

§ 503.001. SHORT TITLE. This chapter may be cited as the Licensed Professional Counselor Act.

§503.002. GENERAL DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Examiners of Professional Counselors.

(1-a) "Commissioner" means the commissioner of the department.

(2) "Department" means the Department of State Health Services.

(3) "Graduate semester hour" means a semester hour or the quarter hour equivalent as defined by regional accrediting educational associations when applied only to domestic training programs.

(4) "Licensed professional counselor" means a person who holds a license issued under this chapter and who:

(A) represents the person to the public by any title or description of services incorporating the words "licensed counselor" and offers to provide professional counseling services to any individual, couple, family, group, or other entity for compensation, implying that the person offering the services is licensed and trained, experienced, or expert in counseling; or

(B) engages in any practice of counseling.

§503.003. DEFINITION: PRACTICE OF PROFESSIONAL COUNSELING.

(a) In this chapter, "practice of professional counseling" means the application of mental health, psychotherapeutic, and human development principles to:

(1) facilitate human development and adjustment throughout life;

(2) prevent, assess, evaluate, and treat mental, emotional, or behavioral disorders and associated distresses that interfere with mental health;

(3) conduct assessments and evaluations to establish treatment goals and objectives; and

(4) plan, implement, and evaluate treatment plans using counseling treatment interventions that include:

(A) counseling;

(B) assessment;

(C) consulting; and

(D) referral.

(b) In this section:

(1) "Assessment" means the selection, administration, scoring, and interpretation of an instrument designed to assess an individual's aptitudes, attitudes, abilities, achievements, interests, personal characteristics, disabilities, and mental, emotional, and behavioral disorders, and the use of methods and techniques for understanding human behavior that may include the evaluation, assessment, and treatment by counseling methods, techniques, and procedures for mental and emotional disorders, does not include the use of standardized projective techniques or permit the diagnosis of a physical condition or disorder.

(2) "Consulting" means applying scientific principles and procedures in counseling and human development to assist in understanding and solving current or potential problems that the person seeking consultation may have with regard to another person, including an individual, group, or organization.

(3) "Counseling" means assisting a client through a therapeutic relationship, using a combination of mental health and human development principles, methods, and techniques, including the use of psychotherapy, to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(4) "Counseling treatment intervention" means the application of cognitive, affective, behavioral, psychodynamic, and systemic counseling strategies, including strategies for developmental, wellness, and psychological dysfunction that reflect a pluralistic society. The term does not permit or include the diagnosis or treatment of a physical condition or disorder. The term includes:

(A) an intervention specifically implemented in the context of a professional counseling relationship;

(B) individual, group, or family counseling or psychotherapy;

(C) the assessment, evaluation, and treatment of a person with a mental, emotional, or behavioral disorder;

(D) guidance and consulting to facilitate normal growth and development, including educational and career

(E) the use of functional assessment and counseling for a person requesting assistance in adjustment to a disability or handicapping condition;

(F) research; and

(G) referrals.

(5) "Referral" means:

(A) evaluating and identifying the needs of a person being counseled to determine the advisability of referral to another specialist;

(B) informing the person of that judgment; and

(C) communicating to the person to whom the referral is made as requested by the person being counseled or as appropriate.

(c) The use of specific methods, techniques, or modalities within the practice of professional counseling is limited to professional counselors appropriately trained in the use of those methods, techniques, or modalities.

§503.004. PRACTICE OF MEDICINE NOT AUTHORIZED. This chapter does not authorize the practice of medicine as defined by the law of this state.

§503.005. APPLICATION OF SUNSET ACT. The Texas State Board of Examiners of Professional Counselors is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017.

#### SUBCHAPTER B. APPLICATION OF CHAPTER

§503.051. COUNSELING FOR GOVERNMENT OR EDUCATIONAL INSTITUTION.

This chapter does not apply to an activity, service, or use of an official title by a person employed as a counselor by a federal, state, county, or municipal agency or public or private educational institution if the person is performing counseling or counseling-related activities within the scope of the person's employment.

§503.052. COUNSELOR INTERN. This chapter does not apply to an activity or service of a student, intern, or trainee in counseling pursuing a course of study in counseling in a regionally accredited institution of higher education or training institution if:

(1) the activity or service is a part of the supervised course of study; and

(2) the person is designated as a "counselor intern."

