

Parenting Coordination: Ethical Land Mines

AAMFT Workshop #409

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Abstract Summary:

- Using state statutory guidelines, licensure board ethical guidelines, AAMFT Code of Ethics, state mental health laws, and HIPAA as a foundation, the participants will explore the ethical constraints LMFTs must use in the practice of court-ordered parenting coordination. Challenging cases will be explored for creative ethical solutions within MFT techniques using recommended practice guidelines developed by one AAMFT division.

Learning Objectives:

Participants will—

1. Become familiar with statutory guidelines for parenting coordination throughout the US
2. Differentiate the concepts of confidentiality and privilege
3. Understand ethical requirements which govern LMFTs
4. Define a parenting coordination model which is consistent with LMFT ethical requirements
5. Test ethical decision-making with parenting coordination case scenarios

Parenting Coordination Legislation: 7 states currently have passed PC legislation; other states have legislation or administrative court order plans underway, as well as use of related statutes for authority to order. Chart compiled by Dr. Lynelle C. Yingling, LMFT [Lynelle@systemsmediation.com]. Thanks to Barbara Bartlett, JD for initiating collection of state legislation in AFCC publications & reviewing this chart.

STATE	TITLE	DEFINITION	GOALS
Oklahoma 2001	Parenting Coordinator	Impartial 3 rd party to assist parties in resolving parenting & other family issues in legal actions affecting a minor child	<ul style="list-style-type: none"> ▪ Identifying disputed issues ▪ Reducing misunderstandings ▪ Clarifying priorities ▪ Exploring possibilities for compromise ▪ Developing methods of collaboration in parenting ▪ Complying with court's order
Idaho 2002	Parenting Coordinator		<ul style="list-style-type: none"> ▪ Collaborative dispute resolution in parenting ▪ Empower parties in resuming parenting controls & decision-making ▪ Minimize degree of conflict between parties for best interests of the children
Oregon 2002	Unnamed individual/ panel/ program	To assist the court in creating parenting plans or resolving disputes regarding parenting time & to assist parents in creating & implementing parenting plans	<ul style="list-style-type: none"> ▪ Gathering information ▪ Monitoring compliance with orders ▪ Providing parents, attorneys, and court with recommendations for new or modified parenting time provisions ▪ Providing parents with problem solving, conflict management & parenting time coordination services or other services approved by the court
Colorado 2005	Parenting Coordinator	Neutral 3 rd party to assist in resolution of disputes concerning parental responsibilities	<ul style="list-style-type: none"> ▪ Assist in creating guidelines for implementing parenting plan ▪ Communication guidelines & skills ▪ Parenting skill resources ▪ Identify causes of conflict ▪ Parenting strategies to minimize conflict
Texas 2005	Parenting Coordinator	Impartial 3 rd party to assist parties in resolving parenting issues in suit affecting parent-child relationship	<ul style="list-style-type: none"> ▪ Identifying disputed issues ▪ Reducing misunderstandings ▪ Clarifying priorities ▪ Exploring possibilities for problem solving ▪ Developing methods of collaboration in parenting ▪ Educating re parenting plan & facilitating agreements ▪ Complying with court's order
N Carolina 2005	Parenting Coordinator	Impartial person who meets qualifications	<ul style="list-style-type: none"> ▪ Identifying disputed issues ▪ Reducing misunderstandings ▪ Clarifying priorities ▪ Exploring possibilities for compromise ▪ Developing methods of collaboration in parenting ▪ Complying with court's order
Louisiana 2007	Parenting Coordinator		<ul style="list-style-type: none"> ▪ Assist parties in resolving disputes & reaching agreements regarding children in their care [17 examples listed] ▪ Refrain from facilitating an agreement that would change legal custody, physical custody, visitation, or child support

