

(ix) The internship site shall inform interns concern-ing the period of the internship and the training objectives of the pro-gram.

(x) The internship experience must be systemat-ically evaluated in a manner consistent with the specific training objectives of the program.

(xi) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the pro-fession.

(xii) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiii) The internship agency must have the availabil-ity of at least two full-time equivalent psychologists as primary super-visors, at least one of whom is employed full time at the agency and is a school psychologist.

(3) Industrial/Organizational Requirements. Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement but must complete 3,500 hours of supervised experience meeting the requirements of paragraph (1) of this subsection, at least 1,750 of which must have been received as a provisional trainee or provisionally licensed psychologist. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which they do not have sufficient training and experience, of which a formal internship is considered to be an integral requirement.

(4) Licensure Following Retraining.

(A) In order to qualify for licensure after undergoing retraining, an applicant must demonstrate the following:

(i) conferral of a doctoral degree in psychology from a regionally accredited institution of higher education prior to under-going retraining;

(ii) completion of a formal, accredited post-doctoral retraining program in psychology which included at least 1,750 hours in a formal internship;

(iii) retraining within the two year period preceding the date of application for licensure under this rule, or continuous employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Psychologists' Licensing Act since re-ceiving their doctoral degree; and

(iv) upon completion of the retraining program, at least 1,750 hours of supervised experience after obtaining either provi-sional trainee status or provisional licensure.

(B) An applicant meeting the requirements of this sub-section is considered to have met the requirements for supervised ex-perience under this rule.

The agency certifies that legal counsel has reviewed the pro-posal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 28, 2018.

TRD-201805061

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 13,
2019 For further information, please call: (512)
305-7700

PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

The Texas State Board of Examiners of Marriage and Family Therapists (board) proposes amendments to §§801.2, 801.11 - 801.19, 801.42 - 801.58, 801.71 - 801.73, 801.91 - 801.93, 801.111 - 801.115, 801.141, 801.174, 801.203, 801.204, 801.232 - 801.235, 801.237, 801.262, 801.268, 801.291 - 801.294, 801.297 - 801.303, 801.331, 801.332, 801.351, and 801.362 - 801.364; new §§801.74 - 801.76, 801.142, 801.143, 801.201, 801.202, 801.236, 801.263, 801.264, 801.266, 801.296, and 801.304; and the repeal of §§801.142, 801.143, 801.172, 801.173, 801.201, 801.202, 801.236, 801.263 - 801.267, and 801.296, concerning the licensing and regulation of marriage and family therapists.

BACKGROUND AND PURPOSE

Texas Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency. Sections 801.1, 801.2, 801.11 - 801.19, 801.41 - 801.58, 801.71 - 801.73, 801.91 - 801.93, 801.111 - 801.115, 801.141 - 801.143, 801.171, 801.174, 801.201 - 801.204, 801.231 - 801.237, 801.261 - 801.264, 801.266, 801.268, 801.291 - 801.303, 801.331, 801.332, 801.351, and 801.361 - 801.364 have been reviewed, and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensing and regulation of marriage and family therapists are still needed; however, changes are needed as described in this preamble and are the result of the comprehensive rule review undertaken by the board and the board's staff. The board proposes introduction of new §§801.74 - 801.76, and §801.304. Sections 801.172, 801.173, 801.265, and 801.267 are proposed for repeal as explained in this preamble.

In general, each section was reviewed and proposed for read-option in order to ensure appropriate subchapter, section, and paragraph organization; to ensure clarity; to improve spelling, grammar, and punctuation; to ensure that the rules reflect cur-rent legal and policy considerations; to ensure accuracy of legal citations; to eliminate unnecessary catch-titles; to delete repeti-tive, obsolete, unenforceable, or unnecessary language; to im-prove draftsmanship; and to make the rules more accessible, understandable, and usable.

SECTION-BY-SECTION SUMMARY

This section-by-section summary considers only those sections which were substantially changed in language, meaning, or in-tent. A number of modifications are proposed for the chapter in order to meet the objectives of the agency review of rules as de-

scribed in this preamble, such as improving draftsmanship and ensuring clarity.

Non-substantive changes were made to various sections of the chapter, including conformance to HHSC Rule Drafting Guidelines, such as use of parallel construction: §§801.114; separate ideas: §§801.18, 801.112, 801.235, 801.263, and 801.351; use active voice: §§801.11, 801.18, 801.72, 801.92, 801.112, 801.201, 801.268, 801.292, 801.297, 801.300, and 801.363; use present tense: §§801.51, 801.72, 801.112, 801.174, 801.201, 801.203, 801.204, 801.232, 801.233, 801.234, 801.268, 801.291, 801.297 - 801.300, 801.303, 801.331, 801.351, and 801.364; use singular, not plural nouns: §§801.2, 801.13801.44, 801.56, 801.58, 801.113, 801.232, 801.266, 801.268, and 801.303; specify time period: §801.18, 801.142, 801.143, and 801.297; do not use "and/or" or other sets of words with slash marks: §§801.44, 801.58, 801.91, 801.114, 801.297, and 801.331; use the defined terminology consistently: §§801.17, 801.18, 801.42 - 801.44, 801.57, 801.71, 801.111, 801.114, 801.115, 801.141, 801.143, 801.202, 801.232, 801.233, 801.235, 801.263, 801.298, 801.300, 801.331, and 801.351; "Including" is term of enlargement, omit "but not limited to.": §§801.2, 801.44, 801.43, 801.53, 801.58, 801.133, and 801.204; spell out numbers one through ten and use numerals for numbers 11 and above, unless the number is the first word in a sentence: §§801.48, 801.56, 801.114, 801.115, and 801.263; use obligation words appropriately, such as 1) "must" imposes a duty (never use shall): §§801.12, 801.44, 801.46, 801.48, 801.49, 801.51 - 801.58, 801.112, 801.142, 801.143, 801.174, 801.204, 801.232, 801.235, 801.237, 801.262, 801.268, 801.291, 801.297, and 801.364; 2) "may" indicates discretion to act or grants permission: §§801.237, 801.262, and 801.298; and 3) "may not" imposes a prohibition: §§801.11 - 801.19, 801.44 - 801.48, 801.50, 801.52, 801.53, 801.56 - 801.58, 801.204, 801.232, 801.268, and 801.297; use simple words instead of complex words or phrases; such as 1) "before" for "prior to": §§801.11, 801.44, 801.56, 801.73, 801.93, 801.74, 801.234, 801.293, 801.300, 801.301, 801.351, and 801.363; 2) "begin" for "initiate" or "commence": §§801.12, 801.44, and 801.56; 3) "end" for "terminate": §801.44; and 4) "use" for "utilize": §801.42 and §801.56; omit needless words: §§801.2, 801.11, 801.1, 801.13, 801.18, 801.19, 801.43 - 801.45, 801.143, 801.174, 801.201, 801.203, 801.232, 801.235, 801.237, 801.291, 801.292, 801.297, 801.300, 801.331, 801.351, 801.362, and 801.363; avoid redundancies: §801.12, 801.44, 801.115, 801.174, 801.202, 801.267, and 801.362; cross-reference to law: §§801.2, 801.11, 801.13, 801.14, 801.18, 801.42, 801.44, 801.48, 801.57, 801.58, 801.204, and 801.291; cross-reference another rule: §§801.2, 801.174, 801.203, 801.235, and 801.351 and cross-reference Code of Federal Regulations: §801.2; as well as the addition of clarifying language to sections entitled "Purpose": §§801.1, 801.71, 801.91, 801.111, 801.141, 801.171, 801.231, 801.261, 801.331, and 801.361; and the addition of clarifying language to sections entitled "General": §§801.72, 801.112, 801.232, and 801.291.

The following are proposed changes concerning Subchapter A. Introduction.

The amendments to §801.2 add definitions for "Disciplinary action," "Health and Human Services Commission," "Informal settlement conference," "Jurisprudence exam," "Licensure examination," "Respondent," and "Supervision hour"; combine definitions of "Associate" and "Licensed marriage and family therapist associate"; expand the definition of "Supervision"; and update

and clarify statutory and rule references. As a result of the new definitions, the definitions are renumbered accordingly.

The following are proposed changes concerning Subchapter B. The Board.

Amendment to §801.11(e)(1)(C) removes the chair's obligation to sign approved meeting minutes.

Amendments to §801.13 replace "Department" with "HHSC" to reflect that the 84th Texas Legislature transferred the regulatory functions of the Department of State Health Service (department or DSHS) to the Health and Human Services Commission (HHSC) via Senate Bill 200. Effective September 1, 2017, HHSC provides personnel and facilities necessary for the administration of the board's functions. In addition, amendment to (g) removes the executive director's obligation to sign approved meeting minutes.

Amendments to §801.14 in subsection (b) replace "department" with "HHSC" to reflect changes made by the 84th Texas Legislature as noted above.

Amendments to §801.18 in subsection (a) remove the annual continuing education sponsor fee.

Amendments to §801.19 replace "department" with "staff" to reflect changes made by the 84th Texas Legislature as noted above.

The following are proposed changes concerning Subchapter C. Guidelines for Professional Therapeutic Services and Code of Ethics.

Amendments to §801.42 include reformatting and non-substantive changes.

Amendments to §801.43 include reformatting and non-substantive changes.

Amendments to §801.44 remove redundant subsections (m) and (x) and move subsection (n) to §801.48 Record Keeping, Confidentiality, Release of Records, and Required Reporting - see subsections (e) and (f); and remove redundant subsection (w), - see §801.47 Drug and Alcohol Use.

Amendments to §801.45 clarify in subsections (b) and (f) that the board may take action if a licensee engages in sexual misconduct with "a supervisee, an LMFT Associate, or an intern for whom the licensee has administrative or clinical responsibility" as well as "a student in a marriage and family therapy graduate program in which the licensee offers professional or educational services." Non-substantive changes were also made to this section.

Amendments to §801.46 include reformatting and non-substantive changes.

Amendments to §801.47 include reformatting and non-substantive changes.

Amendments to §801.48 reorganize the elements under subsection (d) related to required reporting and move provisions under (h) related to reporting of sexual misconduct so they are under (d)(5) related to duty to report sexual misconduct; align subsection (e) with HIPAA requirements of record retention for six years; and add subsection (f) related to exemptions from subsection (e), which was moved from §801.44 Relationships with Clients. Reformatting and non-substantive changes were also made to this section.

Amendments to §801.49 clarify in subsection (c) the required documentation to submit to the board within 30 days of the granting of an academic degree relevant to marriage and family therapy is an official transcript. Reformatting and non-substantive changes were also made to this section.

Amendments to §801.50 include reformatting and non-substantive changes.

Amendments to §801.51 include non-substantive changes.

Amendments to §801.52 include non-substantive changes.

Amendments to §801.53 include non-substantive changes.

Amendments to §801.54 include non-substantive changes.

Amendments to §801.55 include non-substantive changes.

Amendments to §801.56 include non-substantive changes.

Amendments to §801.57 clarify in subsection (d) prohibition that a licensee who has conducted a child custody evaluation may not provide any other type of service unless court-ordered to do so. Non-substantive changes were also made to this section.

Amendments to §801.58 clarify in subsection (d) required training or experience before a licensee may provide technology-assisted services and removed unnecessary language regarding a deadline for compliance in effect when the provision was introduced; repeal requirements that licensee disclose credentials and obtain client consent at the onset of each technology-assisted session; repeal subsection (j) concerning a compliance deadline imposed with this section was introduced. Non-substantive changes were also made to this section.

The following are proposed changes concerning Subchapter D. Application Procedures.

Amendments to §801.71 include non-substantive changes.

Amendments to §801.72 include non-substantive changes.

Amendments to §801.73 simplify subsection (a) by removing list of data required on application form and stating application form approved by the board; move provision that requires supervised experience form to new section §801.76 Licensed Marriage and Family Therapist (LMFT); add subsection (b) to require an applicant to submit appropriate fee(s); clarify requirements for official transcript in subsection (c); remove old effective date from subsection (e) and clarify requirements for jurisprudence exam. Non-substantive changes were also made to this section.

New §801.74 organizes and clarifies application and academic requirements for licensure examination.

New §801.75 organizes and clarifies qualifications, application and academic requirements for LMFT Associate license.

New §801.76 organizes and clarifies qualifications, application, academic, and supervised clinical experience requirements for LMFT license.

The following are proposed changes concerning Subchapter E. Criteria for Determining Fitness of Applicants for Examination and Licensure.

Amendments to §801.91 include non-substantive changes.

Amendments to §801.92 include non-substantive changes.

No changes were made to §801.93.

The following are proposed changes concerning Subchapter F. Academic Requirements for Examination and Licensure.

Amendments to §801.111 include non-substantive changes.

Amendments to §801.112 define the start of an academic program in subsection (a)(2) and move provision regarding remedy for graduate internship deficiency in subsection (a)(3) - see §801.114. Non-substantive changes were also made to this section.

Amendments to §801.113 define the start of an academic program in subsection (b)(3); organize provision regarding 45 or 60 semester hours under subsection (b); and redesignate subsections (c) and (d). Non-substantive changes were also made to this section.

Amendments to §801.114 clarify required semester hours in subsection (a); define the start of an academic program in subsection (b); clarify graduate internship hour requirements in subsection (b)(8); and add subsection (d) regarding remedy for graduate internship deficiency, which was moved from §801.112. Non-substantive changes were also made to this section.

Amendments to §801.115 in subsection (1) reduced requirement from five years to two years immediately preceding the date the application is received from an LMFT of another U.S. jurisdiction so the academic requirements (including the internship) are considered met; in subsection (2) reduced the threshold from five years to two years immediately preceding the date the application is received from an LMFT from a U.S. jurisdiction other than Texas that allows staff to grant one month of credit for every two months of independent practice toward a deficit in the academic internship requirement; and removed unnecessary and redundant subsection (3) - see §801.114. Non-substantive changes were also made to this section.

The following are proposed changes concerning Subchapter G. Experience Requirements for Licensure.

Amendments to §801.141 include non-substantive changes.

Amendments to §801.142 clarify supervised clinical experience requirement in subsection (1); clarify application of excess graduate internship hours in subsection (2); move a number of provisions regarding duties of the supervisor to §801.143; renumbered subsections (3) through (7); require the LMFT Associate to submit a Supervisory Agreement Form for each supervisor within 30 days of the date supervision began in subsection (5); and in subsection (7) reduced requirement from five years to two years immediately preceding the date the application is received from an LMFT of another U.S. jurisdiction so supervised clinical experience requirements are considered met. Non-substantive changes were also made to this section.

Amendments to §801.143 clarify requirements to apply for supervisor status in subsection (a); supervised clinical experience requirement in subsection (1); redesignate and reorganize subsections (b) through (n); in subsection (d), include supervisor's duties toward an LMFT Associate - moved from §801.142; in subsection (f) require a supervisor to report the end of supervision within 30 days; broadens supervisor's duty to ensure LMFT Associate knows and follows all statutes and rules that govern the practice of marriage and family therapy in subsection (g); in subsections (j) through (l), clarify consequences in the event that the supervisor fails to renew his or her license and supervisor status or the supervisor becomes subject to disciplinary action. Non-substantive changes were also made to this section.

The following are proposed changes concerning Subchapter H. Examinations.

The repeal of §801.172 is proposed because it no longer reflects current operational procedures. The requirement that the board offer the examination "at least semiannually" remains in Title 3 of the Texas Occupations Code, Sec. 502.155. However, the board's licensure examination vendor, the Association of Marital and Family Therapy Regulatory Boards (AMFTRB), offers the licensure examination more frequently than required by statute. The board also accepts verification of passing the California state licensing examination, which is also offered more frequently than twice per year.

The repeal of §801.173 is proposed because it no longer reflects current operational procedures. After staff has verified an applicant is eligible to sit for the AMFTRB licensure examination, staff sends a letter to the applicant with instructions to register with AMFTRB. Application and academic requirements to take the licensure examination are in new §801.74.

Amendments to §801.174 in subsection (e) allow an applicant to retake the examination as many times as needed until the expiration of the application - one year from the date of the first unsuccessful examination (registration and scheduling limits set by the board's vendor still apply); redesignate subsections (f) through (h); in subsection (f) remove effective date and add reference to definition of jurisprudence exam in §801.2; clarify the jurisprudence exam must be completed no more than six months before the date the application is received in subsection (g); and remove redundant language in subsections (h) and (j) that has been moved to the definition of jurisprudence exam in §801.2. Non-substantive changes were also made to this section.

The following are proposed changes concerning Subchapter I. Licensing.

Amendments to §801.201 add subsection (d) regarding the licensee's responsibility for use or misuse of original or duplicate license. Non-substantive changes were also made to this section.

Amendments to §801.202 remove redundant language regarding application requirements for the LMFT Associate - see new §801.75; redesignate subsections (a), (b), and (c); in subsection (c) an LMFT Associate who failed to meet all requirements by the end of 72 (or in some cases 96) months, may reapply for LMFT Associate, meeting all current requirements and passing the national licensure examination no more than six months before the date the application is received; and repeal provision for board review of clinical supervision experience accrued under a previously held LMFT Associate license. Non-substantive changes were also made to this section.

Amendments to §801.203 include non-substantive changes.

Amendments to §801.204 include non-substantive changes.

The following are proposed changes concerning Subchapter J, including changing the subchapter heading to License Renewal, Inactive Status, and Surrender of License.

Amendments to §801.232 include non-substantive changes.

Amendments to §801.233 include non-substantive changes.

Amendments to §801.234 include non-substantive changes.

Amendments to §801.235 include non-substantive changes.

Amendments to §801.236 implement recommendations of the Texas Sunset Commission to standardize conditions for inactive licensees and clarify how licensee may request inactive status and remove the limit of 24 months of inactive status in subsec-

tion (a); in subsection (b) a licensee cannot practice while the license is inactive; impose forfeiture of supervisory status with inactive status in subsection (c); inactive licenses remain subject to disciplinary action in subsection (d); in subsection (e) no continuing education is required while license is inactive; steps for converting from inactive to active status are set in subsection (f), including proof of jurisprudence exam no more than six months before the date request for status change is received and proof of completion of required continuing education for current renewal period; subsection (g) states neither continuing education nor fees will be prorated; and subsection (h) requires a licensee to reapply and meet all current requirements to regain supervisor status.

Amendments to §801.237 include non-substantive changes.

The following are proposed changes concerning Subchapter K. Continuing Education Requirements.

Amendments to §801.262 include non-substantive changes.

Amendments to §801.263 include non-substantive changes.

Amendments to §801.264 simplify the types of acceptable continuing education, requiring providers: to ensure the education is directly related to the practice of marriage and family therapy in subsection (1); to confirm presenters have the necessary experience and knowledge of the topic in subsection (2); to verify attendance and provide proof of completion in subsection (3); to collect participants' evaluation in subsection (4); and to maintain records at least three years in subsection (5). Some categories of acceptable continuing education are repealed and some are moved to §801.266 related to Determination of Clock Hour Credits and Credit Hours Granted. The limit of 12 hours by non-interactive study is repealed along with credit attending an ethics committee meeting. Credit for completing the jurisprudence exam is moved to §801.266.

The repeal of §801.265 regarding Continuing Education Sponsor is proposed to comport with changes proposed to §801.264.