§503.054. COUNSELING BY OTHER LICENSED OR CERTIFIED PROFESSIONAL OR BY RELIGIOUS PRACTITIONER.

This chapter does not apply to an activity or service of any of the following persons performing counseling consistent with the law of this state, the person's training, and any code of ethics of the person's profession if the person does not represent the person by any title or description as described by the definition of "licensed professional counselor" in Section 503.002:

(1) a member of another profession licensed or certified by this state, including:

(A) a physician, registered nurse, psychologist, social worker, marriage and family therapist, chemical dependency counselor, physician assistant, or occupational therapist; or

(B) an optometrist engaged in the evaluation and remediation of learning or behavioral disabilities associated with or caused by a defective or abnormal condition of vision; or

(2) a recognized religious practitioner, including a Christian Science practitioner recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal.

§503.055. PERSON LICENSED TO PRACTICE LAW.

This chapter does not apply to an activity, service, title, or description of a person licensed to practice law.

§503.056. COUNSELING FOR NONPROFIT ORGANIZATION OR CHARITY.

This chapter does not apply to an activity, service, title, or description of a person who is employed as a professional by or who volunteers in the practice of

counseling for a public or private nonprofit organization or charity if the person:

(1) is accountable to the person's sponsoring organization; and

(2) does not use the title or hold the person out to be a licensed counselor.

#### §503.057. COUNSELING UNDER OTHER CERTIFICATION.

This chapter does not apply to an activity, service, title, or description of a person certified by the Commission on Rehabilitation Counselor Certification or the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists who:

(1) is performing counseling consistent with state law, the person's training, and any code of ethics of the person's profession; and

(2) does not use the title or hold the person out to be a licensed counselor.

#### §503.058. CERTIFIED CAREER COUNSELING.

This chapter does not apply to a person who owns, operates, or is employed by a certified career counseling service regulated under Chapter 2502.

#### §503.059. EXEMPT PERSON VOLUNTARILY LICENSED UNDER CHAPTER.

A person otherwise exempt under this subchapter who obtains a license under this chapter is subject to this chapter to the same extent as any other person licensed under this chapter.

#### §503.060. MUSICAL THERAPY SERVICES.

This chapter does not apply to an activity, service, title, or description of a person who:

(1) is certified by the Certification Board for Music Therapists or listed with the National Music Therapy Registry;

(2) performs a music therapy service consistent with:

- (A) state law;
- (B) the person's training;

and

(C) the code of ethics of the person's profession; and

(3) does not engage in the use of psychotherapy or use the title of licensed counselor or represent that the person is a licensed counselor.

### SUBCHAPTER C. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

#### §503.101. BOARD MEMBERSHIP.

(a) The Texas State Board of Examiners of Professional Counselors consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) five licensed professional counselor members, at least three of whom are in private practice and at least one of whom is a counselor educator; and

(2) four members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

#### §503.102. MEMBERSHIP QUALIFICATIONS.

(a) To be qualified for appointment as a licensed professional counselor member of the board, a person must:

(1) be a citizen of the United States and a resident of this state for the 30 months preceding appointment;

(2) have engaged in the field of counseling for at least 24 months or 2,000 hours; and

(3) be licensed under this chapter.

(b) To be qualified for appointment as a public member of the board, a person must:

(1) be a citizen of the United States and a resident of this state for the 30 months preceding appointment; and

(2) be at least 18 years old.

#### §503.103. ELIGIBILITY OF PUBLIC MEMBERS.

A person is not eligible for appointment as a public member of the board if:

(1) the person is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) the person's spouse is registered, certified, or licensed by an occupational regulatory agency in the field of mental health; or

(3) the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization receiving funds from the board;

(B) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the board; or

(C) uses or receives a substantial amount of funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

#### §503.104. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

(a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, manager, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of mental health.

(c) A person may not be a member of the board or act as the general counsel to the board or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

#### §503.105. TERMS.

Board members serve staggered six-year terms with the terms of three members expiring on February 1 of each odd-numbered year. In making an appointment to the board, the governor shall specify which member the new appointee succeeds.