STATE	REQUIREMENTS FOR ORDERING	PROVIDER QUALIFICATIONS
Oklahoma	<ul style="list-style-type: none"> ▪ Agreement or ▪ High conflict with ▪ Best interest of child ▪ Must be able to pay 	<ul style="list-style-type: none"> ▪ Set by local rules ▪ Minimum licensed professional with experience in family & children's services
Idaho	<ul style="list-style-type: none"> ▪ Agreement ▪ Appointed by the court 	<ul style="list-style-type: none"> ▪ Parties select who agree to ▪ Be neutral to the dispute & parties ▪ Criminal history check ▪ No retainer required ▪ Supreme Court list of mediators ▪ Knowledge of child development ▪ 20 hrs training in domestic violence
Oregon	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Established by presiding judge ▪ May require mediation skills
Colorado	<ul style="list-style-type: none"> ▪ Failed to implement parenting plan ▪ Mediation inappropriate or failed ▪ Best interest of child ▪ Consider domestic violence impact on ability to engage in PC 	<ul style="list-style-type: none"> ▪ Current/past/future evaluator excluded
Texas	<ul style="list-style-type: none"> ▪ Agreement or ▪ High conflict with ▪ Best interest of child ▪ Family violence exclusion if verified by court hearing ▪ Must be able to pay cost unless government agency provides service 	<ul style="list-style-type: none"> ▪ Set by court ▪ Minimum mental health [counseling, education, family studies, psychology, or social work] bachelor's degree with additional 16 hrs PC training or mental health master's degree with emphasis in family & child issues ▪ Minimum 8 hrs family violence training
N Carolina	<ul style="list-style-type: none"> ▪ Agreement or ▪ High conflict with ▪ Best interest of child ▪ Must be able to pay ▪ Selected from list maintained by court ▪ Required appointment conference for parties, attorneys, & parenting coordinator 	<ul style="list-style-type: none"> ▪ Masters or doctorate in psychology, law, social work, counseling, medicine, or related subject ▪ 5 years related professional post-degree experience ▪ Current license if applicable ▪ 24 hours training in child development, high-conflict family dynamics, stages & effects of divorce, problem solving techniques, mediation, & legal issues ▪ Continuing education including group discussion & peer review support
Louisiana	<ul style="list-style-type: none"> ▪ Good cause if previous child custody judgment entered other than ex parte order ▪ Shall appoint with joint motion of parties ▪ Must be able to pay ▪ Appointment term for up to 1 year which is renewable ▪ Family violence history exclusion 	<ul style="list-style-type: none"> ▪ Master's, PhD, or equivalent mental health degree [psychiatry, psychology, social work, marriage & family counseling, professional counseling] ▪ LA licensed mental health professional ▪ 3 years post-degree experience ▪ LA qualified mediator ▪ 40 hrs PC training; 14 hrs of family mediation training may be used towards the 40 hrs; training includes judicial system & procedures, ethical standards including confidentiality & conflicts of interest, child development & divorce impact, parenting techniques, parenting plans & time schedules, family systems theory, communication skills, domestic violence effects, & PC process & documentation execution ▪ 20 hrs PC continuing ed every 2 years

STATE	REPORT TO COURT	DECISION MAKING AUTHORITY	CITATION
Oklahoma	<ul style="list-style-type: none"> ▪ File decisions & recommendations within 20 days ▪ Parties can file objection to PC decisions & recommendations within 10 days 	<ul style="list-style-type: none"> ▪ May not make decision on custody, visitation or support. ▪ The decision cannot modify any existing court order; ▪ The decision may not abrogate either parent's custodial or noncustodial rights. 	43 O.S. §120.1 et seq.; www.oscn.net
Idaho	<ul style="list-style-type: none"> ▪ Provide a minimum of 1 status report to the court every 6 months 		Title 32 Domestic Relations, Chapter 7 Divorce Actions; 32-717D. Idaho Code; IRCP Rule 16(l)
Oregon			O.R.S. 107.425(3)
Colorado	<ul style="list-style-type: none"> ▪ Records & testimony privileged except by agreement of parties 	<ul style="list-style-type: none"> ▪ Can be combined with appointment of decision-maker by agreement of parties ▪ Decision-maker has binding authority to resolve disputes concerning children, including parenting time, disputed parental decisions, & child support consistent with substantive intent of court order ▪ Decisions subject to de novo hearing 	Colorado Revised Statutes, Title 14, Section 1, Article 10 [14-10-128.1]
Texas	<ul style="list-style-type: none"> ▪ Records & testimony privileged ▪ Report to court whether process should continue 	<ul style="list-style-type: none"> ▪ Facilitate agreements but no authority to make binding decisions ▪ Submit agreements to court for approval 	Texas Family Code §153.601-611 Revised 2007 by HB 555 [TFC §153.601- 611, 153.007-0071, 153.133]
N Carolina	<ul style="list-style-type: none"> ▪ Report to court, parties, & attorneys if order not in best interest of child or PC not qualified for issues ▪ Written summary of each meeting & copies of written communication to parties & attorneys ▪ Records & testimony subpoenaed only by presiding judge ▪ Judge reviews records in camera & decides if to release 	<ul style="list-style-type: none"> ▪ Limited by agreement if parties consent to appointment ▪ May be authorized to decide parenting plan implementation issues not specifically governed by court order if parties unable to resolve; binding until court reviews 	North Carolina General Statutes Section 1. Chapter 50 Article 5 [HB 1221]
Louisiana	<ul style="list-style-type: none"> ▪ Notify court of conflict of interest ▪ Shall not be called as a witness without prior court approval based on demonstrated need for testimony & evidence cannot be adduced from other sources ▪ Prepare interim & final reports as ordered by court & other reports when necessary ▪ Distribute reports to court, parties, & their attorneys 	<ul style="list-style-type: none"> ▪ If parties unable to reach agreement, PC may make recommendation in report to the court for resolution of dispute 	Louisiana Revised Statutes 9:358.1-358.9; 2007 Senate Bill No. 208. Act No. 265