Amendments to §801.266 credit continuing education activities on a one-for-one basis with one credit hour for each clock hour spent in the continuing education activity, except that in subsection (1) completion of the jurisprudence exam once per renewal period may count for one hour of the ethics requirement; credit for passing graduate coursework is removed and subsections are renumbered; hours spent providing clinical supervision may count for no more than one-half of the renewal period's continuing education requirement is subsection (2); in subsection (3) a presenter may earn 1.5 hours for each approved hour of continuing education presented, not to exceed one-half of the renewal period's continuing education requirement and the same topic may not be used more than once biennially; an author of a book or peer reviewed article that enhances a licensee's marriage and family therapy knowledge or skill may claim credit not to exceed one-half of the renewal period's continuing education requirement.

The repeal of §801.267 regarding Determination of Clock Hour Credits is proposed to remove redundant language which is now proposed in §801.266.

Amendments to §801.268 include non-substantive changes.

The following are proposed changes concerning Subchapter L. Complaints and Violations.

Amendments to §801.291 include non-substantive changes.

Amendments to §801.292 include non-substantive changes.

Amendments to §801.293 include non-substantive changes.

Amendments to §801.294 include non-substantive changes.

No changes to §801.295.

Amendments to §801.296 simplify Complaint Procedures and implement recommendations made by the Texas Sunset Advisory Commission, employing appropriate penalty matrices in subsection (k); and allowing staff to dismiss baseless and non-jurisdictional complaints in subsection (l).

Amendments to §801.297 in subsections (c) and (d) conform to changes proposed in §801.296 (related to Complaint Procedures); in subsection (f) clarify that a licensee on probation must submit proof or required notification within 30 days of moving to another jurisdiction and within 30 days after the date the probationary order takes effect a licensee must submit proof of required notification to the principle(s) of each practice location; also in subsection (f) remove confusing language to clarify that a supervisor who becomes subject to a disciplinary order is no longer an approved supervisor per §801.143(l); reorganize provisions regarding board-ordered supervision under subsection (g) and provisions concerning release from probation in subsection (h); also in subsection (h) conform to changes proposed in §801.296 (related to Complaint Procedures). Non-substantive changes were also made to this section.

Amendments to §801.298 include non-substantive changes.

Amendments to §801.299 move language regarding administrative penalty from §801.302 to subsection (a); remove unnecessary provisions that repeat statute and redesignate subsections (b) through (d); and move provisions regarding severity level and sanction guide to §801.302 as referenced in subsection (d). Non-substantive changes were also made to this section.

Amendments to §801.300 include non-substantive changes.

No changes to §801.301.

Amendments to §801.302 incorporate language regarding administrative penalty amounts for each severity level from §801.299 to subsections (1) through (3); remove statement in subsection (1) regarding regaining licensure after revocation of license because it appears to conflict with Texas Occupations Code, Sec. 502.252(b)(8) related to qualifications for licensure. Non-substantive changes were also made to this section.

Amendments to §801.303 conform to changes proposed in §801.296 (related to Complaint Procedures). Non-substantive changes were also made to this section.

New §801.304 introduces reciprocal discipline: in subsection (a) Staff opens a complaint upon receipt of a report of disciplinary action imposed by another health licensing board in this state or any other jurisdiction; subsection (b) provides that the disciplinary action imposed is the action applicable to the same conduct or rule violation under board rules; and subsection (c) provides that a voluntary surrender of a license in lieu of disciplinary action or during an investigation by another health licensing board in this state or any other jurisdiction constitutes disciplinary action under this rule. Staff opens a complaint and the disciplinary action imposed is the disciplinary action applicable under board rules to the alleged conduct as if proved.

The following are proposed changes concerning Subchapter M. Licensing of Persons with Criminal Backgrounds.

Amendments to §801.331 include non-substantive changes.

Amendments to §801.332 include non-substantive changes.

The following are proposed changes concerning Subchapter N, including changing the subchapter heading to Informal Settlement Conference.

Amendments to §801.351 conform to changes proposed in §801.296 (related to Complaint Procedures); remove language regarding ethics committee's or executive director's discretion to hold a conference and redesignate subsections (b) through (q); reorganize and simplify provisions regarding notice of the informal settlement conference in subsection (c); also in subsection (c), incorporate language from §801.362 to eliminate redundancy; reorder subsections (e), (g), (i), (j), and (l) for more logical flow; and consolidate provisions regarding respondent's acceptance of rejection of settlement recommendations in subsection (o). Non-substantive changes were also made to this section.

The following are proposed changes concerning Subchapter O. Formal Hearings.

Amendments to §801.362 remove redundant language subsection (b) - see §801.351(c); and redesignate subsection (b). Non-substantive changes were also made to this section.

Amendments to §801.363 include non-substantive changes.

Amendments to §801.364 include non-substantive changes.

FISCAL NOTE

The board has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

The board has determined that during the first five years that these provisions will be in effect, the proposed rules neither create or nor eliminate a government program; implementation of the proposed rules requires neither the creation of new employee positions nor the elimination of existing employee positions; implementation of the proposed rules require neither an increase nor decrease in future legislative appropriations to the agency; the proposed rules require a decrease in fees paid to the agency; the proposed rules does not create a new rule; the proposed rules neither expand, limit, nor repeal an existing regulation; the proposed rules neither increase nor decrease the number of individuals subject to the rule's applicability; and the proposed rules neither positively nor adversely affect this state's economy.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT ANALYSIS

The board has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses, micro-businesses, and rural communities will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. The proposal

will not affect a local economy. There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these proposed rules because these rules are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT

In addition, the board has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is continued assurance of public health and safety through the effective licensing and regulation of marriage and family therapists. Finally, the restructuring of many of the rules should improve comprehension, resulting in fewer legal costs to the state and mental health care providers.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

Board staff has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposed rules may be submitted to Sarah Faszholz, Interim Executive Director, Texas State Board of Examiners of Marriage and Family Therapists, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347 or by email to mft@hhsc.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. INTRODUCTION

22 TAC §801.2

The amendment is sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examina-

tion; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendment affects Texas Occupations Code, Chapter 502.

§801.2. Definitions.

The following words and terms when used in this chapter, [shall] have the following meanings unless the context indicates otherwise.

(1) Accredited institutions or programs--An institution of higher education accredited by a regionally accrediting agency recognized by the Texas Higher Education Coordinating Board. [or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council for Higher Education Accreditation (CHEA).]

(2) Act--Texas Occupations Code, Chapter 502, the Licensed Marriage and Family Therapist Act. [(relating to Marriage and Family Therapists).]

(3) Administrative law judge (ALJ)--An individual who presides at an administrative hearing held under Texas Government Code, Chapter 2001 (relating to Administrative Procedure), as defined in Texas Government Code, Chapter 2003 (relating to State Office of Administrative Hearings).

(4) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

[(5) Associate--A licensed marriage and family therapist associate. The appropriate board-approved terminology to use in reference to an Associate is: "Associate," "Licensed Marriage and Family Therapist Associate," or "LMFT Associate." Other terminology or abbreviations like "LMFT A" are not board-approved and shall not be used.]

(5) [(6)] Board--The Texas State Board of Examiners of Marriage and Family Therapists.

(6) [(7)] Client--An individual, family, couple, group, or organization who receives or has received services from a person identified as a marriage and family therapist who is either licensed by the board or unlicensed.

(7) [(8)] Completed application--The official marriage and family therapy application form, fees and all supporting documentation which meets the criteria [set out] in §801.73 of this title (relating to Required Application Materials).

(8) [(9)] Contested case--A proceeding in accordance with the APA and this chapter, including[; but not limited to;] rule enforcement and licensing[;] in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

(9) Disciplinary action--A sanction imposed by board order, such as denial, reprimand, probated suspension, suspension, or revocation of a license or administrative penalty. A disciplinary action is posted on the board's website and reported to the National Practitioner Data Bank.

[(10) Department--The Department of State Health Services.]

(10) [(11)] Endorsement--The process whereby the board reviews licensing requirements that a license applicant completed while under the jurisdiction of an out-of-state marriage and family therapy regulatory board. The board may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(11) [(42)] Family system [systems]--An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, and life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(12) [(43)] Formal hearing--A hearing or proceeding in accordance with this chapter[; including a contested case as defined in this section] to address the issues of a contested case.

(13) [(44)] Group supervision--Supervision that involves a minimum of three and no more than six marriage and family supervisees or LMFT Associates [associates] in a clinical setting during the supervision hour. [A supervision hour is fifty minutes].

(14) HHSC--The Health and Human Services Commission.

(15) Individual supervision--Supervision of no more than two marriage and family therapy supervisees or LMFT Associates [associates] in a clinical setting during the supervision hour. [A supervision hour is fifty minutes.]

(16) Informal settlement conference--An informal disposition of a contested case held to determine whether the disputed matters can be resolved without further proceedings.

(17) [(46)] Investigator--A professional complaint investigator employed by the HHSC. [department.]

(18) Jurisprudence exam--An online learning experience based on the Act, board rules, and other state laws and rules relating to the practice of marriage and family therapy.

(19) [(47)] License--A marriage and family therapist license, a marriage and family therapist associate license, [or] a provisional marriage and family therapist license, or a provisional marriage and family therapist associate license.

(20) [(48)] Licensed marriage and family therapist (LMFT)--A qualified [An] individual licensed by the board [who offers] to provide marriage and family therapy for compensation.

[(19)] Licensee--Any person licensed by the Texas State Board of Examiners of Marriage and Family Therapists.]

(21) [(20)] Licensed marriage and family therapist associate (LMFT Associate)--A qualified [An] individual licensed by the board [who offers] to provide marriage and family therapy for compensation under the supervision of a board-approved supervisor. The appropriate board-approved terms to refer to an LMFT Associate are: "Licensed Marriage and Family Therapist Associate" or "LMFT Associate." Other terminology or abbreviations like "LMFT A" are not board-approved and may not be used.

(22) Licensee--Any person licensed by the board.

(23) Licensure examination--The national licensure examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

(24) [(24)] Marriage and family therapy--The rendering of professional therapeutic services to clients, singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The

term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.

(25) [(22)] Month--A calendar month.

(26) Open Meetings Act--Texas Government Code Chapter 551.

(27) [(23)] Party--Each person, governmental agency, or officer or employee of a governmental agency named by the administrative law judge [Administrative Law Judge] (ALJ) as having an interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(28) [(24)] Person--An individual, corporation, partnership, or other legal entity.

(29) [(25)] Pleading--Any written allegation filed by a party concerning its claim or position.

(30) Public Information Act--Texas Government Code Chapter 552.

(31) [(26)] Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of [their] regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally recognized [eognizable] church, denomination or sect, or an integrated auxiliary of a church as defined in 26 CFR §1.6033-2(h) [Title 26, Code of Federal Regulations 1.6033-2, subsection (h) (as in effect in 2008)] (relating to [(Internal Revenue)] Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980));

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

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

(32) Respondent--A person alleged to have violated the act or Board rules.

(33) [(27)] Supervision--The guidance or management in the provision of clinical services by a marriage and family therapy supervisee or LMFT Associate, which must be conducted for at least one supervision hour each week, except for good cause shown.

(34) Supervision hour--50 minutes.

(35) [(28)] Supervisor--An LMFT with supervisor status [A person] meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements). The appropriate board-approved terminology to use in reference to a Supervisor is: "Supervisor," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S" or "LMFT Supervisor." Other terminology or abbreviations will [like "LMFT S" are not board-approved and shall] not be used.

(36) [(29)] Technology-assisted services--Providing therapy or supervision with [Services that use] technologies and devices for [that enable] electronic communication and information exchange [to provide therapy or supervision] between a licensee in one location and a client or supervisee in another location.

~~{(30) Texas Open Meetings Act--Government Code, Chapter 551-}~~

~~{(31) Texas Public Information Act--Government Code, Chapter 552-}~~

~~(37) [(32)] Therapist--A person who holds a license issued by the board. [Texas licensed marriage and family therapist or a Texas licensed marriage and family therapist associate.]~~

~~(38) [(33)] Waiver--The suspension of educational, professional, or [and/or] examination requirements for an applicant [applicants] who meets [meet] licensing requirements under special conditions.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805133

Jennifer Smothermon, MA, LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER B. THE BOARD

22 TAC §§801.11 - 801.19

The amendments are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments affect Texas Occupations Code, Chapter 502. §801.11. *The Board.*

(a) Membership. The board is composed of nine members appointed by the governor. Four members must be selected from the general public. Five members must be eligible for licensure under the Act, at least one of whom must be a professional educator in marriage and family therapy. These members must have engaged in the practice of education of marriage and family therapy for at least five years, or have 5,000 hours of clinical experience in the practice of marriage and family therapy.

(b) Terms. Members of the board hold office for staggered six-year terms. Three members' terms expire February 1 of each odd-numbered year.

(c) Vacancies. In the event of a vacancy, the governor will [shall] appoint a replacement who meets the qualifications of the vacated office to fill the unexpired part of the term.

(d) Elections. At the meeting held nearest to August 31 of each year, the board will [shall] elect a vice-chair by a majority vote of the members present.

(e) Officers.

(1) Chair. The chair is [shall be] appointed by the governor and serves [will serve] at the will of the governor.

(A) The chair presides [shall preside] at all meetings [at which] he or she attends [is in attendance] and performs [shall perform] all duties prescribed by law and board rules.

(B) The chair is authorized by the board to make minor procedural decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board. The executive director will keep a record [shall keep a tabulation] of the minor procedural decisions and include them in the executive director's report to the board.

~~{(C) The chair shall sign the approved minutes of each meeting-}~~

(2) Vice-chair.

(A) The vice-chair performs [shall perform] the duties of the chair in the absence or disability of the chair.

(B) In the event of a vacancy, [Should the office of the chair become vacant,] the vice-chair will serve as chair [shall serve] until a successor is appointed. [named.]

(f) Committees. The chair may appoint board members to committees to assist the board in its work. All committees will [appointed by the chair shall] consist of no more than four members and will [shall] make reports to the board at regular meetings. [The board shall direct all such reports to the executive director for distribution.] The chair will [board shall] appoint at least one public member to any [board] committee established to review a complaint [filed with the board] or [review an] enforcement action [against a license holder related to a complaint filed with the board].

(g) Compensation. No board member [of the board] may receive compensation for serving on the board. Each member is entitled to reimbursement of travel expenses for each day [that] the member performs board functions [as a member of the board].

(h) Meetings.

(1) Agendas.

(A) The executive director or the executive director's designee will [shall] prepare and submit to each board member [of the board] an agenda which includes items required by law, items requested by members, and other matters of board business [which have been] approved by the chair.

(B) The official agenda of a board meeting will [shall] be filed with the [Texas] secretary of state as required by Texas Government Code, Chapter 551 (relating to Open Meetings). [the Texas Open Meetings Act.]

(C) Any individual wishing to be on the agenda to present a specified topic at a meeting of the board must provide a written request to the executive director in time to be placed on the agenda (not later than 30 days before [prior to] the scheduled date of the meeting) which describes the topic to be addressed. The chair may limit as appropriate the time for public participation.

(2) Frequency of meetings. The board will [shall] meet at least biannually and may meet at other times as the chair deems necessary. All meetings will [shall] be conducted in accordance with Texas Government Code, Chapter 551 (relating to Open Meetings). [the Texas Open Meetings Act.]

(3) Attendance. It is grounds for removal from the board if [If] a member is absent from more than half of the regularly scheduled board meetings [~~that~~] the member is eligible to attend during the calendar year without an excuse approved[-; ~~unless the absence is excused~~] by majority vote of the board[-; ~~a potential ground for removal from the board may exist~~]. The chair will [shall] notify the governor [~~that~~] a potential ground for removal exists. The attendance records of the members will [may] be made available to the governor of the State of Texas and [~~and/or~~] the Texas Sunset Advisory Commission.

(4) Rules of parliamentary procedure. All official board decisions will be [~~decisions made by the board shall be~~] made according to parliamentary procedure as set forth in the latest edition of Robert's Rules of Order Revised. If a question arises concerning interpretation of the latest edition of Robert's Rules of Order Revised, the chair or acting chair will make the decision.

(5) Transaction of official business. The board may transact official business only when it is a legally constituted meeting with a quorum present. Five members of the board constitute a quorum.

(i) The board is [shall] not [be] bound in any way by any statement or action on the part of any board member, committee [~~subcommittee~~] member, or staff member, except when a statement or action is in pursuance of the specific instruction of the board. Board member or staff member opinions, except when a statement or action is in pursuance of the specific instructions of the board, about ethical dilemmas or practice issues should never be substituted for appropriate professional consultation or legal advice.

(j) Training. A person who is appointed to and qualifies for office as a board member [~~of the board~~] may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program meeting [~~that meets~~] the requirements established in Texas Government Code Chapter 551 (relating to Open Meetings). [the Act.]

§801.12. Petition for the Adoption of a Rule.

(a) Purpose. The purpose of this section is to establish procedures for the submission, consideration, and disposition of a petition to adopt a rule.

(b) Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition must [shall] be in writing; [shall] state the petitioner's name, address, and telephone number; and [shall] contain the following:

(A) a brief explanation of and justification for the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the proposed rule is to be promulgated; and

(D) the public benefit anticipated as a result of adopting the proposed rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(3) The petition must [shall] be filed with the board office.

(4) The executive director or the executive director's designee may determine that the petition does not contain the information described in paragraph (2) of this subsection and return the petition to the petitioner.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the executive director must [shall] submit a completed petition to the board for consideration.

(2) If the board denies the petition, the board must [shall] give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(3) If the board begins [~~initiates~~] rulemaking procedures, the version of the rule [~~which~~] the board proposes may differ from the version proposed by the petitioner.

(d) Subsequent petitions to adopt the same or similar rules. [~~All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsections (b) and (c) of this section.~~] The board may refuse to consider a subsequent petition for the adoption of the same or similar rule submitted within six months after the date of an initial petition.

§801.13. Executive Director and HHSC [~~the Department~~].

(a) Following consultation with the board members, HHSC will appoint an [~~the department shall designate a department~~] employee as executive director for the board.

(b) The executive director[-;] or the executive director's designee[-;] keeps [shall keep] the minutes of the meetings and proceedings of the board and is [shall be] the custodian of the files and records of the board.

(c) HHSC exercises [~~The department shall exercise~~] general supervision over individuals employed in the administration of the Texas Occupations Code, Chapter 502 (relating to the Act) [Act].

(d) The executive director is [shall be] responsible for the preliminary information regarding complaints and for the presentation of [~~the formal~~] complaints to the board.

(e) The executive director or the executive director's designee processes [shall handle] all correspondence for the board and prepares [~~obtains, assembles, or prepares~~] reports and information [~~that~~] the board may modify or authorize.

(f) The executive director or the executive director's designee is responsible for [shall have the responsibility of] assembling and reviewing application materials [~~submitted by applicants for licensure~~]. Determinations made by the executive director or the executive director's designee are subject to [~~the~~] approval or [~~and/or~~] modification by [~~of~~] the board, which makes [shall make] the final decision regarding [~~the~~] applicant eligibility [~~of the applicants~~].

[(g) The executive director shall sign the approved minutes of each meeting.]

§801.14. Official Records.

(a) All official records of the board, except those records containing information considered confidential under the provisions of Texas Government Code, Chapter 552 (relating to Public Information) and the Act are [~~the Texas Public Information Act, shall be~~] open for public inspection during regular office hours.

(b) Official records will [shall] not be taken from board offices; however, persons may obtain copies of files upon written request and by paying the cost per page set by the General Services Commission and HHSC [~~the department~~].