#### §503.106. OFFICERS.

(a) The governor shall designate a member of the board as presiding officer. The presiding officer serves in that capacity at the will of the governor.

(b) The board shall elect an assistant presiding officer to serve as provided by board rule.

#### §503.107. GROUNDS FOR REMOVAL.

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 503.102;

(2) does not maintain during the service on the board the qualifications required by Section 503.102;

(3) is ineligible for membership under Section 503.103 or 503.104;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a member of the board exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and attorney general that a potential ground for removal exists.

#### §503.108. REIMBURSEMENT.

A board member may receive reimbursement for expenses as provided by the General Appropriations Act.

#### §503.109. MEETINGS.

The board shall hold at least two regular meetings each year as provided by board rule.

§503.110. TRAINING.

(a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts-of-interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) Repealed by Acts 2005, 79th Leg., ch. 561, § 25(2).

§503.111. OFFICIAL OATH.

Before assuming the duties of office, each board member shall file with the secretary of state a copy of the constitutional oath of office taken by the member.

SUBCHAPTER D. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL

§503.151. EXECUTIVE DIRECTOR. The commissioner of public health, with the advice and consent of the board, shall appoint an executive director for the board. The executive director must be an employee of the department.

§503.152. POWERS AND DUTIES OF EXECUTIVE DIRECTOR.

(a) The executive director serves as the administrator of professional counselor licensing activities for the board. The executive director shall:

(1) keep full and accurate minutes of the board's transactions and proceedings;

(2) serve as custodian of the board's files and records;

(3) prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter, including rules and proposals on administrative procedures;

(4) exercise general supervision over persons employed by the department in the administration of this chapter;

(5) investigate complaints and present formal complaints;

(6) attend all board meetings;

(7) handle or arrange for the handling of the board's correspondence;

(8) conduct or arrange for necessary inspections and investigations;

(9) obtain, assemble, or prepare reports and information as directed or authorized by the board; and

(10) perform other duties prescribed by this chapter and by the department.

(b) The executive director is not entitled to vote at board meetings.

§503.153. PERSONNEL AND FACILITIES.

(a) The department shall provide the basic personnel and facilities required to administer this chapter. The department personnel administering this chapter act as agents of the board.

(b) The department by agreement may secure services that it considers necessary to administer this chapter and may provide for compensation for those services.

(c) The department may employ on a full-time or part-time basis the professional consultants, technical assistants, and employees necessary to administer this chapter.

§503.154. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and staff of the department.

§503.155. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION.

The board shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

#### SUBCHAPTER E. BOARD POWERS AND DUTIES

##### §503.201. GENERAL POWERS AND DUTIES.

(a) The board shall:

(1) determine the qualifications and fitness of an applicant for a license, license renewal, or provisional license;

(2) examine for, deny, approve, issue, revoke, suspend, suspend on an emergency basis, place on probation, and renew the license of an applicant or license holder under this chapter;

(3) adopt and publish a code of ethics;

(4) by rule adopt a list of authorized counseling methods or practices that a license holder may undertake or perform; and

(5) adopt an official seal.

(b) The board may request and shall receive the assistance of a state educational institution or other state agency.

##### §503.202. FEES.

(a) The board by rule shall establish fees for the board's services in amounts reasonable and necessary to cover the costs of administering this chapter without accumulating an unnecessary surplus.

(b) The board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

##### §503.203. GENERAL RULEMAKING AUTHORITY.

(a) The board shall adopt rules necessary to administer this chapter.

(b) The board shall conduct hearings on the rules adopted under this section.

##### §503.204. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING.

(a) The board may not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit

(b) The board may not include in rules to prohibit false, misleading, or deceptive practices by a license holder a rule that:

(1) restricts the license holder's use of any advertising medium;

(2) restricts the license holder's personal appearance or use of the license holder's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder; or

(4) restricts the license holder's advertisement under a trade name.

##### §503.2045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.

(a) The board shall adopt rules necessary to comply with Chapter 53.

(b) In its rules under this section, the board shall list the specific offenses for which a conviction would constitute grounds for the board to take action under Section 53.021.