**REPORT OF THE
TEXAS ASSOCIATION FOR MARRIAGE AND FAMILY THERAPY
PARENTING COORDINATION TASKFORCE:**

**Recommended Practice Guidelines for a Family Systems Model of
Parenting Coordination within the Context of Texas Family Law**

**Submitted March 4, 2007 to the TAMFT Board by the following Taskforce Members;
approved 4-27-2007:**

**Dr. Ken Bateman; Richardson, TX
Dr. Saliha Bava; Houston, TX
Shana Conover; Tyler, TX
Dr. Anne Ellis; Dallas, TX
Vicki James; Dallas, TX
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Dr. Lynelle Yingling; Rockwall, TX [Chair]**

The PC Taskforce was appointed by TAMFT President Dr. Michael Bishop on September 12, 2006 to address the following goals:

1. Review the Texas statute for parenting coordination, including future proposed changes from the Legislative Council;
2. Review currently available practice guidelines, including AFCC guidelines;
3. Review our family therapy Code of Ethics from the TX LMFT Board and from AAMFT; and
4. Propose for TAMFT Board adoption practice guidelines and training guidelines which comply with Texas statutory requirements and MFT Codes of Ethics.

Definition of Parenting Coordination Practice for Texas Licensed Marriage and Family Therapists Involved in the Practice of Parenting Coordination in Texas

Definition of Practice for Licensed Marriage and Family Therapists and Associates (“LMFTs”):

Parenting coordination is a practice which utilizes concepts, methods, and processes from a family systems approach to assist binuclear family parents in resolving co-parenting issues arising from an order in a suit affecting the parent-child relationship.

Duties of the court-appointed Parenting Coordinator (“PC”) are limited to matters which will aid the parents in the following areas in accordance with Texas Family Code §153.601-611:

- (1) identifying disputed issues;
- (2) reducing misunderstandings;
- (3) clarifying priorities;
- (4) exploring possibilities for problem solving;
- (5) developing methods of collaboration in parenting;
- (6) developing a parenting plan; and
- (7) complying with the court's order regarding conservatorship or possession of and access to the child.

Texas Family Code Sections 153.606-609 provide practice guidelines for PCs. The role of a PC is to empower parents to self-determine a parenting plan in the best interest of their child(ren) and to resolve conflicts regarding implementing the parenting plan through effective communication. Agreements between the parents should be encouraged in order to help them communicate more effectively. However, no modifications to existing orders, judgments, or the decree should be made. All agreements made by the parties with the assistance of the PC while a suit is pending shall be in writing, signed by the parties and their attorneys, if any, and filed with the court. In addition, the PC is required to submit a report to the court as often as is ordered by the court or every 90 days stating only whether or not the parenting coordination should continue. The PC has the authority to determine the intervention procedures and techniques to use in working with the parents to achieve effective co-parenting. The court may remove the PC if both parties request removal or if one party requests removal and good cause is shown to the court. Fees shall be allocated between the parents as determined by the court.