§801.15. *Impartiality and Nondiscrimination.*

(a) The board will ~~[shall]~~ make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, gender, national origin, age, disability, sexual orientation, or genetic information.

(b) Any board member who is unable to be impartial in the determination of an applicant's eligibility for licensure or board-approved supervisor status or in a disciplinary action against a licensee must ~~[shall so]~~ declare this to the board and ~~[shall]~~ not participate in any board proceedings involving that applicant or licensee.

§801.16. *Policy on Disability Accommodations.*

The board complies with the Americans with Disabilities Act (42 U.S.C. §12101 *et seq.*) in the delivery of its services to applicants and licensees. A person who needs reasonable accommodations in order to access board services must ~~[shall]~~ request accommodations in writing and may be required to provide verification of the person's disability and recommendations for appropriate accommodations from a medical, mental health, rehabilitation, or educational professional or specialist qualified to make such recommendations.

§801.17. *License Certificate.*

(a) The board will ~~[shall prepare and]~~ provide ~~[to]~~ each licensee ~~[Licensed Marriage and Family Therapist and Licensed Marriage and Family Therapist Associate]~~ a license certificate and a renewal card which contains the licensee's name and license number.

(b) Any license certificate or renewal card issued by the board remains the board's property and must be surrendered to the board upon demand.

§801.18. *Fees.*

~~{(a) The board has established the following fees for licenses, license renewals, examinations, and all other administrative expenses under the Licensed Marriage and Family Therapists Act (Act):}~~

(a) ~~[(b)]~~ The schedule of fees is ~~[shall be]~~ as follows:

- (1) application fee--\$40;
- (2) licensure examination fee--is ~~[shall be]~~ in accordance with the current contracted examination fee;
- (3) initial licensure fee issued for a two-year term--\$90;
- (4) biennial renewal fee--\$130;
- (5) late renewal fees ~~[fee--late renewal fees shall be set as follows]:~~

(A) on or before 90 days after the expiration date ~~[within 90 days]--biennial renewal fee plus \$33 [one-fourth of the current biennial renewal fee (\$33)]; and~~

(B) more ~~[longer]~~ than 90 days but less than one year after the expiration date--biennial renewal fee plus \$65 ~~[one-half of the current biennial renewal fee (\$65)];~~

- (6) inactive status (administrative) fee--\$75;
- (7) duplicate license fee--\$10;
- (8) provisional licensure fee--\$40;
- ~~[(9) continuing education sponsor fee--\$50 annually;]~~
- (9) ~~[(40)]~~ child support reinstatement fee--\$40;
- (10) ~~[(44)]~~ verification fee--\$10;
- (11) ~~[(42)]~~ student loan default reinstatement fee--\$40;

(12) ~~[(43)]~~ criminal history evaluation letter fee--\$50;

(13) ~~[(44)]~~ application fee for board approved supervisor status--\$20; and

(14) ~~[(45)]~~ biennial renewal fee for board-approved supervisor status--\$50 ~~[biennially]~~.

(b) ~~[(e)]~~ All fees are nonrefundable.

(c) ~~[(d)]~~ For all applications and renewals ~~[renewal applications]~~, the board is required ~~[authorized]~~ to collect subscription and convenience fees to recover costs associated with application and renewal ~~[application]~~ processing through www.texas.gov. ~~[For all applications and renewal applications, the board is authorized to collect fees to fund the Office of Patient Protection in accordance with Occupations Code, Chapter 101 (relating to Health Professions Council).]~~

(d) For all applications and renewals, the board is required to collect fees to fund the Office of Patient Protection in accordance with Texas Occupations Code, §101.307 (relating to Health Professions Council).

(e) The board will ~~[shall]~~ make periodic reviews of its fee schedule to ensure ~~[and make any adjustments necessary to provide]~~ funds ~~[to]~~ meet its expenses without creating an unnecessary surplus. All fee changes will ~~[shall]~~ be made through rulemaking procedures.

§801.19. *Request for Criminal History Evaluation Letter.*

(a) In accordance with ~~[the]~~ Texas Occupations Code, §53.102 (relating to Request for Criminal History Evaluation Letter), a person may request staff ~~[the department]~~ to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe ~~[that]~~ the person is ineligible for the license due to a conviction or deferred adjudication ~~[for a felony or misdemeanor offense]~~.

(b) A person making a request for issuance of a criminal history evaluation letter must ~~[shall]~~ submit the request on a form prescribed by staff, ~~[the department, accompanied by]~~ the criminal history evaluation letter fee, and the required supporting documentation~~;~~ as described on the form. The request must ~~[shall]~~ state the basis for the person's potential ineligibility.

(c) Staff have ~~[The department has]~~ the same authority to investigate a request submitted under this section and the requestor's eligibility that staff have ~~[the department has]~~ to investigate a person applying for a license.

(d) If staff determine ~~[the department determines that]~~ a ground for ineligibility does not exist, staff will ~~[the department shall]~~ notify the requestor in writing of the determination~~]. The notice shall be issued~~ not later than the 90th day after the date staff ~~[the department]~~ received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If staff determine ~~[the department determines that]~~ the requestor is ineligible for a license, staff will ~~[the department shall]~~ issue a letter setting out each basis for potential ineligibility and staff's ~~[the department's]~~ determination as to eligibility. The letter will ~~[shall]~~ be issued not later than the 90th day after the date staff ~~[the department]~~ received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of ~~[new]~~ evidence known to, but not disclosed by, the requestor

or not reasonably available to staff [the department] at the time the letter is issued, staff's [the department's] ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805134

Jennifer Smothermon, MA, LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER C. GUIDELINES FOR PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS

22 TAC §§801.42 - 801.58

The amendments are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments affect Texas Occupations Code, Chapter 502.

§801.42. Professional Therapeutic Services.

The following are professional therapeutic services which may be provided by an LMFT or LMFT Associate [a Licensed Marriage and Family Therapist or a Licensed Marriage and Family Therapist Associate].

(1) Marriage and couples therapy using [which utilizes] systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples through the changing life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of either partner.

(2) Sex therapy using [which utilizes] systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies in the resolution of sexual disorders, except treatment for sex offenses. Sex offender treatment as defined by Texas Occupations Code, Chapter 110, and Chapter 810 of this title (relating to Council on Sex Offender Treatment), is not included under Sex Therapy. An individual seeking treatment for a sexual offense must [shall] be referred

for services to [from] those licensed by the Council on Sex Offender Treatment.

(3) Family therapy using [which utilizes] systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective, and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a family member.

(4) Child therapy using [which utilizes] systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a child.

(5) Play therapy using [which utilizes] systems, methods, and processes which include play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors as part of the therapist's role in helping children overcome their social, emotional, and mental problems.

(6) Individual psychotherapy using [which utilizes] systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies to achieve mental, emotional, physical, social, moral, educational, spiritual, and career development and adjustment through the developmental life span. These family system approaches assist in stabilizing and alleviating mental, emotional or behavioral dysfunctions in an individual.

(7) Divorce therapy using [which utilizes] systems, methods, and processes which include interpersonal, cognitive, cognitive behavioral, developmental, psychodynamic, affective and family system methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of the partners.

(8) Mediation using [which utilizes] systems, methods, and processes to facilitate resolution of disputes between two or more dissenting parties, including but not limited to any issues in divorce settlements, parenting plan modifications, parent-child conflicts, pre-marital agreements, workplace conflicts, and estate settlements. Mediation involves specialized therapeutic skills that foster cooperative problem solving, stabilization of relationships, and amicable agreements. A court appointed mediation requires a specialized training period.

(9) Group therapy using [which utilizes] systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment throughout the life span.

(10) Chemical dependency therapy using [which utilizes] systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective methods and strategies, and 12-step methods to promote the healing of the client.

(11) Rehabilitation therapy using [which utilizes] systems methods and processes which include interpersonal, cognitive, cogni-

tive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society.

(12) Referral services using [which utilizes] systems methods and processes which include evaluating and identifying needs of clients to determine the advisability of referral to other specialists, and informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources. This includes social studies and family assessments of the individual within the family.

(13) Diagnostic assessment using [which utilizes] the knowledge organized in the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as the International Classification of Diseases (ICD) as part of their therapeutic role to help individuals identify their emotional, mental, and behavioral problems when necessary.

(14) Psychotherapy using [which utilizes] systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to assist clients in their efforts to recover from mental or emotional illness.

(15) Hypnotherapy using [which utilizes] systems methods and processes which include the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional disorders and addictions.

(16) Biofeedback using [which utilizes] systems methods and processes which include electronic equipment to monitor and provide feedback regarding the individual's physiological responses to stress. The therapist who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the therapist's academic program or the substantial equivalent provided through continuing education.

(17) Assessment and appraisal using [which utilizes] systems methods and processes which include formal and informal instruments and procedures, for which the therapist has received appropriate training and supervision in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental problems.

(18) Consultation using [which utilizes] systems, methods, and processes which include the application of specific principles and procedures in consulting 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.

(19) Activities under the Texas Family Code, Chapter 153, Subchapter K, concerning Parenting Plan, Parenting Coordinator, and Parenting Facilitator. [pertaining to parenting plan and parenting facilitator.]

(20) Parent education and parent training including advice, counseling, or instructions to parents or children.

(21) Life coaching and any related techniques or modalities.

(22) Any other related services provided by a licensee.

§801.43. Professional Representation.

(a) When providing professional therapeutic services[;] as defined in §801.42 of this title (relating to Professional Therapeutic Services), a licensee must [shall] indicate his or her licensure status as an LMFT or LMFT Associate [a Licensed Marriage and Family Therapist

or a Licensed Marriage and Family Therapist Associate], including any probationary status or other restrictions placed on the licensee by the board.

(b) A licensee must [shall] not make any false, misleading, deceptive, fraudulent or exaggerated claim or [~~misleading 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, education, experience, professional affiliations, fees, products, or publications; or

(3) the practice of marriage and family therapy.

(c) A licensee must [shall] not misrepresent any agency or organization by presenting it as having attributes that it does not possess.

(d) A licensee must [shall] not encourage, or within the licensee's power, allow a client to hold exaggerated ideas about the efficacy of services provided by the licensee.

(e) A licensee must [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 claims or 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 claim or statement made by another, the licensee must [shall] take immediate and reasonable action to correct the misrepresentation, claim or statement.

§801.44. Relationships with Clients.

(a) A licensee must [shall] provide marriage and family therapy professional services only in the context of a professional relationship.

(b) A licensee must [shall] make known in writing to a prospective client the important aspects of the professional relationship, including [~~but not limited to:~~] the licensee's status as an LMFT or LMFT Associate, [a Licensed Marriage and Family Therapist, including] any probationary status or other restrictions placed on the licensee by the board, office procedures, after-hours coverage, fees, and arrangements for payment (which might affect the client's decision to enter into the relationship).

(c) A licensee must [shall] obtain an appropriate consent for treatment before providing professional services. A licensee must [shall] make reasonable efforts to determine whether the conservatorship, guardianship, or parental rights of the client have been modified by a court. Before [~~Prior to~~] the commencement of therapy services to a minor client who is named in a custody agreement or court order, a licensee must [shall] obtain and review a current copy of the custody agreement or court order in a suit affecting the parent-child relationship. A licensee must [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 before [~~prior to~~] providing services to a minor, a licensee must [shall] follow the protocol set forth in such federal or state statutes.

(d) A licensee must [shall] make known in writing to a prospective client the confidential nature of the client's disclosures and the clinical record, including the legal limitations of the confidentiality of the mental health record and information.

(e) No commission or rebate or any other form of remuneration may [shall] be given or received by a licensee for the referral of clients for professional services. A licensee employed or under contract with a chemical dependency facility or a mental health facility must[;

~~shall~~ comply with the requirements in Texas Health and Safety Code, §164.006 (relating to Soliciting and Contracting with Certain Referral Sources). Compliance with Texas Health and Safety Code, Chapter 164 (relating to Treatment Facilities Marketing and Admission Practices) ~~is~~ shall not ~~be~~ considered ~~as~~ a violation of state law regarding illegal remuneration.

(f) A licensee must ~~shall~~ not exploit the licensee's ~~his/her~~ position of trust with a client or former client.

(g) A licensee must ~~shall~~ not engage in activities that seek to meet the licensee's personal needs instead of the needs of the client.

(h) A licensee must ~~shall~~ not provide marriage and family therapy services to family members, personal friends, educational associates, business associates, or others whose welfare might be jeopardized by such a dual relationship.

(i) A licensee must ~~shall~~ set and maintain professional boundaries with clients and former clients.

(j) A licensee may disclose confidential information to 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.

(k) In group therapy settings, the licensee must ~~shall~~ take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(l) A licensee must ~~shall~~ make a reasonable effort to avoid non-therapeutic relationships with clients or former clients. A non-therapeutic relationship is an activity begun ~~initiated~~ by either the licensee or the client for the purposes of establishing a non-therapeutic relationship. A licensee must ~~It is the responsibility of the licensee to~~ ensure the welfare of the client if a non-therapeutic relationship arises.

~~{(m) A licensee shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes, and billing information for a minimum of 5 years for an adult client and 5 years beyond the age of 18 years of age for a minor.}~~

~~{(n) Records created by licensees during the scope of their employment by educational institutions; by federal, state, or local government agencies; or political subdivisions or programs are not required to comply with the requirements of subsection (m) of this section.}~~

(m) ~~{(o)}~~ A licensee may not ~~shall~~ bill clients or third parties for ~~only those~~ services not actually rendered or as agreed to in writing.

(n) ~~{(p)}~~ A licensee must end ~~shall terminate~~ a professional relationship when it is reasonably clear ~~that~~ the client is not benefiting from it. Upon ending a professional relationship, ~~termination,~~ if the client still requires mental health services, the licensee must ~~shall~~ make reasonable efforts to provide a written referral to clients for ~~in writing to refer the client to~~ appropriate services and to facilitate the transfer to appropriate care.

(o) ~~{(q)}~~ A licensee who engages in technology-assisted services must provide the client with the licensee's license number and information on how to contact the board by telephone, electronic communication, or mail. The licensee must comply with all other provisions of this chapter.

(p) ~~{(r)}~~ A licensee may not ~~shall~~ offer ~~only those~~ services that are beyond the licensee's ~~within his or her~~ professional competency, and the services provided must ~~shall~~ be within accepted professional standards of practice and appropriate to the needs of the client.

(q) ~~{(s)}~~ A licensee must ~~shall~~ base all services on an assessment, evaluation, or diagnosis of the client.

(r) ~~{(t)}~~ A licensee must ~~shall~~ evaluate a client's progress on a continuing basis to guide service delivery and must ~~shall~~ make use of supervision and consultation as indicated by the client's needs.

(s) ~~{(u)}~~ A licensee may ~~shall~~ not promote or encourage the illegal use of alcohol or drugs by a client ~~clients~~.

(t) ~~{(v)}~~ A licensee must ~~shall~~ not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee must ~~shall~~ take immediate and reasonable action to inform the other mental health services provider.

~~{(w) A licensee shall refrain from providing services while impaired by medication, drugs, or alcohol.}~~

~~{(x) Upon termination of a relationship, if professional counseling or other marriage and family therapy services are still necessary, the licensee shall take reasonable steps to facilitate the transfer to appropriate care.}~~

(u) ~~{(y)}~~ A licensee may ~~shall~~ not aid or abet the unlicensed practice of marriage and family therapy services by a person required to be licensed under the Act. A licensee must ~~shall~~ report to the board knowledge of any unlicensed practice.

(v) ~~{(z)}~~ A licensee may ~~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.

§801.45. *Sexual Misconduct.*

(a) The following words and terms, when used in this section, ~~shall~~ have the following meanings, unless the context clearly indicates otherwise.

(1) Mental health services--The assessment, diagnosis, treatment, or therapy in a professional relationship to assist an individual or group in:

(A) alleviating mental or emotional illness, symptoms, conditions, or disorders, including alcohol or drug addiction;

(B) understanding conscious or subconscious motivations;

(C) resolving emotional, attitudinal, or relationship conflicts; or

(D) modifying feelings, attitudes, or behaviors that interfere with effective emotional, social, or intellectual functioning.

(2) Mental health services provider--A licensee or any other licensed or unlicensed individual who performs or purports to perform mental health services, including a licensee under the provisions of the Act.

(3) Sexual contact--

(A) deviate sexual intercourse as defined by Texas Penal Code, §21.01;

(B) sexual contact as defined by Texas Penal Code, §21.01;

(C) sexual intercourse as defined by Texas Penal Code, §21.01;

(D) requests by a licensee for conduct described by subparagraph (A), (B), or (C) of this paragraph.

(4) Sexual exploitation--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.

(5) Therapeutic deception--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 therapy.

(b) A licensee may ~~[shall]~~ not engage in sexual contact with a person who is:

(1) a client or a former client;

(2) a supervisee, an LMFT Associate, ~~[an associate]~~ or an intern for whom the licensee has administrative or clinical responsibility;

(3) a student ~~[an intern]~~ in a marriage and family therapy graduate program in which the licensee offers professional or educational services; or

(4) a clinical supervisor or supervisee of the licensee.

(c) A licensee may ~~[shall]~~ not provide therapeutic services to a person with whom the licensee has had a sexual relationship.

(d) A licensee may ~~[shall]~~ not practice therapeutic deception or sexual exploitation.

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

(1) with the consent of the person;

(2) outside the therapy or treatment sessions of the person;

or

(3) off the premises regularly used by the licensee for the therapy or treatment sessions of the person.

(f) The following, when done in the context of professional services, is ~~[shall be]~~ considered ~~[to be]~~ sexual exploitation.

(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 to or 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 therapy or treatment.

(6) Requesting details of sexual history or sexual likes and dislikes when not necessary for therapy or treatment of the individual.

(7) Initiating conversation regarding the sexual likes and dislikes when not necessary for therapy or treatment of the individual.

(8) Kissing or fondling.

(9) Making a request for non-professional social contact.

(10) Any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but of a sexual nature.

(11) Any intentional exposure of genitals, anus, or breasts.

(12) Encouraging a client, student, supervisee, intern, LMFT Associate ~~[associate]~~, or former client to masturbate in the presence of the licensee.

(13) Masturbation by the licensee when a client, student, supervisee, intern, LMFT Associate, ~~[associate]~~, or former client is present.

(g) Examples of sexual contact includes ~~[shall include]~~ those activities and behaviors described in Texas Penal Code, §21.01.

§801.46. Testing.

(a) A licensee must ~~[shall]~~ make known to clients the purposes and explicit use of any testing done as part of a professional relationship.

(b) A licensee may ~~[shall]~~ not appropriate, reproduce, or modify published tests or parts thereof without the acknowledgment and permission of the publisher.

(c) A licensee may ~~[shall]~~ not administer and interpret 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.

§801.47. Drug and Alcohol Use.

A licensee may ~~[shall]~~ not:

(1) use alcohol or drugs in a manner which adversely affects the licensee's ability to provide marriage and family therapy services; or

(2) use any kind of illegal drugs.

§801.48. Record Keeping, Confidentiality, ~~[and]~~ Release of Records, 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 (relating to Mental Health Records), and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice.

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

(c) A licensee must ~~[shall]~~ comply with Texas Health and Safety Code, Chapters 181 (relating to Medical Records Privacy) and 611 (relating to Mental Health Records), and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice, concerning access to and release of mental health records and confidential information.

