act (HIPAA)

IMPORTANT MESSAGE ABOUT HIPAA PRIVACY STANDARDS TO PROVIDERS AND ENTITIES THAT ARE LICENSED OR REGULATED BY THE DEPARTMENT OF STATE HEALTH SERVICES (DSHS)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy regulations implemented standards for how information that identifies a patient can be used and disclosed. (Title 45, Code of Federal Regulations (CFR), Parts 160 and 164) The regulations apply to "covered entities" including health-care plans, health-care clearinghouses, and health-care providers. These privacy standards went into effect on April 14, 2003.

You can continue to provide protected health information to DSHS investigators, inspectors, and licensing and enforcement divisions under one or more of the following exceptions in the HIPAA Privacy Standards. We have listed first the one that applies to most DSHS activities, including regulatory inspections.

*****USE AND DISCLOSURE FOR HEALTH OVERSIGHT ACTIVITIES:** Section 164.512(d) permits covered entities to disclose private health information to a health oversight agency for oversight activities including audits, *civil, administrative or criminal investigations, inspections, licensure or disciplinary actions, or other activities necessary for the oversight* of the health-care system, government benefit programs, *compliance with governmental regulation* or compliance with civil rights laws.

USE AND DISCLOSURE REQUIRED BY LAW: Section 164.512(a) allows covered entities to use and disclose private health information if the use or disclosure is required by law. For example, TDH rules require certain diseases, injuries and conditions to be reported to TDH. Under the "required by law" exception you can continue to comply with these mandatory reporting rules.

USE AND DISCLOSURE FOR PUBLIC HEALTH ACTIVITIES: Section 164.512(b) permits covered entities to release private health information to a public health authority that is authorized by law to collect and receive information for preventing and controlling disease, injury, or disability. This information includes reporting of; disease, injury, vital statistics like births, deaths, marriages, divorces, etc., public health investigations, and public health interventions. Under this exception you are authorized to release information to TDH, or other public health authorities. Disclosure can be initiated by either the public health authority or by you, if it is for one of the above reasons.

USE AND DISCLOSURE FOR LAW ENFORCEMENT PURPOSES: Section 164.512(f) permits disclosure of private health information to a law enforcement officer for certain law enforcement purposes.

USE AND DISCLOSURE TO AVERT A SERIOUS THREAT TO HEALTH OR SAFETY: Section 164.512(j) permits disclosure of private health information if a covered entity in good faith believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. The disclosure must be made to a person who is reasonably able to prevent or lessen the threat, or for identification and apprehension of an individual.

THIS NOTICE IS YOUR AUTHORIZATION UNDER THE ABOVE EXCEPTIONS TO CONTINUE TO PROVIDE ACCESS TO THE INFORMATION REQUESTED BY DSHS AND OTHER PUBLIC HEALTH, LAW ENFORCEMENT AND REGULATORY AUTHORITIES. A Public Health, Licensing, Oversight, Law Enforcement or Regulatory Authority that falls within one of the above exceptions is not required to have a business associate agreement under HIPAA. These entities are not acting on behalf of the covered entity but by a grant of authority under Federal, State or Local Laws.

DSHS inspectors or other personnel should contact their program attorney for more information. (Revised: August 2008).

HIPAA Notice

Select the link below to read an important message about HIPAA Privacy Standards for providers and entities that submit protected health information to the Texas Department of State Health Services.

<http://www.dshs.state.tx.us/hipaa/webmessage.shtm>

External email links are provided to you as a courtesy. Please be advised that you are not emailing the Texas Department of State Health Services (TDH) and TDH policies do not apply should you choose to correspond.

Last updated March 3, 2011



Texas Department of State
Health Services

Important message about HIPAA Privacy Standards to providers and entities that submit protected health information to the Texas Department of State Health Services

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy regulations implemented standards for how information that identifies a patient can be used and disclosed. (Title 45, Code of Federal Regulations (CFR), Parts 160 and 164) The regulations apply to "covered entities" including health-care plans, health-care clearinghouses, and health-care providers. These privacy standards went into effect on April 14, 2003.

The regulations were amended in August 2002 deleting the requirement to obtain an individual's consent for the use and disclosure of private health information for treatment, payment and health care operations. (45 CFR §164.506).

You can continue to submit information you currently submit to DSHS under one or more of the following exceptions in the HIPAA Privacy Standards:

• **USE AND DISCLOSURE REQUIRED BY LAW:**

Section 164.512(a) allows covered entities to use and disclose private health information if the use or disclosure is required by law. For example, DSHS rules require certain diseases, injuries and conditions to be reported to DSHS. Under the "required by law" exception you can continue to comply with these mandatory reporting rules.

• **USE AND DISCLOSURE FOR PUBLIC HEALTH ACTIVITIES:**

Section 164.512(b) permits covered entities to release private health information to a public health authority that is authorized by law to collect and receive information for preventing and controlling disease, injury, or disability. This information includes reporting of; disease, injury, vital statistics like births, deaths, marriages, divorces, etc., public health investigations, and public health interventions. Under this exception you are authorized to release information to DSHS, or other public health authorities. Disclosure can be initiated by either the public health authority or by you, if it is for one of the above reasons.

• **USE AND DISCLOSURE FOR HEALTH OVERSIGHT ACTIVITIES:**

Section 164.512(d) permits covered entities to disclose private health information to a health oversight agency for oversight activities including audits, civil, administrative or criminal investigations, inspections, licensure or disciplinary actions, or other activities necessary for the oversight of the health-care system, government benefit programs, compliance with governmental regulation or compliance with civil rights laws.

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THIS NOTICE IS YOUR AUTHORIZATION UNDER THE ABOVE EXCEPTIONS TO CONTINUE TO REPORT THE INFORMATION YOU CURRENTLY REPORT TO DSHS AND OTHER PUBLIC HEALTH, LAW ENFORCEMENT, AND REGULATORY AUTHORITIES.

Please send questions via Email to: **HIPAA Privacy Officer**

Last updated May 29, 2018