Supplemental legal definitions:

- (1) Alternative Dispute Resolution [ADR] processes and voluntary dispute resolution procedures— includes binding or non-binding arbitration by agreement only; binding or non-binding mediation by agreement or court imposed order; collaborative law by agreement only; and parenting coordination by agreement or court imposed order.
- (2) Conciliation—As described by Judge Debra Lehrmann [360th District Court in Fort Worth, TX] in a 2001 ABA Family Law Section presentation, the conciliatory phase of a lawsuit is distinguished from the adversarial phase by whether or not the professional intervener testifies in court. Conciliatory processes encourage parents to work together, while adversarial processes focus on winning which escalates the conflict and creates greater barriers to co-parenting. The preamble to Texas Family Code 153.601 states: “The legislature further finds that conciliatory forms of dispute resolution, including mediation and the use of PCs, promote the policy set forth in Section 153.001, Family Code.” The identified policy is to promote healthy co-parenting by assuring contact with both parents who can work together; providing a safe, stable, and nonviolent environment; and encouraging separated parents to share parenting responsibilities.
- (3) Confidential process— In accordance with Texas Family Code 153.606(e), “A PC may not: (1) be compelled to produce work product developed during the appointment as PC; (2) be required to disclose the source of any information; (3) submit a report into evidence, except as required by Section 153.608; or (4) testify in court.”
- (4) High conflict case— The court can impose an order for parenting coordination when “the parties demonstrate a pattern of: (A) repetitious litigation; (B) anger and distrust; (C) difficulty in communicating about and cooperating in the care of their children; or (D) other behaviors that in the discretion of the court warrant the appointment of a PC.”[153.601(2)]

- (5) Parenting plan—is a written plan to be included in a court order which defines the rights and duties of both parents, parenting time of the child with each parent, child support, ways to minimize the child’s exposure to any harmful parental conflict, ways to address the child’s changing needs, and a dispute resolution process for future disputes.

- (6) Suit Affecting the Parent-Child Relationship [SAPCR]—is a lawsuit which details court orders for how a child is to be parented without regard to whether the parents are presently or have ever been married to each other. Texas Family Code Chapter 153 is the primary legal guide for making these determinations to be incorporated in a parenting plan.

Process of Parenting Coordination:

As a conciliatory process, parenting coordination provides an alternative to litigation for solving parenting conflicts. The parenting coordination process includes an integration of interventions based on the level of conflict and skill resources of the PC including, at a minimum, family therapy, family mediation, and co-parenting education.

Distinguishing levels of conflict in family systems is an ongoing challenge. Even reaching a consensus definition of family violence has not been achieved by the mental health or legal communities. Continued work on effective ways to assess level of conflict and interventions which are appropriate for parenting coordination is necessary.

Cases that have been determined to include family violence, untreated serious mental illness, or untreated active substance abuse following appropriate individual and family assessment methods shall be referred to more evaluative forensic interventions.

**Credentials and Training for
Texas Licensed Marriage and Family Therapists
Involved in the Practice of Parenting Coordination in Texas**

- (1) PCs who are also LMFTs in Texas practice under their LMFT license. Therefore, they must first meet LMFT credentials and training standards which include course work in theoretical foundations of marriage and family therapy [1 course], assessment and treatment in marriage and family therapy [4 courses], human development, gender, multicultural issues, and family studies [2 courses], psychopathology [1 course], professional ethics [1 course], applied professional research [1 course], and supervised clinical practicum [12 months]. [See Appendix A for complete licensure requirements.]
- (2) Texas statutory guidelines for PCs additionally require at least 8 hours of family violence dynamics training provided by a family violence service provider. See Texas Family Code Section 153.610. This training should be refreshed every other year.
- (3) A minimum 16-hour course in parenting coordination shall be taken by all PCs. See Texas Family Code Section 153.610. The course should include the following topics:
 - Texas Family Law related to Parenting Coordination
 - Parenting Coordination Process & Techniques
 - Family Mediation
 - Systemic Family Dynamics Training, including the Divorcing Process
 - High Conflict Family Assessment, including Family Violence
 - Child Development
 - Parenting Education Models and Techniques
 - Ethics [especially as related to high conflict and protracted custody cases]
- (4) Continuing education in parenting coordination should be included in meeting licensure continuing education requirements.
- (5) Membership and participation in the American Association for Marriage and Family Therapy (“AAMFT”) and the Texas Association for Marriage and Family Therapy (“TAMFT”) is highly recommended as a continuing education resource and for development of the practice of parenting coordination.
- (6) PCs who are working in the collaborative law setting shall also have training in the collaborative law interdisciplinary team process.
- (7) In addition, the following criteria adapted from Guidelines for Parenting Coordinators developed by the Association of Family and Conciliation Courts (“AFCC”) are highly recommended:
 - (a) Training and experience in interest-based negotiation style of family mediation
 - (b) Extensive practical experience in the profession with high conflict or litigating parents
 - (c) Professional competence in the parenting coordination process acquired and maintained by receiving comprehensive training (See Appendix B) and participating in educational activities promoting professional growth as well as peer consultation
- (8) A summary of recommended PC credentials and training is included as Appendix C.