(d) A licensee must ~~[shall]~~ report or release information as required by the following statutes:

(1) Texas Family Code, Chapter 261 (relating to Investigation of Report of Child Abuse or Neglect);

(2) Texas Human Resources Code, Chapter 48 (relating to Investigations and Protective Services [Service] for Elderly Persons and Persons with Disabilities);

(3) Texas Health and Safety Code, Chapter 161, Subchapter L (relating to Abuse, Neglect, and Unprofessional or Unethical Conduct in Healthcare Facilities); and

(4) Texas Civil Practice and Remedies Code, §81.006 (relating to Duty to Report Sexual Exploitation by a Mental Health Services Provider); and

~~[(5) Occupations Code, Chapter 109 (relating to Release of Sex Offender Treatment Information)]~~

(e) A licensee must [shall] keep accurate records of therapeutic services, including [to include, but not be limited to,] dates of services, types of services, progress or case notes and billing information for a minimum of six [5] years for an adult client and five [5] years beyond the age of 18 for a minor, whichever comes last.

(f) Records created by a licensee during the scope of the licensee's employment by educational institutions; by federal, state, or local government agencies; or political subdivisions or programs are not required to comply with the requirements of subsection (e) of this section.

(g) ~~[(f)]~~ A licensee must [shall] retain and dispose of client records in such a way that confidentiality is maintained.

(h) ~~[(g)]~~ In independent practice, the licensee must establish a plan for the custody and control of the licensee's client mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's professional services.

~~[(h) A licensee shall report sexual misconduct as follows:]~~

~~[(1) In addition to the requirements under subsection (d) of this section, if a licensee has reasonable cause to suspect that a client has been the victim of a sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider during therapy or any other course of treatment, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or mental health services provider (during therapy or any other course of treatment), the licensee shall report alleged misconduct not later than the 30th day after the date the licensee became aware of the misconduct or the allegations to:]~~

~~[(A) the district attorney in the county in which the alleged sexual exploitation, sexual contact, or therapeutic deception occurred;]~~

~~[(B) the board if the misconduct involves a licensee; and]~~

~~[(C) any other state licensing agency which licenses the mental health services provider.]~~

~~[(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.]~~

§801.49. Licensees and the Board.

(a) Any person licensed by the board is bound by the provisions of the Act and this chapter.

(b) A licensee must [shall] report alleged misrepresentations or violations of this chapter to the board.

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

(d) The board is not responsible for any lost or misdirected mail if sent to the address last reported by the licensee.

(e) The failure of a licensee to timely respond to a request from the board or staff for information or other correspondence is unprofessional conduct and grounds for disciplinary proceedings.

(f) A licensee must [shall] provide an official transcript [documentation] to the board within 30 days of the granting of an academic degree relevant to the practice of marriage and family therapy.

(g) A licensee must [shall] make a written report [reports] to the board office within 30 days of the following situations:

(1) the licensee's arrest, deferred adjudication, or criminal conviction, other than for a Class C misdemeanor traffic offense;

(2) the filing of a criminal case against the licensee;

(3) the settlement of a judgment rendered in a civil lawsuit filed against the licensee and related to the licensee's marriage and family therapy practice; or

(4) complaints, investigations, or actions against the licensee by a governmental agency or by a licensing or certification body.

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

§801.50. Corporation and Business Names.

(a) An individual practice by a licensee may be incorporated in accordance with Texas Business Organizations Code, Chapter 301 (relating to Provisions Relating to Professional Entities) or other applicable law.

(b) When an assumed name is used in any practice of therapy, the name of the licensee must be listed in conjunction with the assumed name. An assumed name used by a licensee may [must] not be false, deceptive, or misleading.

§801.51. Consumer Complaint Information.

(a) At a minimum, a licensee must [shall] inform each client of the name, address, and telephone number of the board for the purpose of directing complaints to the board:

(1) on each registration form, application, or written contract for services;

(2) on a sign prominently displayed in the place of business; or

(3) in a bill for therapy services provided to a client or third party.

(b) The board will provide [shall prepare information of] consumer information [interest that describes the regulatory functions of the board] and board procedures for handling and resolving complaints on its website.

(c) The board will [~~shall~~] make consumer information available to the public and appropriate state agencies.

§801.52. Display of License Certificate.

(a) A licensee must [~~shall~~] display an original or true and accurate copy of an original, board-issued license certificate and renewal card in a prominent place in all locations of practice.

(b) A licensee may [~~shall~~] not make any alteration on a license certificate or annual renewal card issued by the board.

(c) A licensee may [~~shall~~] not display a license certificate or renewal card issued by the board that is altered, expired, suspended, or revoked.

(d) A licensee who elects to copy a board-issued license certificate or certificate card is responsible for the use or misuse of the reproduced license.

§801.53. Advertising and Announcements.

(a) Information used by a licensee in any advertisement or announcement of services may [~~shall~~] not contain information which is false, misleading, deceptive, inaccurate, incomplete, out of context, or not readily verifiable. Advertising includes[; ~~but is not limited to;~~] any announcement of services, letterhead, business cards, commercial products, and billing statements. Only the highest academic degree earned from an accredited college or university or only the highest academic degree earned at a foreign university that has been determined to be equivalent to a degree from an accredited institution or program by a member of the National Association of Credential Evaluation Services and relevant to the profession of therapy or a therapy-related field shall be used when advertising or announcing therapeutic services to the public or in therapy-related professional representations. A licensee may advertise or announce his or her other degrees or equivalent degrees earned at foreign institutions from accredited colleges or universities if the subject of the degree is specified.

(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) 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. A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

(d) All advertisements or announcements of therapeutic services including telephone directory listings by a licensee must [~~person licensed by the board~~] shall clearly state his or her license [~~the licensee's licensure~~] status by the use of a title such as "Licensed Marriage and Family Therapist," "LMFT," "Licensed Marriage and Family Therapist Associate," "LMFT Associate," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S," or "LMFT Supervisor."

(e) A licensee may [~~shall~~] not include in advertising or announcements any information or any reference to certification in a field outside of therapy or membership in any organization that may be confusing or misleading to the public as to the services or legal recognition of the licensee.

(f) An LMFT or LMFT Associate holding a provisional license must [~~shall~~] indicate the provisional status on all advertisements, billing, and announcements of treatment by the use of the term "Provisional Licensed Marriage and Family Therapist" or "Provisional Licensed Marriage and Family Therapist Associate," as appropriate.

§801.54. Research and Publications.

(a) In research with a human subject, a licensee is responsible for the welfare of the human subject throughout a project and must [~~shall~~] take reasonable precautions so [~~that~~] the human subject suffers [~~shall suffer~~] no injurious emotional, physical, or social effect.

(b) A licensee must [~~shall~~] disguise data obtained from a therapeutic relationship for the purposes of education or research to ensure full protection of the identity of the human subject client.

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

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

§801.55. Parenting Coordination.

(a) In accordance with the 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 the Texas Family Code, §153.606, in a suit affecting the parent-child relationship; and

(2) who:

(A) is appointed under Texas Family Code, 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 is not acting under the authority of a license issued by the board, and is not

engaged in the practice of marriage and family therapy. The services provided by the licensee who serves as a parenting coordinator are not within the jurisdiction of the board, but rather the jurisdiction of the appointing court.

(c) A licensee who serves as a parenting coordinator has a duty to provide the information in subsection (b) of this section to the parties to the suit.

(d) Records of a licensee serving as a parenting coordinator are confidential under the Texas Civil Practices and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator shall comply with the Texas Civil Practices and Remedies Code, Chapter 154, relating to the release of information.

(e) A licensee must [shall] not provide marriage and family therapy services to any person while simultaneously providing parenting coordination services. The foregoing rule does [shall] not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

§801.56. Parenting Facilitation.

(a) In accordance with House Bill 1012, 81st Legislature, Regular Session, 2009, and Texas Family Code, Chapter 153, this section establishes the practice standards for licensees who desire to serve as parenting facilitators.

(b) In accordance with the 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 the Texas Family Code, §153.6061, in a suit affecting the parent-child relationship; and

(2) who:

(A) is appointed under Texas Family Code, 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 [shall] comply with all applicable requirements of the Texas Family Code, Chapter 153, and this section. Licensees must [shall] 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 the Texas Family Code, §153.6102(e), a licensee serving as a parenting facilitator may [shall] not provide other marriage and family therapy services to any person while simultaneously providing parenting facilitation services. The foregoing rule does [shall] 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 the Texas Family Code, §153.6101(b)(1), an LMFT Associate may not [a licensed marriage and family therapist associate shall not] serve as a parenting facilitator.

(f) A licensee serving as a parenting facilitator uses [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 the Texas Family Code, Chapter 153.

(g) A licensee serving as a parenting facilitator must [shall] 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 [shall] 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 [shall] 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 [shall] 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 [shall] be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parenting facilitator must [shall] 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 may not be stated or implied. [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 [shall] tailor the techniques used [so as] to avoid offering the opportunity for further coercion.

(k) A licensee serving as a parenting facilitator must [shall] 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 may [shall] not provide legal advice.

(m) A licensee serving as a parenting facilitator must [shall] serve by written agreement of the parties and/or formal order of the court.

(n) A licensee serving as a parenting facilitator may [shall] not begin to provide [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 [shall] 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 end [shall terminate] or withdraw services if the licensee determines the licensee cannot act in an impartial or objective manner;

(2) may [shall] 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) may [shall] not coerce or improperly influence any party to make a decision;

(4) may [shall] not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting facilitator process; and

(5) may [shall] 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 [shall] avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration may [shall] 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 [shall] 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 individual who provides [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, before [shall, 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 may [shall] 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 board.

(w) In the initial session with each party, a licensee serving as a parenting facilitator must [shall] 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 [shall] comply with all mandatory reporting requirements, including but not limited to Texas Family Code, Chapter 261, concerning abuse or neglect of minors;

(2) must [shall] 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 [shall] maintain records necessary to support charges for services and expenses, and must [shall] make a detailed accounting of those charges to the parties and their counsel, if requested to do so;

(4) must [shall] maintain notes regarding all communications with the parties, the children, and other persons with whom they speak about the case; and

(5) must [shall] 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 shall be maintained for the period of time described in §801.48(e) of this title (relating to Record Keeping, Confidentiality, [and] Release of Records, and Required Reporting), or as otherwise directed by the court.

(z) Records of a licensee serving as a parenting facilitator must [shall] be released on the request of either parent, as directed by the court, or as directed by the board.

(aa) Charges for parenting facilitation services must [shall] 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 [shall] 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 parenting facilitator that is required by the Texas Family Code, §153.6101(b), and is determined by the court is:

(1) eight hours of family violence dynamics training provided by a family violence service provider;

(2) Forty (40) [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) Twenty-four (24) [24] classroom hours of training in the fields of family dynamics, child development, family law; and

(4) ~~Sixteen (16)~~ [16] hours of training in the laws and board rules governing parenting coordination and facilitation, and the multiple styles and procedures used in different models of service.

(ff) A licensee serving as a parenting facilitator:

(1) ~~must [shall]~~ complete minimum training as required by the Texas Family Code, §153.6101, as determined by the appointing court;

(2) ~~must [shall]~~ have extensive practical experience with high conflict or litigating parents;

(3) ~~must [shall]~~ complete and document upon request advanced training in family dynamics, child maltreatment, co-parenting, and high conflict separation and divorce; and

(4) ~~must [shall]~~ regularly complete continuing education related to co-parenting issues, high-conflict families and the parenting coordination and facilitation process.

(gg) A licensee serving as a parenting facilitator ~~must [shall]~~ decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the licensee's skill or expertise.

(hh) Since parenting facilitation services are addressed under multiple titles in different jurisdictions nationally, acceptability of training to meet the requirements of subsection (cc) of this section is based on functional skills taught during the training rather than the use of specific titles or names.

§801.57. *Child Custody Evaluations.*

(a) Licensees ~~must [shall]~~ comply with all applicable statutes and rules, including but not limited to Texas Family Code, Chapter 107, Subchapters D, E, and F (relating to Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions).

(b) When a licensee who has conducted a court-ordered child custody evaluation or adoption evaluation receives any complaint relating to the outcome of the evaluation, the licensee must report the complaint to the court that ordered the evaluation. The board reviews only complaints regarding forensic evaluations that allegedly violated specific board rules.

(c) Disclosure of confidential information in violation of Texas Family Code, §107.111 (relating to Child Custody Evaluator Access to Investigative Records of Department of Family and Protective Services; Offense) or §107.163 (Adoption Evaluator Access to Investigative Records of Department of Family and Protective Services; Offense) is grounds for disciplinary action, up to and including license revocation.

(d) A licensee may not provide ~~[therapy and]~~ any other type of service, ~~neither sequentially nor simultaneously [including but not limited to a child custody evaluation or parenting facilitation,]~~ in the same case he or she provides a child custody evaluation unless required by court order. [; whether such services are delivered sequentially or simultaneously.]

(e) A licensee 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 in accordance with Texas Family Code, Chapter 107, Subchapter D.

(f) Before beginning child custody evaluations or adoption evaluations, a licensee ~~must [shall]~~ inform the parties in writing 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, 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.

(g) ~~An LMFT Associate may [A Licensed Marriage and Family Therapist Associate shall]~~ not conduct child custody evaluations or adoption evaluations unless qualified by another professional license to provide such services or otherwise allowed by law.

§801.58. *Technology-Assisted Services.*

(a) Licensees who provide marriage and family therapy to clients or supervision to supervisees outside the State of Texas ~~must [shall]~~ comply with the laws and rules of this board and of the out-of-state regulatory authority.

(b) Licensees who provide treatment, consultation, and supervision using technology-assisted services ~~must [shall]~~ meet the same standards of appropriate practice as licensees who practice in traditional (i.e., in-person) settings.

(c) In accordance with Texas Occupations Code, §502.251 (relating to License Required), a person may not practice as a marriage and family therapist unless the person holds a license under this chapter or is exempt under Texas Occupations Code, §502.004 (relating to Application of Chapter).

(d) Before providing technology-assisted services, a licensee ~~must receive [Licensees may use technology-assisted services only after receiving]~~ appropriate education, training, ~~or [and/or]~~ supervised experience in using relevant technology. A therapist who uses technology-assisted services must maintain documentation of academic preparation and supervision in the use of technology-assisted services as part of the therapist's academic program or the substantial equivalent provided through at least 15 hours of continuing education and 2 hours every subsequent renewal period. ~~[Licensees must comply with this subsection by January 1, 2018.]~~

(e) A licensee ~~may [shall]~~ not render therapy using technology-assisted services without complying with the following at the onset of each session:

(1) fully verifying the location and identity of the client, to the most reasonable extent possible; ~~and~~

(2) disclosing the identity and applicable credentials of the licensee; and

(3) obtaining appropriate consents from clients.

(f) Before providing technology-assisted services, a licensee ~~must [licensees shall]~~ determine whether a client is a minor. Upon determining ~~[that]~~ a client is a minor, and before providing technology-assisted services, a licensee must [licensees shall] obtain required consent from a parent or guardian and ~~must [shall]~~ verify the identity of the parent, guardian, or other person consenting to the minor's treatment.

(g) The licensee ~~must [shall]~~ determine if technology-assisted service is an appropriate delivery of treatment or supervision, considering the professional, intellectual, or emotional needs of the client or supervisee.

(h) Informed consent ~~must [shall]~~ include, at a minimum, information that defines electronic service delivery as practiced by the licensee and the potential risks and ethical considerations. The licensee ~~must [shall]~~ obtain and maintain written and/or electronic evidence documenting appropriate client informed consent for the use of technology-assisted services. The licensee ~~must [shall]~~ ensure that the in-

formed consent complies with other informed consent requirements in this chapter and must ~~[shall]~~ include the following:

- (1) identification of the client, the therapist, and the therapist's credentials;
- (2) list of services provided by the licensee using technology-assisted services;
- (3) client agreement that the therapist determines on an on-going basis whether the condition being assessed or ~~[and/or]~~ treated is appropriate for technology-assisted services;
- (4) details on security measures taken with the use of technology-assisted services, as well as potential risks to privacy notwithstanding such measures;
- (5) information regarding secure protocols and back-up plans in case of technical failure;
- (6) the licensee's credentials or training to engage in technology-assisted services, physical location of practice, and contact information;
- (7) risks and benefits of engaging in the use of technology;
- (8) emergency procedures to follow when the therapist is not available;
- (9) information collected and any passive tracking mechanisms used;
- (10) third-party websites or services used by the licensee to facilitate technology-assisted services; and
- (11) an explanation of how records are maintained electronically, including~~;~~ but not limited to, encryption type and record security, and the archival storage period for transaction records.

(i) Therapists who use technology-assisted services must ~~[shall]~~ meet or exceed applicable federal and state legal requirements of health information privacy, including~~;~~ but not limited to, compliance with the Health Insurance Portability and Accountability Act of 1996 ~~[1966]~~ (HIPAA), Public Law 104-191; The Health Information Technology for Economic and Clinical Health (HITECH) Act, 42 U.S.C. Chapter 156, Subchapter III; Texas Health and Safety Code, Chapter 181 (relating to Medical Records Privacy); and state privacy, confidentiality, and security rules.

~~[(j) Licensees must comply with this section by January 1, 2018.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805135

Jennifer Smothermon, MA, LPC, LMFT
Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §§801.71 - 801.76

The amendments and new sections are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments and new sections affect Texas Occupations Code, Chapter 502.

§801.71. Purpose of Application Procedures.

The purpose of this subchapter is to set out the application procedures for examination and licensure as an LMFT and LMFT Associate [a marriage and family therapist or marriage and family therapist associate].

§801.72. General Application Procedures.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official board forms.

(b) The board does ~~[will]~~ not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(c) An applicant ~~[application]~~ must complete the application process, satisfying any deficiencies [be completed] within one year of the original date of filing. An application ~~[that is]~~ not completed one year past the date an application is opened is void.

§801.73. Required Application Materials.

An applicant must submit:

(1) ~~[(a)]~~ an application [Application] form approved by the board; ~~[- The application form shall contain:]~~

~~[(1) specific information regarding personal data; employment and type of practice; other state licenses and certifications held; disciplinary actions taken by other jurisdictions; felony or misdemeanor convictions; educational background including direct clinical experience, supervised experience, and references;]~~

~~[(2) a statement that the applicant has read the Act and the board rules and agrees to abide by the Act and the board rules;]~~

~~[(3) the applicant's permission to the board to seek any information or references it deems necessary to determine the applicant's qualifications;]~~

~~[(4) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;]~~

~~[(5) a statement that the applicant understands that the fees submitted in the licensure process are nonrefundable;]~~

~~[(6) the applicant's signature and date of signature; and]~~

~~[(7) official transcripts.]~~

(2) the appropriate fee(s) per §801.18 of this title (relating to Fees);

(3) an official transcript(s), indicating the date the degree required for licensure was awarded or conferred and sent directly to the board's office from all colleges or universities where post-baccalaureate course work was completed;

(4) supporting documentation and other materials the board may deem necessary, including current employment arrangements and the name of all jurisdictions where the applicant currently holds or has held a certificate or license to practice marriage and family therapy; and

[(e)] proof [Effective September 1, 2006, all applicants for licensure must submit proof] of successful completion of the jurisprudence exam [examination at the time of application. The jurisprudence examination must be completed] no more than six months before [prior to] the date the [of licensure] application is received.

[(b) Supervised experience form. The supervised experience form must be completed by the applicant's supervisor and is valid only when it bears the supervisor's signature.]

[(e) Course work. An applicant must have the official transcript(s) showing all relevant course work sent directly to the board office.]