##### §503.205. DELEGATION TO COMMITTEE.

The board may delegate a function or activity required by this chapter to a committee of board members on a permanent or temporary basis if the board agrees to the delegation.

##### §503.206. ANNUAL REPORT OF BOARD ACTIVITIES.

As part of the report required by Section 11.017, Health and Safety Code, the Texas Board of Health shall include a report about the activities of the Texas State Board of Examiners of Professional Counselors during the preceding fiscal year.

##### §503.207. LICENSE HOLDER REGISTRY.

(a) Each year the board shall prepare a registry of persons licensed under this chapter. The registry must include listings of any specializations permitted by law or by board rule. The registry shall be made available on request to a license holder, another state agency, or a member of the public.

(b) A person licensed under this chapter shall inform the board of the person's current address at all times.

##### §503.208. COMPETENT PERFORMANCE OF PROFESSIONAL DUTIES.

The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties.

§503.209. BOARD DUTIES REGARDING COMPLAINTS.

(a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

§503.210. USE OF TECHNOLOGY.

The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

§503.211. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY.

(a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

SUBCHAPTER F. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

§503.251. PUBLIC INTEREST INFORMATION.

(a) The board shall prepare and disseminate consumer information that describes the regulatory functions of the board and the procedures by which consumer complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

§503.252. COMPLAINTS.

(a) The board by rule shall 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. The board may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for service provided by a person regulated under this chapter.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

§503.253. RECORDS OF COMPLAINTS.

(a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

(2) a summary of the results of the review or investigation of the complaint; and

(3) information about the disposition of the complaint.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the parties of the status of the complaint until final disposition of the complaint.

**§503.254. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION.**

The board shall adopt rules concerning the investigation of a complaint filed with the board.

The rules must:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who files a complaint has an opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

**§503.2545. SUBPOENAS**

(a) In an investigation of a complaint filed with the board, the board may request that the commissioner of public health or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board may delegate the authority granted under Subsection (a) to the executive director.

(f) The board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its records.

(g) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

(h) All information and materials subpoenaed or compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license, except that this information may be disclosed to:

- (1) persons involved with the board in a disciplinary action against the holder of a license;
- (2) professional counselor licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the board against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

**§503.255. DISPOSITION OF COMPLAINT.**

(a) The board shall:

- (1) dispose of each complaint in a timely manner; and
- (2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(b) Each party shall be notified of the projected time requirements for pursuing the

complaint. The board shall notify each party to the complaint of any change in the schedule established under Subsection (a)(2) not later than the seventh day after the date the change is made.

(c) The executive director shall notify the board of a complaint that is not resolved within the time prescribed by the board for resolving the complaint.

§503.2555. COMPLAINT COMMITTEE.

The 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.

§503.256. PUBLIC PARTICIPATION.

(a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

SUBCHAPTER G. LICENSE REQUIREMENTS

§503.301. LICENSE REQUIRED.

A person may not engage in the practice of professional counseling unless the person is:

- (1) licensed under this chapter; or
- (2) exempt from this chapter under

Subchapter B.

§503.302. QUALIFICATIONS FOR LICENSE.

(a) A person qualifies for a license under this chapter if the person:

- (1) is at least 18 years old;
- (2) has a master's or doctoral degree in counseling or a related field;
- (3) has successfully completed a graduate degree at a regionally accredited institution of higher education and the number of graduate semester hours required by board rule, which may not be less than 48 hours and must include 300 clock hours of supervised practicum that:

(A) is primarily counseling in nature; and

(B) meets the specific academic course content and training standards established by the board;

(4) has completed the number of supervised experience hours required by board rule, which may not be less than 3,000 hours working in a counseling setting that meets the requirements established by the board after the completion of the graduate program described by Subdivision (3);

(5) except as provided by Subsection (b), passes the license examination and jurisprudence examination required by this chapter;

(6) submits an application as required by the board, accompanied by the required application fee; and

(7) meets any other requirement prescribed by the board.

(b) Repealed by Acts 2005, 79th Leg., ch. 561, § 25(3).

(c) Repealed by Acts 2005, 79th Leg., ch. 561, § 25(3).

(d) In establishing the standards described by Subsection (a)(3)(B), the board shall review and consider the standards as developed by the appropriate professional association.