Ethical Guidelines for Texas Licensed Marriage and Family Therapists Involved in the Practice of Parenting Coordination in Texas

Parenting coordination in Texas is defined by the Texas Family Code § 153-601-611. PCs may be appointed by the court or by agreement of the parties in high-conflict or other cases where a PC has been determined to be in the best interests of the children in order to assist the parties in resolving parenting issues.

PCs are required to follow the law governing the practice of parenting coordination in Texas. In addition to following Texas law governing parenting coordination, LMFTs practicing under their Texas licenses are also required to follow the ethical standards governing the practice of marriage and family therapy as defined by the Texas Board of Examiners of Marriage and Family Therapists in Chapter 801 of the Texas Administrative Code.

Ethical standards for marriage and family therapists are also defined and enforced by the AAMFT. The AAMFT Code of Ethics is binding upon all members of AAMFT in order to honor the public trust in marriage and family therapists.

The following ethical guidelines for LMFTs were defined by the TAMFT Parenting Coordination Taskforce in order to provide guidance so that both Texas laws governing parenting coordination and appropriate ethical standards are being followed by LMFTs involved in the practice of parenting coordination ("LMFT-PCs").

Key ethical areas that should be outlined in each LMFT-PC's services agreement and communicated directly and openly with clients and their attorneys include:

- (a) Informed consent
- (a) Multiple relationships
- (a) Confidentiality
- (a) Relationships with involved professionals
- (a) Termination of parenting coordination services
- (a) Financial arrangements

Other ethical areas that shall be considered by the LMFT-PC in practicing parenting coordination include:

- (1) Professional competence and integrity
- (2) Advertising

Ethical Guidelines Outlined in PC Services Agreement

Informed Consent

Appropriate informed consent is obtained from the participants in a parenting coordination case and should be clearly and directly communicated in the PC Services Agreement. The content of the informed consent should include a description of parenting coordination and specific duties of the PC according to the Texas Family Code as well as additional duties set forth in the order or agreed upon by the clients. The clients should also be informed of their rights to confidentiality (see below) and the limits of confidentiality (see below) as a result of giving their informed consent.

Relationships with Clients

LMFT-PCs should avoid conditions and multiple relationships with clients that could interfere with their impartiality or create a professional conflict. Such relationships include, but are not limited to:

- (1) Business or close personal relationships with a client or the client's immediate family
- (2) Anyone with whom the PC has had a prior sexual relationship
- (3) Having a sexual relationship with a client either during the period of the parenting coordination services or following termination
- (4) Becoming the PC after serving as a therapy, consultant, coach, or another mental health role to either one of the clients or a family member
- (5) Becoming the therapist, consultant, coach, or another mental health role for either one of the clients or a family member either during or after the term of PC involvement
- (6) Serving as a custody evaluator either before, during, or after the term of PC involvement with the family, because of the confidential nature of the PC process under the Texas Family Code (see below)
- (7) Accepting gifts, favors, loans, or other items from clients, attorneys, or others involved in the parenting coordination process

Confidentiality

Consistent with the AAMFT Code of Ethics, confidentiality is an ethical and legal practice of a professional to protect client communication, information, identity, and records of diagnosis,

evaluation and plans that are created or maintained by a professional. Adherence of confidentiality will be governed by the Texas Mental Health and Safety code (Chapter 611) and other applicable laws related to mental health records and communication.