[(d) Other documents. Vita, resume, and/or other documentation of the applicant's credentials may be submitted.]

§801.74. Application to take Licensure Examination.

(a) Application Requirements. An applicant must submit:

(1) all requirements in §801.73 of this title (relating to Required Application Materials);

(2) in lieu of an official transcript as required in §801.73(c) of this title, a letter from a college or university official stating the applicant is in good academic standing and has completed or is enrolled in a graduate internship in marriage and family therapy or an equivalent internship;

(3) a copy of government-issued picture identification (i.e., driver's license, passport);

(4) an Examination Security Information Acknowledgment Form; and

(5) a Course Equivalency Request Form, if applicant who holds a master's or doctorate degree in a related mental health field with a planned course of study in marriage and family therapy as described in §801.113(d) and (e) of this title (relating to Academic Requirements) with minimum course content as described in §801.114 of this title (relating to Academic Course Content).

(b) Academic Requirements. An applicant must meet the academic requirements as prescribed in §801.112 of this title (relating to General Academic Requirements).

(c) Academic Course Content. An applicant must meet the academic course content requirements as mandated in §801.114 of this title.

§801.75. Application for Licensed Marriage and Family Therapist Associate (LMFT Associate).

(a) Qualifications. An applicant for LMFT Associate must meet the qualifications required by §502.252(b) of the Act.

(b) Application Requirements. An applicant must submit:

(1) all requirements in §801.73 of this title (relating to Required Application Materials);

(2) Supervisory Agreement Form; and

(3) proof of achieving a passing score on a licensure examination.

(c) Academic Requirements. An applicant for LMFT Associate must meet the education requirements as prescribed in §801.112 of this title (relating to General Academic Requirements).

(d) Academic Course Content. An applicant for LMFT Associate must meet the academic course content requirements as mandated in §801.114 of this title (relating to Academic Course Content).

§801.76. Application for Licensed Marriage and Family Therapist (LMFT).

(a) Qualifications. An applicant for LMFT must meet the qualifications required by §502.252(b) of the Act.

(b) Application Requirements. An applicant must submit:

(1) all requirements in §801.73 of this title (relating to Required Application Materials);

(2) a Licensed Supervised Experience Verification Form; and

(3) proof of achieving a passing score on a licensure examination.

(c) Academic Requirements. An applicant for LMFT must meet the education requirements as prescribed in §801.112 of this title (relating to General Academic Requirements).

(d) Academic Course Content. An applicant for LMFT must meet the academic course content requirements as mandated in §801.114 of this title (relating to Academic Course Content).

(e) Supervised Clinical Experience Requirements and Conditions. An applicant for LMFT must meet the supervised clinical experience requirements and conditions as mandated in §801.142 of this title (relating to Supervised Clinical Experience Requirements and Conditions).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805138

Jennifer Smothermon, MA, LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER E. CRITERIA FOR DETERMINING FITNESS OF APPLICANTS FOR EXAMINATION AND LICENSURE

22 TAC §§801.91 - 801.93

The amendments are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53,

Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments affect Texas Occupations Code, Chapter 502.

§801.91. Purpose of Criteria for Determining Fitness of Applicants.

The purpose of this subchapter is to establish the criteria by which the board will determine the qualifications required of applicants for approval for examination or [and/or] licensure.

§801.92. Finding of Non-Fitness for Licensure.

The board may deny a license if it finds an applicant: [The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of a license:]

(1) lacks ~~[lack of]~~ the necessary skills and abilities to provide adequate marriage and family therapy services;

(2) misrepresented any information ~~[any misrepresentation]~~ in the application or other materials submitted to the board;

(3) violated ~~[the violation of]~~ any provision of the Act or this chapter applicable to an unlicensed person in effect at the time of application ~~[which is applicable to an unlicensed person]~~;

(4) violated ~~[the violation of]~~ any provision of code of ethics which would have applied if the applicant had been a licensee at the time of the violation; or

(5) has a criminal conviction per §801.332 of this title (relating to Criminal Conviction).

§801.93. Finding of Non-Fitness for Licensure Subsequent to Issuance of License.

The board may take disciplinary action based upon information received after issuance of a license, even if the violation occurred before ~~[prior to]~~ issuance of the license.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805143

Jennifer Smothermon, MA, LPC, LMFT
Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE

22 TAC §§801.111 - 801.115

The amendments are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt

rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments affect Texas Occupations Code, Chapter 502.

§801.111. Purpose of Academic Requirements.

This subchapter establishes the academic requirements for examination and licensure for an LMFT and LMFT Associate. ~~[a marriage and family therapist or for a marriage and family therapist associate.]~~

§801.112. General Academic Requirements.

(a) An applicant must submit an official transcript showing: ~~[The board shall accept the following as meeting academic requirements for licensure as a marriage and family therapist associate:]~~

(1) a master's or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE);

(2) a master's degree from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP), Marriage, Couples, and Family Counseling (MCFC) specialization which meets the requirements of §801.114(b)(8) of this title (relating to Academic Course Content) and starts on or after January 1, 2017, (the earliest class reported on one of an applicant's official transcripts denotes the start of a program); or

(3) a master's or doctorate degree from an accredited institution or program as defined in §801.2 of this title (relating to Definitions) in a related mental health field with a planned course of study in marriage and family therapy as described in §801.113(d) and (e) of this title (relating to Academic Requirements) with the required minimum course content as described in §801.114 of this title. ~~[Prior to being qualified to receive a license as a marriage and family therapist under this section, the applicant shall complete the pre-graduation practicum deficit in addition to the post-graduate supervised experience requirements consistent with the requirements in §801.142 of this title (relating to Supervised Clinical Experience Requirements and Conditions).]~~

(b) An applicant must submit an evaluation ~~[Degrees and coursework received at foreign universities shall be acceptable only if the degree conferred and coursework has been determined]~~ by a member of the National Association of Credential Evaluation Services (NACES) of any degree or coursework completed at a foreign university. Staff may not accept a foreign degree or course unless NACES has determined it to be equivalent to a degree conferred by or coursework completed in an accredited institution or program. [It is the applicant's responsibility to have degrees and coursework so evaluated.]

(c) An applicant must submit a course description from an official school catalog or syllabus for any course listed on the transcript with a title ~~[The relevance to the licensing requirements of academic courses, the titles of which are]~~ not self-explanatory or apparently relevant to academic requirements.; ~~[must be substantiated through course descriptions in official school catalogs, bulletins, syllabi, or by other means.]~~

(d) The board will not accept any undergraduate courses as meeting any academic requirements unless the applicant's official transcript clearly shows the course was awarded graduate credit by the school. [Undergraduate courses taken by an applicant that meet the academic requirements shall not be accepted by the board unless the applicant's official transcripts clearly show that the courses were awarded graduate credit by the school.]

(e) The board will accept as meeting academic requirements only those courses shown on the applicant's transcript as: [Coursework submitted by an applicant must clearly show that it was completed with a passing grade or for credit.]

(1) part of the applicant's program of studies and as completed with a passing grade or for credit; or

(2) taken outside the applicant's program of studies and completed with at least a "B" or "pass."

~~[(f)]~~ In the case of coursework taken outside of a program of studies for which a degree was granted, no course in which the applicant received a grade below "B" or "pass" shall be counted toward meeting academic requirements for examination or licensure.]

~~[(f)]~~ The [In evaluating transcripts, the] board will [shall] consider a quarter hour of academic credit as two-thirds of a semester hour.

§801.113. Academic Requirements.

(a) An applicant [Persons applying] for the licensure examination must have completed or be enrolled in a board-approved marriage and family therapy graduate internship program]; or its equivalent, which is approved by the board].

(b) An applicant for LMFT Associate or LMFT [Persons applying for licensure as a marriage and family therapist or a marriage and family therapist associate] must have a master's or doctorate degree in marriage and family therapy or a master's or doctorate degree in a related mental health field with course work and training determined by the board to be substantially equivalent to a graduate degree in marriage and family therapy from a regionally accredited institution of higher education or an institution of higher education approved by the board with:[:]

(1) at least 45 semester hours for an applicant who started a program before August 1, 2017; or

(2) at least 60 semester hours for an applicant who started a program on or after August 1, 2017.

(3) The earliest class reported on one of an applicant's official transcripts denotes the start of a program.

~~[(c)]~~ A degree or course work in a master's or doctorate in marriage and family therapy or a related mental health field must include at least 45 semester hours which the applicant completed at a regionally accredited school, except that those applicants starting August 1, 2017, must have 60 semester hours.]

~~[(c)]~~ [(d)] A degree or course work in a related mental health field must have been a planned course of study designed to train a person to provide direct services to assist individuals, families or couples in a therapeutic relationship in the resolution of cognitive, affective, behavioral or relational dysfunctions within the context of marriage or family systems.

~~[(d)]~~ [(e)] Examples of degrees in a related mental health field may include [but are not limited to] counseling, psychology, social work, or family studies with an emphasis on Marriage and Family Therapy. Degrees in fields other than those listed may be reviewed by an

appropriate committee of the board for eligibility toward course equivalency.

§801.114. Academic Course Content.

(a) An applicant who holds a graduate degree in a mental health-related field must have course work in each of the following areas [(one course is equal to three semester hours)]:

(1) theoretical foundations of marriage and family therapy--three semester hours [one course];

(2) assessment and treatment in marriage and family therapy--12 semester hours [four courses];

(3) human development, gender, multicultural issues and family studies--six semester hours [two courses];

(4) psychopathology--three semester hours [one course];

(5) professional ethics--three semester hours [one course];

(6) applied professional research--three semester hours [one course]; and

(7) supervised clinical internship [practicum]--12 months or nine semester hours.

(b) An applicant who begins a graduate degree program in marriage and family therapy or a mental health-related field on or after August 1, 2017, must complete course work and the minimum required semester hours in each of the following areas (the earliest class reported on one of an applicant's official transcripts denotes the start of a program): [(one course is equal to three semester hours)]:

(1) theoretical knowledge and foundations of marriage and family therapy--three semester hours--including [but is not limited to] the historical development, theoretical and empirical foundations, and contemporary conceptual directions of the field of marriage and family therapy [(3 semester hours)];

(2) assessment and treatment in marriage and family therapy--12 semester hours--including but is not limited to treatment approaches specifically designed for use with a wide range of diverse couples, families, and children, including sex therapy, same sex couples, young children, adolescents, interfaith couples, crisis intervention, and elderly [(42 semester hours)];

(3) human development, gender, multicultural issues and family studies--six semester hours; [(6 semester hours)];

(4) psychopathology--three semester hours--including [but is not limited to] traditional psycho-diagnostic categories including knowledge and use of the Diagnostic and Statistical Manual of Mental Disorders [(3 semester hours)];

(5) professional ethics--three semester hours--including [but is not limited to] professional identity of the marriage, couple, and family therapist, including professional socialization, scope of practice, professional organizations, licensure and certification; and ethical issues related to the profession of marriage, couple, and family therapy as well as the practice of individual therapy [(3 semester hours)];

(6) applied professional research--three semester hours--including [but is not limited to] research evidence related to MFT, becoming an informed consumer of research, and research and evaluation methods [(3 semester hours)];

(7) treatment of addictions and management of crisis situations--no minimum requirements [(no minimum requirements)];

(8) supervised clinical internship [practicum]--12 months or nine semester hours. During the supervised clinical internship,

[practicum,] the applicant must have 300 hours of experience, of which: [(direct and non-direct), including a minimum of 75 hours of direct client contact with couples and families out of an overall minimum of 150 hours of direct client contact]. The board may count excess practicum hours toward the experience requirements of this subchapter if:]

(A) at least 150 hours must be direct client contact hours; and [the hours were part of the applicant's academic practicum or internship accumulated after the commencement of the applicant's planned graduate program;]

(B) of the 150 direct client contact hours, at least 75 hours must be direct client contact with couples and families. [the relational, or other direct client contact hours and/or non-direct hours that are in excess of the 300-hour practicum required by this paragraph; and]

[(C) no more than 400 hours of the direct plus non-direct hours.]

(c) The remaining courses needed to meet the 45 or 60 [45/60] graduate semester hour requirement must [shall] be marriage and family therapy or related course work [that are] in areas directly supporting the development of an applicant's professional marriage and family, individual, or group therapy skills.

(d) Staff may issue an LMFT Associate license to an applicant who has a deficiency in pre-graduate internship months, semester hours, or clock hours required by subsection (a)(7) or (b)(8) of this section but must require the applicant complete the deficient months, semester hours, or clock hours in addition to the post-graduate, licensed supervised clinical experience requirements in §801.142 of this title (relating to Supervised Clinical Experience Requirements and Conditions) before awarding an LMFT license to that applicant.

§801.115. Academic Requirements and Supervised Clinical Internship [Practicum] Equivalency for Applicants Currently Licensed as an LMFT in Another Jurisdiction.

An applicant currently licensed as a marriage and family therapist in another jurisdiction of the United States[;] who does not meet the academic requirements in §801.114 of this title (relating to Academic Course Content) may be considered to have met the requirements according to the following.

(1) If an applicant has been licensed as an LMFT [a marriage and family therapist] in another [a] United States jurisdiction for the two [5] years immediately preceding the date the application is received, the academic requirements (including the internship) are considered met. [practicum] will be considered to have been met. If licensed for any other 5-year period, the board will determine whether academic requirements have been met.]

(2) If an applicant has been licensed as an LMFT [a marriage and family therapist] in another [a] United States jurisdiction for less than two [5] consecutive years immediately preceding the date the application is received, staff may grant one month of credit for every two months of independent marriage and family therapy practice toward [; the applicant may make up] any deficit in the academic internship [practicum] requirement [by receiving 1 month of credit toward the requirement for every 2 months of independent licensed marriage and family therapy experience].

[(3) If an applicant is licensed as a marriage and family therapist associate in another United States jurisdiction or has been licensed as a marriage and family therapist for less than 5 consecutive years, the applicant must meet all academic course requirements, including the practicum. The applicant may make up any deficit in the practicum requirement by applying post-graduate supervised experience accrued toward licensure as a licensed marriage and family

therapist in another jurisdiction on a month for month equivalency by endorsement.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805147

Jennifer Smothermon, MA, LPC, LMFT
Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §§801.141 - 801.143

The amendment and new sections are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendment and new sections affect Texas Occupations Code, Chapter 502.

§801.141. Purpose of Experience Requirements.

The purpose of this subchapter establishes the minimum experience requirements for licensure as an LMFT [a marriage and family therapist].

§801.142. Supervised Clinical Experience Requirements and Conditions.

An applicant for LMFT must complete supervised clinical experience acceptable to the board.

(1) The LMFT Associate must have completed a minimum of two years of work experience in marriage and family therapy including at least 3,000 hours of supervised clinical practice, of which:

(A) at least 1,500 hours must be providing direct clinical services, with no more than 500 hours provided via technology-assisted services (as approved by the supervisor); and

(B) of the 1,500 hours of direct clinical services, at least 750 hours must be providing direct clinical services to couples or families.

(C) of the 3,000 hours of supervised clinical practice, at least 200 hours must be board-approved supervision as defined in §801.2 of this title (relating to Definitions), of which:

- and
- (i) at least 100 hours must be individual supervision;
 - (ii) no more than 50 hours may be provided by telephonic services;
 - (iii) with unlimited hours by live video.
 - (iv) While providing services, the LMFT Associate must participate in a minimum of one hour of supervision every week, except for good cause shown.

(D) The remaining hours may come from related experiences, including workshops, public relations, writing case notes, consulting with referral sources, etc.

(2) Staff may count graduate internship hours exceeding the requirements set in §801.114(b)(8) of this title (relating to Academic Course Content) toward the minimum requirement of at least 3,000 hours of supervised clinical practice under the following conditions.

(A) No more than 500 excess graduate internship hours completed under a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(B) No more than 400 excess graduate internship hours completed under a non-COAMFTE-accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(C) No more than 100 excess graduate internship supervision hours may be counted toward the minimum requirement of at least 200 hours of board-approved supervision.

(3) An LMFT Associate may practice marriage and family therapy in any setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(4) During the post-graduate, supervised clinical experience, both the supervisor and the LMFT Associate may have disciplinary actions taken against their licenses for violations of the Act or this chapter.

(5) Within 60 days of the initiation of supervision, an LMFT Associate must submit to the board a Supervisory Agreement Form for each board-approved supervisor.

(6) An LMFT Associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.

(7) Except as specified in paragraph (2) of this section, hours of supervision and supervised clinical experience accrued toward an out-of-state LMFT license may be accepted only by endorsement.

(A) The applicant must ensure supervision and supervised experience accrued in another jurisdiction is verified by the jurisdiction in which it occurred and that the other jurisdiction provides verification of supervision to the board.

(B) If an applicant has been licensed as an LMFT in another United States jurisdiction for the two years immediately preceding the date the application is received, the supervised clinical experience requirements are considered met. If licensed for any other two-year period, the board will determine whether clinical experience requirements have been met.

§801.143. Supervisor Requirements.

(a) To apply for supervisor status, an LMFT in good standing must submit an application and applicable fee as well as documentation of the following:

(1) completion of at least 3,000 hours of LMFT practice over a minimum of 3 years; and

(A) successful completion of a 3-semester-hour, graduate course in marriage and family therapy supervision from an accredited institution; or

(B) a 40-hour continuing education course in clinical supervision; or

(2) designation as an approved supervisor or supervisor candidate by the American Association for Marriage and Family Therapy (AAMFT).

(b) A supervisor may not be employed by the person he or she is supervising.

(c) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(d) Within 60 days of the initiation of supervision, a supervisor must process and maintain a complete supervision file on the LMFT Associate. The supervision file must include:

(1) a photocopy of the submitted Supervisory Agreement Form;

(2) proof of board approval of the Supervisory Agreement Form; and

(3) a record of all locations at which the LMFT Associate will practice.

(e) A board-approved supervisor must maintain and sign a record(s) to document the date of each supervision conference and document the LMFT Associate's total number of hours of supervised experience accumulated up to the date of the conference.

(f) Within 30 days of the termination of supervision, a supervisor must submit written notification to the board.

(g) Both the LMFT Associate and the board-approved supervisor are fully responsible for the marriage and family therapy activities of the LMFT Associate.

(1) The supervisor must ensure the LMFT Associate knows and adheres to all statutes and rules that govern the practice of marriage and family therapy.

(2) A supervisor must maintain objective, professional judgment; a dual relationship between the supervisor and the LMFT Associate is prohibited.

(3) A supervisor may not supervise more than 12 persons at one time.

(4) If a supervisor determines the LMFT Associate may not have the therapeutic skills or competence to practice marriage and family therapy under an LMFT license, the supervisor must develop and implement a written plan for remediation of the LMFT Associate.

(5) A supervisor must timely submit accurate documentation of supervised experience.

(h) Supervisor status expires with the LMFT license.

(i) To maintain board approval as a supervisor, a supervisor must successfully complete the jurisprudence exam each renewal period.

(j) A supervisor who fails to meet all requirements for licensure renewal must not advertise or represent himself or herself as a supervisor in any manner.

(k) A supervisor whose license status is other than "current, active" is no longer an approved supervisor. Supervised clinical experience hours accumulated under that person's supervision after the date his or her license status changed from "current, active" or after removal of the supervisor designation will not count as acceptable hours unless approved by the board.