(e) The board may require the statements on a license application to be made under oath.

§503.303. SPECIALIZATION IN ART THERAPY.

(a) A person qualifies for a license as a professional counselor with a specialization in art therapy if the person:

(1) meets the requirements for a license under Section 503.302;

(2) holds:

(A) a master's or doctoral degree in art therapy that includes at least 700 hours of supervised practicum from an accredited institution; or

(B) a master's degree in a counseling-related field if the person has completed at least:

(i) 21 semester hours of sequential course work in the history, theory, and practice of art therapy; and

(ii) 700 hours of supervised practicum from an accredited institution;

(3) completes the following postgraduate experience in addition to the requirements of Subdivision (2) under the

supervision of a licensed professional counselor with a specialization in art therapy:

(A) at least 1,000 client contact hours, if the applicant holds a degree described by Subdivision (2)(A); or

(B) at least 2,000 client contact hours, if the applicant holds a degree described by Subdivision (2)(B); and

(4) demonstrates successful completion of the national Certification Examination in Art Therapy of the Art Therapy Credentials Board.

(b) The board shall accept an individual course from an art therapy program accredited through the American Art Therapy Association as satisfying the education requirements under Section 503.302(a)(3) if at least 75 percent of the course content is substantially equivalent to the content of a course required by board rule.

(c) Repealed by Acts 2005, 79th Leg., ch. 561, § 25(4).

#### §503.304. REVIEW OF APPLICATION.

(a) Not later than the 30th day before the examination date, after investigation of a license application and review of other evidence submitted, the board shall notify the applicant that the application and evidence submitted are:

(1) satisfactory and accepted; or

(2) unsatisfactory and rejected.

(b) If the board rejects an application, the board shall state in the notice the reasons for the rejection.

#### §503.305. LICENSE EXAMINATION.

(a) The board shall administer examinations to determine the competence of qualified applicants at least twice each calendar year.

(b) The board shall contract with a nationally recognized testing organization to develop and administer a written professional counselor licensing examination to applicants who apply for a license under this chapter.

(c) Repealed by Acts 2005, 79th Leg., ch. 561, § 25(5).

(d) Repealed by Acts 2005, 79th Leg., ch. 561, § 25(5).

(e) Repealed by Acts 2005, 79th Leg., ch. 561, § 25(5).

#### §503.3055. JURISPRUDENCE EXAMINATION

(a) The board shall develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, board rules, and any other applicable laws of this state affecting the applicant's professional counseling practice.

(b) The board shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

#### §503.306. EXAMINATION RESULTS.

(a) The board shall notify each examinee of the examination results not later than the 30th day after the date on which the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the examination results not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the examination results graded or reviewed by a national testing service will be delayed for more than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination.

(d) Notwithstanding the other provisions of this section, the board may notify an applicant of the applicant's examination results in the manner provided in a contract between the board and a testing organization selected by the board under Section 503.305.

#### §503.307. REEXAMINATION.

(a) An applicant who fails an examination may reapply and take a subsequent examination.

(b) An applicant who has failed two successive examinations may not reapply for another examination before:

(1) the second anniversary of the date of the last examination taken by the applicant; or

(2) the date the applicant has satisfactorily completed nine graduate semester hours in the applicant's weakest portion of the examination.

§503.308. TEMPORARY LICENSE.

(a) The board by rule may provide for the issuance of a temporary license. Rules adopted under this subsection must provide a time limit for the period a temporary license is valid.

(b) The board by rule may adopt a system under which a temporary license may be issued to a person who:

(1) meets all of the academic requirements for licensing; and

(2) enters into a supervisory agreement with a supervisor approved by the board.

§503.310. PROVISIONAL LICENSE.

(a) On application and payment of applicable fees, the board may issue a provisional license to a person who holds a license as a counselor or art therapist issued by another state or by a jurisdiction acceptable to the board.

(b) An applicant for a provisional license must:

(1) be licensed in good standing as a counselor or art therapist in another state, territory, or jurisdiction that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) have passed the required license examination; and

(3) be sponsored by a person licensed under this chapter with whom the applicant may practice under a provisional license.