Also consistent with the parenting coordination statute under the Texas Family Code, parenting coordination is clearly identified as a conciliatory form of Alternative Dispute Resolution (“ADR”) which is also confidential (See Chapter 154, Texas Civil Practice and Remedies Code).

Therefore, an LMFT-PC shall maintain confidentiality regarding the information shared during the parenting coordination process, except as set forth under “Exceptions to Confidentiality” or by written agreement of the respective parties.

Exceptions to Confidentiality

Exceptions to confidentiality include the following circumstances:

- (1) When the clients sign a written release of information for a specified purpose and recipient (such as the parenting coordination clients’ attorneys), information shall be disclosed by the LMFT-PC unless disclosure is judged by the LMFT-PC to be harmful to any of the parenting coordination clients, including the children.
- (2) When child abuse or neglect is suspected, a report shall be made to the Child Protective Services (“CPS”) Division of the Texas Department of Family and Protective Services, other state agencies, or local/state law enforcement officers. Abuse/neglect of an elder or disabled person must also be reported.
- (3) When a client or a member of the client’s family is a danger to self or others, a report shall be made to the appropriate authorities.
- (4) When required by law such as the requirement under the parenting coordination statute that a written report be submitted to the court, a report shall be filed with the court as often as ordered stating only whether or not the parenting coordination should continue.
- (5) When a complaint has been filed with the LMFT’s licensing board, information shall be provided as required or deemed necessary in order to respond to the complaint.
- (6) When required by management audits, financial audits, program evaluations, or research (by client permission only), in accordance with Texas Health and Safety Code Section 611.004(a)(3).

Relationships with Involved Professionals

The “Relationships with Involved Professionals” section of the PC Services Agreement should address, at a minimum, the following areas:

- (1) Confidentiality
- (2) Release of information
- (3) Boundaries with involved professionals

Confidentiality

As discussed above, the parenting coordination process is confidential. No information obtained during the parenting coordination process will be disclosed without a written release of information or in accordance with other “Exceptions to Confidentiality” defined above.

Release of Information

Upon receipt of a written release of information, information will be shared with individuals indicated on the release, but only to the extent necessary to achieve the purpose of consultation. Information will not be shared, even with consent, if it is judged by the LMFT-PC to be harmful to any of the clients, including the children, or the parenting coordination process and its intent under the Texas statute, i.e. to assist the parents in resolving parenting issues outside of the litigation process.

Boundaries with Involved Professionals

Appropriate boundaries with other professionals involved with the clients including attorneys, therapists, custody evaluators, and financial advisors shall be maintained by the LMFT-PC in order to protect the integrity of the parenting coordination process. Other professionals will be utilized to the extent that they are helpful to the process and its intent under the Texas statute, i.e. to assist the parents in resolving parenting issues outside of the litigation process.

Termination of Parenting Coordination Services

The “Termination of Parenting Coordination Services” section of the PC Services Agreement should address, at a minimum, the following areas:

- (1) LMFT-PC’s philosophy regarding termination
- (2) Reasons for termination
- (3) Termination plan
- (4) Referrals

LMFT-PC’s Philosophy Regarding Termination

The LMFT-PC’s philosophy or perspective about termination should be communicated in the PC Services

Agreement. For example, are you willing to continue to see the clients periodically when they need help in the future or do you have a structured process that they must complete in a particular sequence?

Reasons for Termination

The court order for PC services may be terminated by the court following the request of one parent with good cause or the agreement of both parents. The reasons for the PC recommending termination to the court should be specifically explained to parents but cannot be reported to the court, for example:

- (1) Goals are attained
- (2) The LMFT-PC is unable to help the clients
- (3) Other services are necessary
- (4) Family violence risk is determined
- (5) Nonpayment of fees

Termination Plan

A specific plan for terminating should be described in the PC Services Agreement.

Referrals

A plan for referring to another PC should be described in the event that the LMFT-PC is unable to assist the parenting coordination clients. The LMFT-PC should also determine what their participation will be in helping clients transfer to a new PC and whether or not they will share records, consult with the new PC, and/or charge for consulting time.

A plan should also be outlined for referrals to other professionals when necessary for individual therapy, evaluation, or other professional services.

Financial arrangements

The amount of fees and responsibility for payment should be outlined in the PC Services Agreement as agreed to by the parenting coordination clients and their attorneys or by court order. Once the parenting coordination services have begun, the LMFT-PC will provide reasonable notice of any changes in fees or other charges.