(l) A supervisor who becomes subject to a board disciplinary order is no longer an approved supervisor. The person must:

(1) inform each LMFT Associate of the board disciplinary order;

(2) refund all supervisory fees received after date the board disciplinary order was signed by the board chair to the LMFT Associate who paid the fees; and

(3) assist each LMFT Associate in finding alternate supervision.

(m) Supervision of an LMFT Associate without being currently approved as a supervisor is grounds for disciplinary action.

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805148

Jennifer Smothermon, MA, LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



22 TAC §801.142, §801.143

The repeals are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The repeals affect Texas Occupations Code, Chapter 502.

§801.142. Supervised Clinical Experience Requirements and Conditions.

§801.143. Supervisor Requirements.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805150

Jennifer Smothermon, MA, LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER H. EXAMINATIONS

22 TAC §801.172, §801.173

The repeals are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The repeals affect Texas Occupations Code, Chapter 502.

§801.172. Frequency.

§801.173. Applying for Licensure Examination.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805155

Jennifer Smothermon, MA, LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



22 TAC §801.174

The amendment is sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202,

to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendment affects Texas Occupations Code, Chapter 502.

§801.174. Licensure and Jurisprudence Examinations.

(a) The board will ~~shall~~ accept the national licensure examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

(b) An applicant must ~~shall~~ apply to take the licensure examination per §801.74 of this title (relating to Application to Take Licensure Examination). ~~[on a form prescribed by the board.]~~ The applicant must ~~will~~ pay the examination fee to the appropriate party as dictated by the current examination contract or agreement.

(c) The board, or its designee, will ~~shall~~ determine the times and places for licensing examinations and give reasonable public notice.

(d) The board, or its designee, will ~~shall~~ notify the examinee of the results of the licensure examination in accordance with the current examination contract or agreement. If the board is notified of a potential delay of notification of exam results, the board will ~~shall~~ notify the examinee as soon as possible regarding the delay.

(e) An applicant who fails the examination may retake the examination as many times as needed until the expiration of the application. The application for examination expires one year after the date of the first unsuccessful examination.

(e) Procedures for failure of an applicant to pass a licensure examination, if all minimum application and other requirements are met and current, are as follows:}

{{(1) An applicant who fails an examination may retake the examination at the next scheduled date.}}

{{(2) Fee for the examination is in accordance with subsection (b) of this section.}}

{{(3) The applicant must reschedule the examination and resubmit the examination fee.}}

{{(4) The board shall furnish the person who failed the examination with an analysis of that person's performance on the examination if so requested in writing by the examinee.}}

(f) At the time of application, an applicant for licensure must submit proof of successful completion of the jurisprudence exam as defined in §801.2 of this title (relating to Definitions).

{{(f) If an applicant fails the licensure examination two or more times, the board may require the applicant to identify additional courses of study which address the area(s) of deficit; and present satisfactory evidence of completion of the courses before approving the applicant to reschedule the licensure examination.}}

{{(g) Effective September 1, 2006, all applicants for licensure must submit proof of successful completion of the jurisprudence examination at the time of application.}}

(g) ~~[(h)]~~ The jurisprudence exam ~~[examination]~~ must have been completed no more than six months before ~~[prior to]~~ the ~~[licensure application]~~ date the application is received.

(h) ~~[(i)]~~ The jurisprudence exam ~~[examination]~~ is available as an online learning experience and applicable fees are paid ~~[payable]~~ directly to the approved vendor.

{{(i) The jurisprudence examination content is based on the Act, the rules of the board, and other state laws and rules that relate to the practice of marriage and family therapy.}}

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805156

Jennifer Smothermon, MA, LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER I. LICENSING

22 TAC §801.201, §801.202

The repeals are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The repeals affect Texas Occupations Code, Chapter 502.

§801.201. General Licensing.

§801.202. Associate License.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805158

Jennifer Smotherman, MA, LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



22 TAC §§801.201 - 801.204

The amendments and new sections are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments and new sections affect Texas Occupations Code, Chapter 502.

§801.201. General Licensing.

(a) Within 30 days of receipt of application materials, staff will either issue a license with a unique license number or notify the applicant of a deficiency.

(b) A licensee must submit a written request for a duplicate license with the appropriate fee. A licensee must return a damaged license certificate or renewal card to the board.

(c) Within 30 days of receipt of licensee's written request and payment for a duplicate license, staff will mail the license certificate to the licensee's last-reported mailing address.

(d) A licensee is responsible for the use or misuse of an original or duplicate license.

§801.202. LMFT Associate License.

(a) The initial LMFT Associate license will be issued for a period of 24 months and may be renewed biennially for a period not to exceed a total of 72 months.

(b) An LMFT Associate who has held the LMFT Associate license for 72 months and submitted documentation to the board to satisfy all minimum requirements for LMFT licensure, except the 750-hour requirement set in §801.142(1)(B) of this title (relating to Supervised Clinical Experience Requirements and Conditions) and requiring at least 750 hours of direct clinical services to couples or families, may renew his or her LMFT Associate license only once more (not exceeding 96 months of licensure as an LMFT Associate).

(c) An LMFT Associate who has held the LMFT Associate license for 72 months (or 96 months if subsection (b) of this section applies) and has not met the minimum requirements for LMFT licensure, may not renew but must reapply for the LMFT Associate license, meeting all current application requirements and passing the national licensure examination no more than six months before the date the application is received.

§801.203. Provisional LMFT License.

(a) A provisional license may be granted to a person who:

(1) is licensed or otherwise registered as a marriage and family therapist by another state or other jurisdiction, whose requirements for licensure or registration, at the time the license or registration was obtained, were substantially equivalent to the requirements set out in §801.76 of this title (relating to Application for Licensed Marriage and Family Therapist (LMFT)); [§801.73 of this title (relating to Required Application Materials);]

(2) has successfully passed a national examination relating to marriage and family therapy or an examination approved by the board;

(3) is sponsored by a Texas LMFT [licensed marriage and family therapist in Texas] with whom the provisional license holder may practice under this section;

(4) provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter (relating to Experience Requirements for Licensure); and

(5) meets any other requirements set forth under the Act.

(b) Upon formal written request, the board may waive the requirement set out in subsection (a)(3) of this section if the board determines that compliance with subsection (a)(3) of this section would cause undue hardship to the applicant.

(c) The board will [~~shall~~] issue a license to a holder of a provisional license if:

(1) the provisional license holder passes the examinations [examination] required by Subchapter H of this chapter (relating to [Licensure] Examinations);

(2) the provisional license holder provides official graduate transcripts meeting the requirements set forth in Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure);

(3) the provisional license holder provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter; and

(4) the provisional license holder meets any other requirements set forth under the Act.

(d) The board must complete the processing of a provisional license holder's application for license within 180 days after the provisional license was issued. The board may extend the 180-day deadline to allow for the receipt and tabulation of pending examination results.

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

(a) This section implements licensing procedures in accordance with Texas Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). The following definitions apply in this section:

(1) Active duty--Current full-time military service in the U.S. Armed Forces or active duty military service as a member of the Texas military forces, as defined by Texas Government Code, §437.001 (relating to Texas Military), or similar military service of another state.

(2) License--A license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(3) Military service member--A person who is on active duty.

(4) Military spouse--A person who is married to a military service member.

(5) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(6) U.S. Armed Forces--The U.S. Army, Navy, Air Force, Coast Guard, or Marine Corps or a reserve unit of one of those branches of the Armed Forces.

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

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

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

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

(f) An applicant who is a military service member, military veteran, or military spouse who holds a current unrestricted license issued by another jurisdiction that has substantially equivalent licensing requirements must [shall] complete and submit an application form and a supplemental application form for military service member, military veteran, or military spouse. The applicant must satisfy the application and supplemental application requirements and meet the substantial equivalency requirements of the out-of-state jurisdiction. The applicant may not be subject to unresolved allegations related to the out-of-state license. The applicant must be free of any criminal background relevant to the license and must be free of any facts or circumstances that would provide grounds for denial of the license. As soon as practicable after the applicant submits a complete application, staff [the department] will process the application and [will] issue a license to an applicant whose application meets the requirements of this section. A license issued in accordance with this section has [will have] the same term as the applicable license type otherwise issued under the Act and this subchapter. Renewal of the license is [shall be] in accordance with subsection (i) of this section.

(g) In accordance with Texas Occupations Code, §55.004(c) (relating to Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining [that] the applicant holds a license issued by another jurisdiction [that] has licensing requirements substantially equivalent to those of this state.

(h) An applicant who is a military service member, military veteran, or military spouse and who held an unrestricted license [registration] in this state within the five years preceding the [application] date the application is received must [shall] complete and submit an application form and a supplemental application form for military service member, military veteran, or military spouse. The applicant must satisfy the application and supplemental application requirements. The applicant may not be subject to unresolved allegations related to the license [registration]. The applicant must be free of any criminal background relevant to the license [registration] and must be free of any facts or circumstances that would provide grounds for denial of the license [registration]. As soon as practicable after the

applicant submits a complete application, staff [the department] will process the application and [will] issue a license [registration] to an applicant whose application meets the requirements of this section. Renewal of the license must [registration shall] be in accordance with subsection (i) of this section.

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

(j) Notwithstanding any other law, staff may [the department will] waive the license application fee for an applicant described in paragraph (1) or (2) of this subsection. An applicant must [shall] provide any documentation requested by staff [the department] to verify [that] the applicant is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all applicable requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by an out-of-state regulatory authority that has license requirements that are substantially equivalent to the requirements for the license in this state.

(k) For license renewal, staff may [the department will] exempt an individual who holds a license issued by the board [the department] from any increased fee or other penalty imposed for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the program director [that] the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(l) A military service member who holds a license is entitled to two years of additional time beyond the expiration date of the license to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member's license [registration].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805159

Jennifer Smothermon, MA, LPC, LMFT
Chair

Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER J. LICENSE RENEWAL, INACTIVE STATUS, AND SURRENDER OF LICENSE

22 TAC §§801.232 - 801.237

The amendments and new section are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments and new section affect Texas Occupations Code, Chapter 502.

§801.232. *General License Renewal.*

- (a) A licensee must renew the license biennially or by the expiration date, whichever comes first.
- (b) Each licensee is responsible for renewing licensure and paying the renewal fee before the expiration date and will ~~shall~~ not be excused from paying late renewal fees or renewal penalty fees.
- (c) A licensee must satisfy ~~have fulfilled~~ continuing education requirements prescribed by the board ~~rule~~ in order to renew licensure.
- (d) A licensee whose license is not renewed due to failure to meet all requirements for licensure renewal must ~~shall~~ return his or her license certificate to the board and may ~~shall~~ not advertise or represent himself or herself as an LMFT Associate or LMFT ~~[a licensed marriage and family therapist]~~ in any manner.
- (e) The board will ~~shall~~ deny renewal if required by the Texas Education Code, §57.491, relating to default ~~defaults~~ on a guaranteed student loan. ~~[loans:]~~
- (f) The board may refuse to renew the license of a person who fails to pay an administrative penalty imposed in accordance with the Act unless the enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

§801.233. *Staggered Renewals.*

The board uses ~~shall use~~ a staggered system for licensure renewals; the renewal date of an LMFT ~~[a marriage and family therapist]~~ license shall be the last day of the licensee's birth month.

§801.234. *Licensure Renewal.*

- (a) At least 30 days before ~~prior to~~ the expiration date of a person's license, the board will send notice to the licensee of the expiration date of the license, the amount of the renewal fee due, and a licensure renewal form which the licensee must complete and return to the board with the required fee. The licensure renewal form may be completed electronically if available. Failure to receive notice does not relieve the licensee from the responsibility to timely renew.
- (b) The licensure renewal form will ~~shall~~ require the licensee to provide current addresses, telephone numbers, and information regarding completion of continuing education requirements.

(c) A license is not renewed until the board receives the completed licensure renewal form and the renewal fee, and the licensee has complied with the continuing education requirements. The board or its designee may grant the licensee additional time to complete continuing education requirements based on extraordinary circumstances, such as medical complications.

(d) The board will ~~shall~~ issue a renewal card to a licensee who has met all requirements for renewal.

§801.235. *Late Renewal.*

(a) A person who renews a license after the expiration date but on or before [within] 90 days after the expiration date must ~~shall~~ pay the renewal fee and late renewal fee prescribed in §801.18 of this title (relating to Fees). ~~[plus one-fourth of the current biennial license renewal fee.]~~

(b) A person whose license was not renewed on or before 90 days after the expiration date may renew before one year after the expiration date ~~[If a person's license has been expired for 90 days but less than one year the person may renew the license]~~ by paying ~~[to the board]~~ the renewal fee and late renewal fee prescribed in §801.18 of this title. ~~[a fee that is equal to one-half of the current biennial license renewal fee.]~~

(c) ~~[(b)]~~ A person whose license was not renewed before one year after ~~[within one year of]~~ the expiration date may reapply ~~seek to obtain a new license by reapplying~~ for a license, submitting to examination~~[-]~~ and complying with current requirements and procedures for obtaining an original license.

(d) ~~[(e)]~~ The board may renew without re-examination an expired license of a person who was an LMFT ~~[licensed as a Marriage and Family Therapist]~~ in this state, moved to another state, and is currently licensed as a marriage and family therapist ~~[Marriage and Family Therapist]~~ and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee equal to the examination fee for the license.

§801.236. *Inactive Status.*

(a) A licensee may request his or her active license be placed on inactive status by submitting to the board the designated form and fee prescribed in §801.18 of this title (relating to Fees).

(b) A licensee cannot practice while the license is inactive.

(c) Board-approved supervisory authority is relinquished upon moving the license to inactive status.

(d) Inactive licenses remain subject to disciplinary action by the board.

(e) No continuing education is required while a license is inactive.

(f) To return an inactive license to active status, the licensee must submit:

- (1) the reactivation form designated by the board;
- (2) the reactivation fee as prescribed in §801.18 of this title;
- (3) proof of completion of jurisprudence exam no more than six months before submitting request for active status; and
- (4) proof of completion of continuing education for the licensee's current two-year renewal period.
- (g) Neither continuing education nor fees will be prorated.
- (h) To regain board-approved supervisory authority, the licensee must reapply meeting all current requirements.

§801.237. *Surrender of License.*

(a) A licensee may at any time voluntarily offer to surrender his or her license for any reason, without compulsion. If there is no complaint pending, board staff may ~~[shall]~~ accept the surrender and void the license.

(b) When a licensee has offered to ~~[the]~~ surrender ~~[of]~~ his or her license after a complaint has been filed which alleges violations of the Act or this chapter, the board may ~~[shall]~~ consider whether to accept the license surrender. If the board accepts such a surrender, that surrender is deemed to be the result of a formal disciplinary action and will ~~[shall]~~ be reported as formal disciplinary action. Surrender of a license without acceptance by the board does ~~[shall]~~ not deprive the board of jurisdiction over the licensee in accordance with the Act or other law.

(c) Reinstatement. A license which has been surrendered and accepted may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805160

Jennifer Smothermon, MA, LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER J. LICENSE RENEWAL AND INACTIVE STATUS

22 TAC §801.236

The repeal is sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The repeal is Texas Occupations Code, Chapter 502.

§801.236. *Inactive Status.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805162

Jennifer Smothermon, MA, LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER K. CONTINUING EDUCATION REQUIREMENTS

22 TAC §§801.262 - 801.264, 801.266, 801.268

The amendments and new sections are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments and new sections are Texas Occupations Code, Chapter 502.

§801.262. *Deadlines.*

Continuing education requirements for renewal must ~~[shall]~~ be fulfilled during board-designated periods beginning on the first day of a licensee's renewal period and ending on the last day of the licensee's renewal period. These renewal periods are generally biennial, but if the renewal is related to the issuance of an initial license, the period may ~~[shall]~~ be for a period of 13 to 24 months, depending on the licensee's birth month.

§801.263. *Requirements for Continuing Education.*

(a) An LMFT must complete 30 clock hours of continuing education which is acceptable to the board each renewal period as described in §801.262 of this title (relating to Deadlines).

(b) An LMFT Associate must complete 15 clock hours of continuing education which is acceptable to the board each renewal period as described in §801.262 of this title.

(c) All licensees are required to complete six hours of ethics each renewal period.

(d) A board-approved supervisor must complete at least three hours of clinical supervision continuing education each renewal period.

§801.264. *Types of Acceptable Continuing Education.*

To be acceptable for the purposes of license renewal or satisfaction of disciplinary stipulations, the education must be received from a continuing education provider that:

(1) ensures the education provided is related to the practice of professional counseling;

(2) ensures the individual(s) presenting the information have the necessary experience and knowledge in the topic(s) presented;

- (3) verifies attendance of participants and provides participants with a letter or certificate of attendance displaying the licensee's name, topic covered, date course was taken, and hours of credit earned;
- (4) maintains all continuing education records and documentation for at least three years; and
- (5) provides participants a mechanism for evaluation of each continuing education activity.

§801.266. Determination of Clock Hour Credits and Credit Hours Granted.

The board credits continuing education activities that meet the criteria §801.264 of this title (relating to Types of Acceptable Continuing Education) on a one-for-one basis with one credit hour for each clock hour spent in the continuing education activity, unless otherwise designated in the provisions below:

- (1) Completing the jurisprudence exam once per renewal period may count for one hour of the ethics requirement described in §801.263 (relating to Requirements for Continuing Education).
- (2) Hours spent providing clinical supervision of a marriage and family therapy intern or an LMFT Associate may count for no more than one-half of the continuing education required each renewal period.
- (3) A presenter of a continuing education activity may earn 1.5 hours for each approved hour of continuing education presented, not to exceed one-half of the continuing education required each renewal period. The same seminar or topic may not be used more than once biennially.
- (4) An author of a book or peer reviewed article which enhances a marriage and family licensee's knowledge or skill may claim continuing education credit not to exceed one-half of the continuing education required each renewal period.

§801.268. Reporting and Auditing of Continuing Education.

- (a) At the time of renewal, the licensee must report completion [Completion] of approved continuing education of no less than 30 hours [must be reported by the licensee at the time of renewal].
- (b) The board will [shall] conduct random audits of a licensee's compliance with the continuing education requirements [by licensees]. A licensee selected for audit must [shall] submit continuing education documentation upon request. Individual continuing education certificates of attendance may [shall] not be submitted unless the licensee is requested to do so by the board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805167
Jennifer Smothermon, MA, LPC, LMFT
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: January 13, 2019
For further information, please call: (512) 776-6972



22 TAC §§801.263 - 801.267

The repeals are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules:

§502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The repeals affect Texas Occupations Code, Chapter 502.

§801.263. Requirements for Continuing Education.

§801.264. Types of Acceptable Continuing Education.

§801.265. Continuing Education Sponsor.

§801.266. Criteria for Approval of Continuing Education Activities.

§801.267. Determination of Clock Hour Credits.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805168
Jennifer Smothermon, MA, LPC, LMFT
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: January 13, 2019
For further information, please call: (512) 776-6972



SUBCHAPTER L. COMPLAINTS AND VIOLATIONS

22 TAC §§801.291 - 801.294, 801.296 - 801.304

The amendments and new sections are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments and new sections affect Texas Occupations Code, Chapter 502.

§801.291. General Complaints and Violations.

The purpose of this subchapter is to establish procedures for imposing disciplinary actions [the denial; revocation; probation; or suspension of

a license; reprimand of a licensee; or imposition of an administrative penalty;] and the procedures for filing complaints and allegations of statutory or rule violations.