(c) An applicant is not required to comply with Subsection (b)(3) if the board determines that compliance with that subsection is a hardship to the applicant.

(d) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license under Section 503.311.

§503.311. ISSUANCE OF LICENSE TO PROVISIONAL LICENSE HOLDER.

(a) The board shall issue a license to the holder of a provisional license who applies for a license if:

(1) the board verifies that the applicant has the academic and experience requirements for a regular license under this chapter; and

(2) the applicant satisfies any other license requirements under this chapter.

(b) The board must complete the processing of a provisional license holder's application for a license not later than the later of:

(1) the 180th day after the date the provisional license is issued; or

(2) the date licenses are issued following completion of the examination.

§503.312. INACTIVE STATUS.

(a) On request of a person licensed under this chapter, the board shall place the person's license on inactive status.

(b) A person whose license is inactive:

(1) foregoes the licensing rights granted under this chapter; and

(2) is not required to pay a license renewal fee or any penalty fee.

(c) A person whose license is inactive may apply to reactivate the license. The board shall reactivate the license if the applicant:

(1) pays a license fee;

(2) is not in violation of this chapter when the applicant applies to reactivate the license; and

(3) fulfills the requirements provided by board rule for the holder of an inactive license.

§503.313. RETIREMENT STATUS.

The board by rule may adopt a system for placing a person licensed under this chapter on retirement status.

§503.314. DISPLAY AND SURRENDER OF LICENSE CERTIFICATE.

(a) A person licensed under this chapter shall display the person's license certificate in an appropriate and public manner.

(b) A license certificate issued by the board is the property of the board and must be surrendered on demand.

SUBCHAPTER H. LICENSE RENEWAL

§503.351. RENEWAL; ELIGIBILITY.

A person licensed under this chapter may renew the license biennially if the person:

(1) is not in violation of this chapter when the person applies for renewal; and

(2) fulfills the continuing education requirements established by the board.

#### §503.352. LICENSE EXPIRATION DATE.

The board shall adopt a system under which licenses expire on various dates during the year. On renewal of the license on the expiration date, the total license renewal fee is payable.

#### §503.353. NOTICE OF LICENSE EXPIRATION.

Not later than the 30th day before the expiration date of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the board's records

#### § 503.354. PROCEDURE FOR RENEWAL.

(a) A license holder is responsible for renewing the license before the expiration date of the license.

(b) A person may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license.

(c) A person whose license has been expired for 90 days or less may renew the license by paying to the board a fee that is equal to 1-1/4 times the amount of the renewal fee.

(d) If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a fee that is equal to 1-1/2 times the amount of the renewal fee.

(e) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

#### §503.355. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER.

The board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applied for renewal. The person must pay to the board a fee that is equal to the amount of the license examination fee.

#### §503.356. CONTINUING EDUCATION.

(a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this chapter.

(b) The board may:

(1) assess the continuing education needs of license holders; and

(2) require license holders to attend continuing education courses specified by the board.

(c) The board by rule shall develop a process to evaluate and approve continuing education courses.

(d) The board shall implement a procedure to assess a license holder's participation in continuing education programs.

#### SUBCHAPTER I. DISCIPLINARY PROCEDURES

#### §503.401. DISCIPLINARY ACTIONS.

(a) A person licensed under this chapter is subject to disciplinary action under this section if the person:

(1) violates this chapter or a rule or code of ethics adopted by the board;

(2) commits an act for which the license holder would be liable under Chapter 81, Civil Practice and Remedies Code;

(3) is legally committed to an institution because of mental incompetence from any cause; or

(4) directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a patient or patronage.

(b) If a person is subject to disciplinary action under this section, the board shall:

(1) revoke or suspend the person's license, including a suspension on an emergency basis;

(2) refuse to renew the person's license;

(3) suspend the person's license and place the person on probation with the license suspension probated; or

(4) reprimand the person.

(c) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit the license holder's practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(d) A license holder is entitled to a hearing conducted by the State Office of Administrative Hearings before a sanction is imposed under this section.

#### §503.402. SCHEDULE OF SANCTIONS.

(a) The board by rule shall adopt a broad schedule of sanctions for violations under this chapter.

