

**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 services 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 prevent 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 treatment intervention only in the context of a professional relationship. A licensee shall inform an individual in writing before services are provided 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 and qualifications of the supervisor.
- (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) Where the client is in one location and the counselor is in another, technological means of communication may be used to facilitate the therapeutic counseling process.
- (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. 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.

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

(j) A licensee shall not promote the licensee's personal or business activities to a client.

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

(l) Dual relationships with clients are prohibited. A dual relationship is considered any non-counseling activity initiated by either the licensee or client for the purpose of establishing a non-therapeutic relationship. (See definition of CLIENT as referenced in §681.2(7) of this title (relating to Definitions).

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

(A) family members;

(B) personal friends;

(C) educational associates; or

(D) business associates.

(2) 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.

(3) 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.

(m) The licensee shall not knowingly offer or provide counseling treatment intervention 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.

(n) 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.

(o) 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.

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

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

(r) 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 (p) and (q) of this section.

(s) 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) 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.

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

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

(v) 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.

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

(x) 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.

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

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

(aa) A licensee shall establish a 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. A licensee shall inform each new client of the plan.

### **§681.42 Sexual Misconduct**

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

(1) "Mental health services 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 services provider also includes employees of the above 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 marital 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(7) of this title (relating to Definitions);

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

(3) a student 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 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 inappropriately seductive or sexual;
  - (3) inappropriate 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 to 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 services 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 services 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 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 licensee 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 treatment intervention services;
- (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, Chapter 611, concerning access to mental health records and confidential information.
- (d) A licensee shall report information if required by any of 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 services 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.

#### **§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's executive director.
- (c) A licensee shall keep his or her board file updated by notifying the board in writing of changes of name, highest academic degree granted, address, telephone number, and employment.
- (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 may be subject to disciplinary action.

#### **§681.47 Assumed Names**

- (a) An individual practice by a licensee may be established as a corporation, a limited liability partnership, a limited liability company, or other business entity in accordance with state or federal law.
- (b) An assumed or trade name used by a licensee must not be false, deceptive, or misleading, as those terms are described in §681.49(b) of this title (relating to Advertising and Announcements.)

#### **§681.48 Consumer Information**

- (a) A licensee 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 treatment intervention 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.

#### **§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 material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;
- (2) makes any representation likely to create an unjustified expectation about the results of a health care service or procedure;
- (3) compares a 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 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 to 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 made.

(d) The highest academic degree earned from an accredited college or university in counseling or a counseling-related field 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. 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.

(e) 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.

(f) All advertisements or announcements of counseling treatment intervention 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 "L.P.C.", or a statement such as "licensed by the Texas State Board of Examiners of Professional Counselors."

(g) Counselors 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."

(h) A licensee is required to hold the art therapy specialty designation in order to use the title

"art therapist" or the initials "A.T." A licensee who does not hold the designation may engage in the practice of counseling by using art therapy as a counseling method but may not use the title or initials.

#### **§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 those 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 fit to practice counseling, including conduct that would have been a violation of the code of ethics if the person was licensed.

#### **§681.52 LPC Interns**

- (a) An LPC Intern may not practice within the Intern's own private independent practice of professional counseling.
- (b) An LPC Intern may be employed on a salary basis or be a consultant or volunteer.
- (c) No payment for services will be made directly by a client to the intern.
- (d) Client records are not the property of the counseling 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.
- (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.

**Source Note:** The provisions of this §681.52 adopted to be effective September 1, 2003, 28 TexReg 4134; amended to be effective September 1, 2005, 30 TexReg 4978; amended to be effective April 27, 2008, 33 TexReg 3268