(1) The following are [shall be] grounds for imposing disciplinary action [~~revocation, probation or suspension of a license, imposition of an administrative penalty, refusal to renew a license, or reprimand of a licensee~~] if a person [licensee] has:

(A) been convicted of an offense set forth in Texas Occupations Code, Chapter 53, related to Consequences of a Criminal Conviction [a felony or a misdemeanor involving moral turpitude];

(B) obtained or attempted to obtain a license by fraud or deception;

(C) used drugs or alcohol to an extent that affects professional competence;

(D) been grossly negligent in performing professional duties;

(E) been adjudicated mentally incompetent by a court of competent jurisdiction;

(F) practiced in a manner detrimental to the public health or welfare;

(G) advertised in a manner that tends to deceive or defraud the public;

(H) had a license or certification revoked by a licensing agency or by a certifying professional organization or by a governmental agency;

(I) otherwise violated the Act or board rules;

(J) committed an act for which liability exists under the Texas Civil Practice and Remedies Code, Chapter 81, concerning Sexual Exploitation by Mental Health Services Provider;

(K) violated an order of the board; or

(L) engaged in conduct that discredits or tends to discredit the profession of marriage and family therapy.

(2) If the board suspends a license, the suspension remains [shall remain] in effect for the period of time stated in the order or until the board determines [that] the reason for the suspension no longer exists.

(3) If a suspension overlaps a license renewal date, the suspended [marriage and family] licensee must [shall] comply with all [the] renewal procedures in Subchapter J of this chapter (regarding License Renewal, Inactive Status, and Surrender of License) [in this chapter]; however, the suspension will [shall] remain in effect pursuant to paragraph (2) of this subsection.

(4) Upon revocation, suspension or non-renewal of a license, a licensee must [shall] return his or her license certificate and all existing renewal cards to the board.

§801.292. Criteria for Denial of a License.

The board may base the denial of a license upon the substantiation of any of the following [related to an applicant may be, as the board determines, the basis for the denial of the licensure of the applicant]:

(1) lack of the necessary skills and abilities to provide adequate therapeutic services;

(2) misrepresentation of professional qualifications or associations;

(3) misrepresentation of services and efficacy of services to clients;

(4) use of misleading or false advertising;

(5) use of relationships with clients to promote personal gain or for the profit of an agency or commercial enterprises of any kind;

(6) engaging in sexual contact or intimacies of any kind with any client or former client [except as noted in §801.45 of this title (relating to Sexual Misconduct)];

(7) a breach of confidentiality of a client except where allowed by law;

(8) abuse [of the use] of alcohol or drugs or the use of illegal drugs of any kind;

(9) any misrepresentation in the application or other materials submitted to the board;

(10) the violation of any provision of the [Licensed Marriage and Family Therapist] Act or this chapter; and

(11) any other criteria listed in §801.291 of this title (relating to General Complaints and Violations).

§801.293. Procedures for Imposing Disciplinary Action [Revoking, Suspending, Probating or Denying a License, or Reprimanding a Licensee].

(a) The board's executive director or his or her [his/her] designee will [shall] give written notice to the person that the board proposes to impose disciplinary action. [deny, suspend, probate, or revoke the license, impose an administrative penalty, or reprimand the licensee, after a hearing in accordance with the provisions of the Administrative Procedure Act (APA), and the board's hearing procedures in Subchapter O of this chapter (relating to Formal Hearings).]

(b) Before imposing disciplinary action, [Prior to denying, revoking, probating or suspending a license; imposing an administrative penalty; or reprimanding a licensee], the board will [ethics committee shall] give the applicant or licensee the opportunity for an informal conference or a formal hearing or both in accordance with the provisions of this subchapter, Subchapter N of this chapter (relating to Informal Settlement Conferences), and Subchapter O of this chapter (relating to Formal Hearings).

§801.294. Violations by an Unlicensed Person.

(a) A person commits an offense if the person knowingly or intentionally acts as an LMFT or LMFT Associate [a licensed marriage and family therapist] without being licensed by the board. Such an offense is a Class B misdemeanor.

(b) An unlicensed person who facilitates or coordinates the provision of professional marriage and family therapy services but does not act as an LMFT or LMFT Associate [a licensed marriage and family therapist] is not in violation of the Act.

(c) If it appears to the board that a person who is not licensed under the Act is violating the Act, a rule adopted under the Act, or another state statute or rule relating to the practice of marriage and family therapy, the board after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity. A violation of a cease and desist order constitutes grounds for the imposition of an administrative penalty by the board.

§801.296. Complaint Procedures.

(a) A complaint must be submitted to the board office on a form prescribed by the board to be an eligible complaint for board action.

(b) Allegations not involving violations of §801.45 of this title (relating to Sexual Misconduct) must be filed within 5 years of the date of termination of professional services or within 5 years of a minor client's 18th birthday, whichever is later.

(c) Staff will send acknowledgement to the complainant upon receipt of an eligible complaint.

(d) Eligible complaints will be reviewed by the review team whose members are designated in board policy to determine if the board has jurisdiction over the complaint and to determine the nature of the allegations.

(1) Complaints outside of the jurisdiction of the board will be dismissed.

(2) Jurisdictional complaints will be reviewed by the team to determine if the complaint states an allegation which, if true, constitutes a violation of the Act or board rules in this chapter.

(A) Complaints that do not state a violation of the Act or board rules in this chapter will be dismissed.

(B) Complaints that state a violation of the Act or board rules in this chapter will be investigated by board staff.

(3) Complaints under the jurisdiction of another agency will be referred to that agency.

(e) Licensees will receive notice of an investigation in writing. Notice to a licensee is effective and service is complete when sent by certified or registered mail to the licensee's address of record at the time of the mailing.

(f) Following completion of the investigation, staff will draft a report. This report will include a recommendation as to whether the investigation has produced sufficient evidence to establish by a preponderance of the evidence there was a violation of the Act or board rules in this chapter.

(g) The review team and counsel for the board will review the complaint's case file, including the investigation report and all evidence, to determine if there is sufficient evidence to demonstrate by a preponderance of the evidence a violation of the Act or board rules in this chapter occurred.

(1) A complaint for which the team and counsel determines the preponderance of the evidence indicates a violation of the Act or board rules in this chapter occurred will result in the issuing a Notice of Violation to the Respondent proposing disciplinary action based on the penalty matrix set by board policy and the Respondent will be given an opportunity to request an Informal Settlement Conference.

(2) A complaint for which staff determines the preponderance of the evidence indicates a violation of the Act or board rules in this chapter did not occur will be dismissed.

(h) At each board meeting, staff will provide the board with a list of complaints dismissed for lack of jurisdiction or lack of violation since the previous meeting of the board.

§801.297. Monitoring of Licensees.

(a) Staff will [The department shall] maintain a complaint tracking system.

(b) Each licensee who [that] has had disciplinary action taken against his or her license must [shall be required to] submit regularly scheduled reports as[, if] ordered by the board. [The report shall be scheduled at intervals appropriate to each individual situation.]

(c) The executive director or executive director's designee will monitor a licensee's compliance with board order or directive, includ-

ing periodic [shall review the] reports and will direct staff to open a new complaint alleging non-compliance [notify the ethics committee] if the requirements of the disciplinary action are not met.

(d) A complaint alleging non-compliance is processed per §801.296 of this title (relating to Complaint Procedures) and may result in a [The ethics committee may consider] more severe disciplinary action [proceedings if non-compliance occurs].

(e) As an alternative to the denial of a license, the board may, as a condition of initial licensure, require monitoring of a licensee who may pose a potential threat to public health or safety, regardless of whether a formal complaint has been received by the board. The board may require a licensee on monitoring status to comply with specified conditions set forth by the board. A licensee placed on this type of monitoring is not considered to have formal disciplinary action taken against his or her [their] license, but must comply fully with the board order [of the board] or face possible formal disciplinary action [levied by the board]. Factors that may constitute a potential threat to public health or safety may include[, but are not limited to,] reports of chemical abuse by a licensee, mental or [and/or] physical health concerns, or [and/or] criminal activity or allegations, whether pending or in final disposition by a court of law.

(f) Probation. If probation is ordered [or agreed to], the following general conditions of probation [terms] may be required. [General conditions of probation:]

(1) The licensee must [shall] obey all federal, state and local laws and rules governing marriage and family therapy practice [in this state].

(2) Under penalty of perjury, the licensee must [shall] submit periodic reports as the board requests on forms provided by the board, stating whether the licensee has complied with all conditions of probation.

(3) The licensee must [shall] comply with the board's probation monitoring program.

(4) The licensee must [shall] appear in person for interviews with the board or its designee at various intervals and with reasonable notice.

(5) If the licensee leaves this state to reside or to practice outside the state, the licensee must notify the board in writing of the dates of departure and return. Periods of practice outside this state will not count toward the time of this probationary period. No more than 30 days after such a move, the licensee must submit proof to the board that he or she has notified the [The] marriage and family therapist licensing authorities of the jurisdiction to which the licensee is moving or has moved [must be promptly notified] of the licensee's probationary status in this state. The probationary period resumes [will resume] when the licensee returns to this [the] state to [reside or] practice.

(6) If the licensee violates probation in any respect, the board, after giving formal notice and the opportunity to be heard, may revoke the licensee's license [and/or board-approved supervisor status] or take other appropriate disciplinary action. The period of probation will [shall] be extended until the matter is resolved. [final.]

(7) The licensee must [shall] promptly notify in writing all principal(s) in jurisdictions [settings] in which the licensee may practice [practices] marriage and family therapy of his or her probationary status and provide proof of that notification to the board within 30 days of the effective date of the order.

(8) While on probation, the licensee may [shall] not [act as a supervisor or] gain any hours of supervised clinical experience [practice] required for any board-issued license.

(9) The licensee is responsible for paying the costs of complying with conditions of probation.

(10) The licensee must ~~[shall]~~ comply with the renewal requirements in the Act and the board rules.

(11) A licensee on probation may ~~[shall]~~ not practice marriage and family therapy except under the conditions described in the probation order.

~~[(12) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:]~~

~~[(A) submit one supervisory plan for each practice location to the board for approval by the board or executive director/designee within 30 days of initiating supervision;]~~

~~[(B) submit a current job description from the agency in which the Marriage and Family Therapist or Associate is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;]~~

~~[(C) ensure that the supervisor submits reports to the board on a schedule determined by the board. In each report, the supervisor must address the supervisee's performance; how closely the supervisee adheres to statutes and rules; any special circumstances that led to the imposition of supervision; and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and]~~

~~[(D) notify the board immediately if there is a disruption in the supervisory relationship or change in practice location, and submit a new supervisory plan within 30 days of the break or change in practice location.]~~

~~[(g) Release from Probation.]~~

~~[(1) If the executive director believes that a licensee has satisfied the terms of probation, the executive director shall report to the ethics committee the status of the licensee's probation.]~~

~~[(2) If the executive director does not believe that the licensee has successfully completed probation, the executive director shall so notify the licensee and shall refer the matter to the ethics committee for review and recommendations. The licensee shall continue supervision and all requirements set forth in the board order, including periodic reports, until the ethics committee reviews and disposes of the case.]~~

~~[(g) [(h)] Board-Ordered Supervision.~~

~~[(1) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:~~

~~[(A) submit one supervisory plan for each practice location to the board for approval by the board or executive director or his or her designee ~~[director/designee]~~ within 30 days of the effective date of the board order ~~[initiating supervision]~~;~~

~~[(B) submit a current job description from the agency in which the LMFT ~~[marriage and family therapist]~~ or LMFT Associate ~~[associate]~~ is employed with a verification of authenticity from~~

the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

~~[(C) ensure that the supervisor submits reports to the board on a schedule determined by the board. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations, after giving the licensee formal notice and the opportunity to be heard, as grounds for further disciplinary action ~~[as it evaluates the supervision verification the supervisee submits]; and~~~~

~~[(D) notify the board immediately if there is a disruption in the supervisory relationship or change in practice location, and submit a new supervisory plan within 30 days of the break or change in practice location.~~

~~[(2) The supervisor who agrees to provide board-ordered supervision of a licensee who is under board disciplinary action must understand the board order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to board discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.~~

~~[(3) Board-ordered and mandated supervision timeframes are specified in the board order.~~

~~[(h) Release from Probation.~~

~~[(1) If the executive director believes a licensee has satisfied the terms of probation, the executive director will report to the Ethics Committee the status of the licensee's probation.~~

~~[(2) If the executive director does not believe the licensee has successfully completed probation, the executive director will direct staff to open a new complaint alleging non-compliance.~~

~~[(3) The complaint alleging non-compliance is processed per §801.296 of this title (related to Complaint Procedures) and may result in more severe disciplinary action.~~

~~[(4) The licensee must continue supervision and all requirements set forth in the board order, including periodic reports, until the complaint alleging non-compliance is resolved.~~

~~§801.298. Default Orders.~~

~~[(a) If a right to a hearing is waived, the board may ~~[shall]~~ consider an order taking disciplinary action as described in the written notice to the respondent ~~[licensee or applicant]~~.~~

~~[(b) The respondent, usually a licensee or applicant, and the complainant will ~~[shall]~~ be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.~~

~~[(c) Upon an affirmative majority vote, the board will ~~[shall]~~ enter an order imposing appropriate disciplinary action.~~

~~§801.299. Administrative Penalties.~~

~~[(a) The assessment of an administrative penalty is governed by the Act. An administrative penalty may be assessed for any violation as~~

determined by the Ethics Committee. An administrative penalty may be assessed in lieu of, or in addition to, other disciplinary actions.

[(b) References in the Act to the "commissioner of health" or the "department" are references to the commissioner of health or his/her designee. The board shall request that the commissioner of health appoint the executive director of the board as his or her designee.]

[(c) References in the Act to a "hearing examiner designated by the department" are references to an administrative law judge from the State Office of Administrative Hearings.]

(b) [(d)] A hearing to assess administrative penalties will [shall] be governed by Subchapter O of this chapter (relating to Formal Hearings) except where the subchapter is in conflict with the Act.

(c) [(e)] Severity levels with the corresponding [The amount of an] administrative penalty amounts are set forth in §801.302 of this title (relating to Severity Level and Sanction Guide). [shall be based on the following criteria:]

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

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

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

[(C) Level III--Violations that have no or minor health or safety significance.]

[(2) The range of administrative penalties by severity levels are as follows:]

[(A) Level I--\$500 - \$5,000;]

[(B) Level II--\$250 - \$2,500; or]

[(C) Level III--no more than \$250.]

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

§801.300. Suspension of License for Failure to Pay Child Support or Non-Compliance with Child Custody Order.

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support, or failure to comply [be in compliance] with a court order relating to child custody, the executive director or designee will [shall immediately] determine if the board has issued a license to the obligor [obligator] named on the order, and, if a license has been issued, will: [shall:]

(1) record the suspension of the license in the board's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) The board will [shall] implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Texas Family Code, Chapter 232 [as added by Acts 1995, 74th

Legislature Chapter 751, §85 (HB 433)] and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the board.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section must [shall] comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to use the titles "Licensed Marriage and Family Therapist," "LMFT," "Provisional Licensed Marriage and Family Therapist," "Provisional LMFT," "Licensed Marriage and Family Therapist Associate," "LMFT Associate," "Provisional Licensed Marriage and Family Therapist Associate," or "Provisional LMFT Associate" [licensed marriage and family therapist," "provisional licensed marriage and family therapist," or "licensed marriage and family therapist associate"] after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any license holder of the board.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the executive director or executive director's designee will [shall promptly] issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee set out in §801.18 of this title (relating to Fees) before [prior to] issuance of the license under subsection (g) of this section.

§801.301. Relevant Factors.

When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction which include: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the Ethics Committee [ethics committee] or administrative law judge. Specific factors are to be considered as set forth herein.

(1) Seriousness of Violation. The following factors are identified:

(A) the nature of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as emotional, physical, or financial;

(B) the extent of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as whether the harm is low, moderate or severe, and the number of persons harmed or exposed to risk; and

(C) the frequency and time-periods covered by the violations, such as whether there were multiple violations, or a single violation, and the period of time over which the violations occurred.

(2) Nature of the Violation. The following factors are identified:

(A) the relationship between the licensee and the person harmed, or exposed to harm, such as a dependent relationship of a client-counselor, or stranger to the licensee;

(B) the vulnerability of the person harmed or exposed to harm;

(C) the degree of culpability of the licensee, such as whether the violation was:

- (i) intentional or premeditated;
- (ii) due to blatant disregard or gross neglect; or
- (iii) resulted from simple error or inadvertence; and

(D) the extent to which the violation evidences the lack of character, such as lack integrity, trustworthiness, or honesty.

(3) Personal Accountability. The following factors are identified:

- (A) admission of wrong or error, and acceptance of responsibility;
- (B) appropriate degree of remorse or concern;
- (C) efforts to ameliorate the harm or make restitution;
- (D) efforts to ensure future violations do not occur; and
- (E) cooperation with any investigation or request for information.

(4) Deterrence. The following factors are identified:

- (A) the sanction required to deter future similar violation by the licensee;
- (B) sanctions necessary to ensure compliance by the licensee of other provisions of the Act or this chapter; and
- (C) sanctions necessary to deter other licensees from such violations.

(5) Miscellaneous Factors. The following factors are identified:

- (A) age and experience at time of violation;
- (B) presence or absence of prior or subsequent violations;
- (C) conduct and work activity before [prior to] and following the violation;
- (D) character references; and
- (E) any other factors justice may require.

§801.302. Severity Level and Sanction Guide.

The following severity levels and sanction guides are based on the relevant factors in §801.301 of this title (relating to Relevant Factors).

(1) Level One--Revocation of license with a possible administrative penalty from \$500 to \$5,000. These violations evidence intentional or gross misconduct on the part of the licensee or [and/or] cause or pose a high degree of harm to the public or [and/or] may require severe punishment as a deterrent to the licensee, or other licensees. [The fact that a license is revoked does not necessarily mean the licensee can never regain licensure.]

(2) Level Two--Extended suspension of license with a possible administrative penalty from \$250 to \$2,500. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but may require termination of licensure for a period of not less than one year.

(3) Level Three--Moderate suspension of license with a possible administrative penalty of no more than \$250. These violations are less serious than Level Two violations, but may require termination of licensure for a period of time that is less than a year.

(4) Level Four--Probated suspension of licensure. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate.

(5) Level Five--Reprimand. These violations involve inadvertent or relatively minor misconduct or [and/or] rule violations not directly involving the health, safety and welfare of the public.

(6) An administrative penalty may be assessed for any violation, as determined by the Ethics Committee [ethics committee]. An administrative penalty may be assessed in lieu of, or in addition to, other disciplinary actions.

§801.303. Other Actions.

A complaint may be resolved [The ethics committee may resolve pending complaints] with actions which are not considered formal disciplinary actions. These include: issuance of an advisory notice, warning letter; or informal reminder; issuance of a "Conditional Letter of Agreement;" or [and/or] other actions as deemed appropriate by the board. [ethics committee:] The licensee is not entitled to a hearing on the matters set forth in the notice, letter, reminder, "Conditional Letter of Agreement," or other action but may submit a written response that is [to be] included in the complaint record. Such actions [by the ethics committee] may be introduced as evidence in any subsequent disciplinary action involving acts or omissions after receipt of the notice, letter, reminder, "Conditional Letter of Agreement," or other action which [is] does not involve a formal disciplinary action.