(b) The State Office of Administrative Hearings shall use the schedule for any sanction imposed under this chapter as the result of a hearing conducted by that office.

#### §503.403. TEMPORARY LICENSE SUSPENSION.

(a) The board or a three-member committee of board members designated by the board shall temporarily suspend the license of a license holder if the board or committee determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

#### §503.404. INFORMAL PROCEDURES.

(a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054(c), Government Code.

(b) Rules adopted under Subsection (a) must:

(1) provide the complainant and the license holder an opportunity to be heard; and

(2) require the presence of a representative of the attorney general or the department's legal staff to advise the board or the board's employees.

#### §503.405. MONITORING OF LICENSE HOLDER.

(a) The board by rule shall develop a system for monitoring a license holder's compliance with this chapter.

(b) The rules must include procedures to:

(1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and

(2) identify and monitor license holders who represent a risk to the public.

#### §503.406. APPLICATION OF ADMINISTRATIVE PROCEDURE LAW.

A proceeding to revoke or suspend a license and an appeal from the proceeding is governed by Chapter 2001, Government Code.

#### §503.407. REFUND.

(a) Subject to Subsection (b), the board may order a 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 under this chapter.

(b) 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 license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

SUBCHAPTER J. PENALTIES AND ENFORCEMENT PROVISIONS

§503.451. INJUNCTION.

(a) The board or the department may institute in its own name an action to enjoin a violation of this chapter. An action under this section is in addition to any other action authorized by law.

(b) The attorney general or the appropriate county or district attorney shall represent the board in an action under this section.

§503.452. CRIMINAL OFFENSES.

(a) A person commits an offense if the person knowingly:

(1) engages in the practice of professional counseling without holding a license under this chapter;

(2) represents the person by the title "Licensed Professional Counselor" or "Licensed Counselor" without holding a license under this chapter;

(3) represents the person by the title "Licensed Professional Counselor -- Art Therapist," "Art Therapist," or by the initials "L.P.C. -- A.T." or "A.T." without:

(A) holding a license with a specialization in art therapy under Section 503.303; or

(B) holding a license under Section 503.309; or

(4) uses any title, words, letters, or abbreviations that imply that the person is licensed under this chapter if the person is not licensed under this chapter.

(b) An offense under this section is a Class B misdemeanor.

§503.453. REPORT OF ALLEGED OFFENSE. The board shall notify the appropriate prosecuting attorney of an alleged offense committed under this chapter.

§503.454. CEASE AND DESIST ORDER.

(a) If it appears to the board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of professional counseling, the board after notice and

opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

SUBCHAPTER K. ADMINISTRATIVE PENALTY

§503.501. IMPOSITION OF ADMINISTRATIVE PENALTY.

The board may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

§503.502. AMOUNT OF ADMINISTRATIVE PENALTY.

(a) The amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) The board by rule shall adopt an administrative penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or board rules to ensure that the amounts of penalties imposed are appropriate to the violation. The board shall provide the administrative penalty schedule to the public on request.

§503.503. REPORT AND NOTICE OF VIOLATION AND PENALTY.

(a) If the commissioner of public health or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the board a report stating:

(1) the facts on which the determination is based; and

(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the commissioner of public health or the commissioner's designee shall give written notice of the report to the person. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended administrative penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

#### §503.504. PENALTY TO BE PAID OR HEARING REQUESTED.

(a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the commissioner of public health or the commissioner's designee; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the commissioner of public health or the commissioner's designee, the board by order shall approve the determination and impose the recommended penalty.

#### §503.505. HEARING.

(a) If the person requests a hearing or fails to respond in a timely manner to the notice, the commissioner of public health or the commissioner's designee shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

#### § 503.506. DECISION BY BOARD.

(a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

#### §503.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

(a) Within 30 days after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

or  
(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner of public health or the commissioner's designee by certified mail.

(c) If the commissioner of public health or the commissioner's designee receives a copy of an affidavit under Subsection (b)(2), the commissioner or the designee may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

§503.511. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

§503.508. COLLECTION OF PENALTY.

(a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

§ 503.509. DETERMINATION BY COURT.

(a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

§503.510. REMITTANCE OF PENALTY AND INTEREST.

(a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.