(1) An advisory notice, warning letter or informal reminder. An [The ethics committee may resolve pending complaints by issuance of a formal] advisory notice, warning letter, or informal reminder informs the licensee of his or her [informing licensees of their] duties under the Act or this chapter, whether the conduct or omission complained of appears to violate such duties, and whether the board has a concern about the circumstances surrounding the complaint.

(2) A "Conditional Letter of Agreement." A [The ethics committee may resolve pending complaints by issuance of a] "Conditional Letter of Agreement" informs the licensee of his or her [informing licensees of their] duties under the Act or this chapter, whether the conduct or omission complained of appears to violate such duties, and creating board-ordered conditions for the long-term resolution of the issues in the complaint. This "Conditional Letter of Agreement" specifies the immediate disposition of the complaint. The licensee is issued the "Conditional Letter of Agreement" by the Ethics Committee [ethics committee], executive director, or designee; a signature of agreement by the licensee is not required. If the licensee fails to comply with all the board-ordered conditions in the specified time frame outlined in the "Conditional Letter of Agreement," staff will open [the licensee will not have a right to a subsequent review of the issues in the original complaint by the ethics committee, but rather,] a new complaint alleging non-compliance with a "Conditional Letter of Agreement" and the complaint alleging non-compliance will be processed per §801.296 (related to Complaint Procedures). Any [will be opened for the original violation(s), and notice of the violation(s) will be issued to the licensee, proposing to impose a formal disciplinary action as the resolution. The] disciplinary action proposed for failure to comply with a "Conditional Letter of Agreement" will be imposed per §801.293 of this title (relating to Procedures for Imposing Disciplinary Action). [will be a reprimand, unless otherwise specified by the ethics committee. "Procedures for Revoking, Suspending, Probating or Denying a License, or Reprimanding a Licensee" shall apply when a formal disciplinary action is proposed.]

(3) Other actions. A complaint may be resolved [The ethics committee may resolve pending complaints] with other actions which are not considered formal disciplinary actions.

§801.304. Reciprocal Discipline.

(a) Staff will open a complaint upon receipt of a report of disciplinary action against a licensee by another health licensing board in this state or any other jurisdiction.

(b) The disciplinary action imposed on a licensee who is disciplined by another health licensing board in this state or any other jurisdiction is the disciplinary action applicable to the same conduct or rule violation under board rules.

(c) A voluntary surrender of a license in lieu of disciplinary action or during an investigation by another health licensing board in this state or any other jurisdiction constitutes disciplinary action under this rule. Staff will open a complaint and the disciplinary action imposed is the disciplinary action applicable under board rules to the alleged conduct as if proved.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805173

Jennifer Smothermon, MA, LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



22 TAC §801.296

The repeal is sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The repeal affects Texas Occupations Code, Chapter 502.

§801.296. Complaint Procedures.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805174

Jennifer Smothermon, MA, LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER M. LICENSING OF PERSONS WITH CRIMINAL BACKGROUNDS

22 TAC §801.331, §801.332

The amendments are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments affect Texas Occupations Code, Chapter 502.

§801.331. Purpose of Criteria for Licensing of Persons with Criminal Backgrounds.

The purpose of this subchapter is to comply with Texas Occupations Code, Chapter 53 (relating to Consequences of Criminal Conviction) by establishing guidelines and criteria regarding the eligibility of persons with criminal backgrounds to obtain licenses as an LMFT or LMFT Associate [a marriage and family therapist].

§801.332. Criminal Conviction.

(a) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee or if the crime involves moral turpitude.

(b) In considering whether a criminal conviction directly relates to the occupation of a licensee, the board will [shall] consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license [to be a licensed marriage and family therapist or licensed marriage and family therapist associate]. The following felonies and misdemeanors relate to the license [of a licensed marriage and family therapist or licensed marriage and family therapist associate] because these criminal offenses indicate an inability, or a tendency to be unable, to perform as a therapist [or a tendency to be unable to perform as a licensed marriage and family therapist or licensed marriage and family therapist associate]:

(A) the misdemeanor of knowingly or intentionally acting as a therapist without a license;

(B) a misdemeanor or [and/or] a felony offense under various chapters of the Texas Penal Code:

(i) concerning Title 5, which relates to offenses against the person;

(ii) concerning Title 7, which relates to offenses against property;

(iii) concerning Title 9, which relates to offenses against public order and decency;

(iv) concerning Title 10, which relates to offenses against public health, safety, and morals; and

(v) concerning Title 4, which relates to offenses of attempting or conspiring to commit any of the offenses of this subparagraph; and

(3) other misdemeanors and felonies [that] the board may consider in order to promote the intent of the Act and this chapter;

(4) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(5) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of an LMFT or LMFT Associate [a licensed marriage and family therapist or licensed marriage and family therapist associate]. In making this determination, the board will apply the criteria outlined in Texas Occupations Code, Chapter 53.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805176

Jennifer Smothermon, MA, LPC, LMFT
Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER N. INFORMAL SETTLEMENT CONFERENCES

22 TAC §801.351

The amendment is sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendment affects Texas Occupations Code, Chapter 502.

§801.351. *Informal Settlement Conference.*

(a) Informal disposition of a [any] complaint as prescribed in §801.296 of this title (relating to Complaint Procedures) [or contested

case involving a licensee or an applicant for licensure] may be made through an informal settlement conference [held to determine whether an agreed order may be approved].

[(b) If the executive director or the ethics committee determines that the public interest may be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing, the provisions of this subchapter shall apply. A licensee or applicant may request an informal conference; however, the decision to hold a conference shall be made by the executive director or the ethics committee.]

(b) [(e)] An informal settlement conference is [shall be] voluntary and is [shall] not [be] a prerequisite to a formal hearing.

(c) [(d)] The executive director will schedule [shall decide upon] the time, date and place of the informal settlement conference, and provide written notice to the respondent or respondent's attorney, [licensee or applicant. Notice shall be provided no less than ten days prior to the date of the conference to the last known address of the licensee or applicant or by personal delivery. The ten days shall begin on the date of mailing or delivery. The licensee or applicant may waive the ten-day notice requirement.]

(1) Notice will be provided no less than ten calendar days before the date of the conference to the last known address of respondent or respondent's attorney by certified or registered mail or by personal delivery. The ten days begin on the date of mailing or delivery. The respondent or respondent's attorney may waive the ten-day notice requirement.

(2) The notice will inform the respondent or respondent's attorney of the name and style of the case, the date, time, and place of the informal settlement conference, and a short statement of the purpose of the informal settlement conference as well as a reference to this section of board rules.

(3) The notice of informal settlement conference includes the following statement in bold, capital letters of at least 10-point type: "Failure to appear. Your failure to appear for the informal settlement conference, in person or by representative, on the above date, at the appointed time and place, will be considered a waiver of your right to an informal settlement conference and a formal hearing. The factual allegations will be deemed admitted as true and the proposed disciplinary action will be imposed by default."

[(e) A copy of the board's rules concerning informal conference may be enclosed with the notice of the informal conference. The notice shall inform the licensee or applicant of the following:]

[(1) that the licensee may be represented by legal counsel;]

[(2) that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate;]

[(3) that at least one member of the ethics committee members shall be present;]

[(4) that the board's legal counsel or a representative of the Office of the Attorney General will be present;]

[(5) that the licensee's or applicant's attendance and participation is voluntary; and]

[(6) that the complainant and any client involved in the alleged violations may be present.]

(d) [(f)] Staff will send [The] notice of the informal settlement conference [may be sent] to the complainant at his or her last known address or by personal delivery. [personally delivered to the complainant.] The complainant will [may] be informed [that] he or she

may appear and testify or may submit a written statement for consideration at the informal settlement conference.

(e) The respondent's or respondent's attorney's attendance and participation in an informal settlement conference is voluntary.

(f) ~~[(g)]~~ At least one board member will attend [of the ethics committee shall be present at] an informal settlement conference.

(g) The board's legal counsel or an attorney from the Office of the Attorney General will attend each informal settlement conference. The board member(s) or staff may ask the attorney for assistance at any time during the informal settlement conference. During periods of consultation between the board member(s), staff, and the board's legal counsel, all other attendees may be asked to leave the room.

(h) The conference is [shall be] informal and does [shall] not follow the procedures established in this chapter for contested cases and formal hearings.

(i) Access to the board's investigative file may be prohibited or limited in accordance with the Public Information Act, the Administrative Procedure Act (APA), and other applicable law.

(j) At the discretion of the board member(s) or executive director, a recording may be made of some or all of the informal settlement conference.

(k) ~~[(i)]~~ The board member(s), the board's legal counsel, staff, or respondent or respondent's attorney [licensee or applicant, the licensee's or applicant's attorney, ethics committee members, the board's legal counsel, and the executive director,] may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(l) The complainant is not a party in the informal settlement conference but, if attending, will be offered the opportunity to speak. Any written statement submitted by the complainant will be reviewed at the conference.

~~[(j)]~~ The board's legal counsel or an attorney from the Office of the Attorney General shall attend each informal conference. The ethics committee members or executive director may call upon the attorney at any time for assistance in the informal conference.]

~~[(k)]~~ Access to the board's investigative file may be prohibited or limited in accordance with the Public Information Act, the Administrative Procedure Act (APA), and other applicable law.]

~~[(l)]~~ At the discretion of the executive director or the ethics committee members, a recording may be made of some or all of the informal conference.]

(m) The [complainant and others present at the request of the complainant, members of the board, the] licensee or applicant, the licensee's or applicant's attorney, and board staff may remain for all portions of the informal settlement conference, except consultation between the board members, staff, and the board's legal counsel. Subject to the discretion of the board, witnesses or other attendees[, other than the complainant,] may be allowed in the meeting only during their testimony.

~~[(n)]~~ The complainant shall not be considered a party in the informal conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.]

(n) ~~[(o)]~~ At the conclusion of the informal settlement conference, the board member(s), the board's legal counsel, or staff [ethics committee member(s) or executive director] may make a proposal for an informal settlement of the complaint [or contested case]. [The

proposed settlement may include administrative penalties or any disciplinary action authorized by the Act. The ethics committee member(s) or executive director may also recommend that the board lacks jurisdiction, that a violation of the Act or this chapter has not been established, or that the investigation be closed.]

(o) ~~[(p)]~~ The respondent or respondent's attorney [licensee or applicant] may either accept or reject the settlement recommendations at the conference. [If the recommendations are accepted, an agreed order shall be prepared by the executive director, executive director's designee or the board's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within ten days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.]

(1) If the recommendations are accepted, staff will prepare and send an agreed order to the last known address of the respondent or respondent's attorney by certified or registered mail or by personal delivery. The agreed order contains findings of fact and conclusions of law.

(A) The respondent will sign and return the order within ten calendar days of his or her receipt of the order. If the respondent or respondent's attorney fails to return the signed order within the stated time period, the inaction will constitute rejection of the settlement recommendations.

(B) The executive director will place the agreed order on the board agenda; the agreed order constitutes only a recommendation for approval by the informal settlement conference board member(s), board's attorney, or staff.

(C) Staff will send notice of the board meeting to the last known address of the respondent or respondent's attorney by certified or registered mail or by personal delivery. The meeting notice will include the date, time, and place of the board meeting. Attendance by the respondent or respondent's attorney is voluntary.

(D) The executive director will present the agreed order with the respondent's signature to the board for review. The board may not change the terms of a proposed order and may only approve or reject an agreed order unless the respondent or respondent's attorney is present at the board meeting and agrees to other terms proposed by the board.

(i) Upon an affirmative majority vote, the board executes the agreed order approving the accepted settlement recommendations.

(ii) If the board rejects a proposed agreed order, the matter is referred to the executive director for appropriate action.

(E) An agreed order is not effective until approved and executed by the board. The order is then effective in accordance with the APA, §2001.054(c).

(2) If the respondent or respondent's attorney rejects the proposed settlement, the matter will be referred to the executive director for appropriate action.

~~[(q)]~~ If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the executive director for appropriate action.]

~~[(r)]~~ If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire board for

its approval. Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by board.}]

[(s)] The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.}]

[(t)] Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted settlement recommendations. The board may not change the terms of a proposed order and may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.}]

[(u)] If the board does not approve a proposed agreed order, the licensee or applicant and the complainant shall be so informed. The matter shall be referred to the executive director for other appropriate action.}]

[(v)] A proposed agreed order is not effective until the full board has approved the agreed order. The order shall then be effective in accordance with the APA, §2001.054(e).}]

[(p)] [(w)] A licensee's opportunity for an informal settlement conference under this subchapter satisfies [shall satisfy] the requirement of the APA, §2001.054(c).

[(q)] [(x)] The board may order a respondent [license holder] to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty. The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the respondent [license holder] for a service regulated by the Act and this title. The board may not require payment of other damages or estimate harm in a refund order.

[(y)] The following statement shall be included in to the notice of informal conference, in bold letters of at least 10 point type:}]
[Figure:22 TAC §801.351(y)]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805178

Jennifer Smothermon, MA, LPC, LMFT
Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



SUBCHAPTER O. FORMAL HEARINGS

22 TAC §§801.362 - 801.364

The amendments are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients

are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments affect Texas Occupations Code, Chapter 502.

§801.362. *Proper Notice.*

(a) For purposes of contested case proceedings before the State Office of Administrative Hearings, proper notice means notice sufficient to meet the provisions of the Texas Government Code, Chapter 2001 and the State Office of Administrative Hearings Rules of Procedure, 1 Texas Administrative Code, Chapter 155.

[(b)] For purposes of informal conferences, proper notice shall include the name and style of the case, the date, time, and place of the informal conference, and a short statement of the purpose of the conference.}]

[(b)] [(e)] The notice of formal hearing will include the following statement [shall be attached to the notice of hearing or notice of informal conference,] in bold, capital letters of at least 10-point type.[:]
Figure: 22 TAC §801.362(b)
[Figure: 22 TAC §801.362(e)]

§801.363. *Default.*

(a) For purposes of this section, default means the failure of the respondent to appear in person, or by legal representative, or by telephone on the day and at the time set for hearing in a contested case or informal settlement conference[, or the failure to appear by telephone,] in accordance with the notice of hearing or notice of informal settlement conference.

(b) Remedies available upon default in a contested case before the State Office of Administrative Hearings (SOAH). The Administrative Law Judge (ALJ) will [shall] proceed in the party's absence and such failure to appear entitles the board [shall entitle the department] to seek informal disposition as provided by the Texas Government Code, Chapter 2001. The ALJ will [shall] grant any motion by the board [department] to remove the case from the contested hearing docket and allow for informal disposition by the board.

(c) Remedies available upon default in an informal settlement conference. The board may proceed to make such informal disposition of the case as it deems proper, as if no request for hearing had been received.

(d) The board may enter a default judgment by issuing an order against the defaulting party in which the factual allegations in the notice of violation or notice of hearing are deemed admitted as true without the requirement of submitting additional proof, upon the offer of proof that proper notice was provided to the defaulting party.

(e) Motion to set aside and reopen. A timely motion by the respondent to set aside the default order and reopen the record may be granted if the respondent establishes that the failure to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to mistake, accident, or circumstances beyond the respondent's control.

(1) The respondent must file a [A] motion to set aside the default order and reopen the record [shall be filed] with the board before [prior to] the time [that] the order of the board becomes final, pursuant to the provisions of the Texas Government Code.

(2) A motion to set aside the default order and reopen the record is not a motion for rehearing and is not [to be] considered a

substitute for a motion for rehearing. The filing of a motion to set aside the default order and reopen has no effect on either the statutory time periods for the filing of a motion for rehearing or on the time period for ruling on a motion for rehearing, as provided in the Texas Government Code.

(f) This subsection also applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the notice was sent to the party's last known address as shown in the board's ~~[on the department's]~~ records, with no showing of actual receipt by the defaulting party or the defaulting party's agent. In that situation, the default procedures described in subsection (c) of this section may be used if there is credible evidence ~~[that]~~ the notice of hearing was sent by certified or registered mail or personal delivery~~[- return receipt requested,]~~ to the defaulting party's last known address.

§801.364. Action after Hearing.

(a) Reopening of hearing for new evidence.

(1) The board may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing.

(2) Staff will ~~[The department shall]~~ reopen a hearing to include such new evidence as part of the record if the board deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(3) Staff will send written notice ~~[Notice]~~ of any reopened hearing ~~[shall be provided]~~ to all previously designated parties, by certified or registered mail or personal delivery. ~~[mail, return receipt requested.]~~

(b) Final orders or decisions.

(1) The final order or decision is ~~[of the department will be]~~ rendered by the board or its designee.

(2) All final orders or decisions will ~~[shall]~~ be in writing and will ~~[shall]~~ set forth the findings of fact and conclusions required by law, either in the body of the order, by attachment, or by reference to an Administrative Law Judge's proposal for decision.

(3) Unless otherwise permitted by statute or by these sections, all final orders will ~~[shall]~~ be signed by the board chair~~[-]~~ or designee.

(c) Motion for rehearing. A motion for rehearing is ~~[shall be]~~ governed by the APA or other pertinent statute and must ~~[shall]~~ be filed with the board.

(d) Appeals. All appeals from final ~~[department]~~ orders or decisions are ~~[shall be]~~ governed by the APA or other pertinent statute and must ~~[shall]~~ be addressed to the board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805179

Jennifer Smothermon, MA, LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: January 13, 2019

For further information, please call: (512) 776-6972



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 525. AUDIT REQUIREMENTS FOR SOIL AND WATER CONSERVATION DISTRICTS

SUBCHAPTER A. AUDITS OF DISTRICTS

31 TAC §525.5, §525.8

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to §525.5 concerning Audit Exemptions and §525.8 concerning Compliance Contingencies for Soil and Water Conservation Districts (SWCDs).

Background and Purpose

Many SWCDs have small operating budgets. The cost of audits performed in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants as mandated by §201.080(d), Agriculture Code and §525.4 of these rules. Certified public accountants or public accountants holding permits from the Texas State Board of Public Accountancy must include the auditor's opinion as to the fair presentation of the financial statements taken as a whole. The financial burden on SWCDs continues to increase and, in some cases, amounts to a double-digit percentage of the entire operating budget of SWCDs.

Section-by-Section Summary

The amendments to §525.5(a)(2) and §525.5(b)(2) may provide SWCDs some financial relief from the increasing cost of certified audits which may outweigh the benefits of auditing small operating accounts. The amendment to §525.8(c)(3) would grant the Executive Director or his designee the authority to exempt the hold of funds requirement, as found in §525.8(a)(1) and (2) and (c)(1) and (2), on a SWCD if it creates an undue hardship to the operation of the SWCD due to extenuating circumstances, such as, but not limited to, natural disasters.

The proposed amendment to §525.5(a)(2) would increase a SWCD's ceiling of gross revenue from \$40,000.00 in any year of the biennial period to a maximum of \$75,000.00. This adjustment would make the requirement for an accountant compilation and review of SWCD records more cost effective.

The proposed amendment to §525.5(b)(2) would increase a SWCD's ceiling of gross state revenue from \$100,000.00 to \$250,000.00 in any year of the biennial period. This adjustment would make the requirement for an accountant compilation and review of SWCD records more cost effective.

New subsection §525.8(c)(3) states that a SWCD's hold status will be removed if: (1) it is in compliance or (2) if the Executive Director or his designee temporarily exempts the hold requirements on a SWCD if it creates undue hardship due to extenuating circumstances, such as, but not limited to natural disasters.

Fiscal Note

Kenny Zajicek, COO/CFO for the State Board, has determined that for the first five-year period the proposed amendments will be in effect, there will be no anticipated fiscal implications for