In addition:

- (1) LMFT-PCs refrain from accepting goods and services from clients in return for services rendered.
- (2) LMFT-PCs do not offer or accept kickbacks, rebates, bonuses, or other remuneration for referrals from attorneys or other professionals.

- (3) LMFT-PCs give reasonable notice to clients with unpaid balances of their intent to seek collection by agency or legal recourse. When such action is taken, LMFT-PCs will not disclose confidential information.

Other Ethical Guidelines

Professional competence and integrity

LMFT-PCs maintain high standards of professional competence and integrity, including:

- (1) Pursuing knowledge of new developments in marriage and family therapy and parenting coordination through education, training, or supervised experience.
- (2) Acquiring adequate knowledge of and adherence to applicable laws, ethics, and professional standards.
- (3) Seeking appropriate professional assistance for their personal problems or conflicts that may impair work performance or clinical judgment.
- (4) Maintaining accurate and adequate clinical and financial records.
- (5) Practicing parenting coordination only after appropriate education and training.
- (6) Refusing to diagnose, treat, or advise on problems outside the recognized boundaries of their competencies.

Advertising

LMFT-PCs engage in appropriate informational activities, including those that enable the public, referral sources, or others to choose professional services on an informed basis. Specifically, they:

- (1) Accurately represent in any advertisements and publications their competencies, education, training, and experience relevant to their practice of marriage and family therapy and parenting coordination.
- (2) Claim as credentials only those earned degrees: (a) from institutions accredited by regional accreditation sources recognized by the United States Department of Education, (b) from institutions recognized by states or provinces that license or certify marriage and family therapists, or (c) from equivalent foreign institutions.
- (3) Correct, wherever possible, false, misleading, or inaccurate information and representations made by others concerning the therapist's qualifications, services, or products.
- (4) Do not represent themselves as providing parenting coordination and/or other specialized services unless they have the appropriate education, training, or supervised experience.

APPENDIX A

Texas Administrative Code

Title 22. Examining Boards

Part 35. Marriage and Family Therapists

Chapter 801. Licensure and Regulation of Marriage and Family Therapists

New Amendments effective July 2, 2006

The rules relating to licensing and regulation of Marriage and Family Therapists and Marriage and Family Therapist Associates:

§801.73. Required Application Materials.

- (a) Application form. The application form shall contain:
1. specific information regarding personal data, employment and type of practice, other state licenses and certifications held, 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 them;
 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 non-refundable;
 6. the applicant's signature and date of signature; and
 7. an official transcript.
- (b) Supervised experience form. The supervised experience form shall be completed by the applicant's supervisor and is valid only when it bears the supervisor's signature.
- (c) 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.
- (e) Effective September 1, 2006, all applicants for licensure must submit proof of successful completion of the jurisprudence examination at the time of application. The jurisprudence

examination must be completed no more than six months prior to the date of licensure application.

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

§801.91. Purpose. 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 and licensure.

§801.92. Finding of Non-Fitness for Licensure.

The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of an associate license or a regular license of the applicant:

1. lack of the necessary skills and abilities to provide adequate marriage and family therapy services in independent practice;
2. any misrepresentation in the application or other materials submitted to the Board;
3. the violation of any provision of the Act or this chapter in effect at the time of application which is applicable to an unlicensed person; or
4. 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.

§801.93. Finding of Non-Fitness for Licensure

Subsequent to Issuance of Licensure. The board may take disciplinary action based upon information received after issuance of a license, if such information had been received prior to issuance of license and would have been the basis for denial.

SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE

§801.111. Purpose. This subchapter establishes the academic requirements for examination and licensure as a marriage and family therapist.

§801.112. General.

- (a) The board shall accept as meeting licensure requirements graduate work done at American universities which hold accreditation or candidacy status from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.
- (b) Degrees and coursework received at foreign universities shall be acceptable only if such coursework may be counted as transfer credit by accredited institutions. It is the applicant's responsibility to have degrees and coursework evaluated by a professional transcript evaluation service approved by the board.
- (c) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs, bulletins, syllabi, or by other means.
- (d) The board shall count no undergraduate level courses taken by an applicant as meeting any academic requirements unless the applicant's official transcript clearly shows that the course was awarded graduate credit by the school.
- (e) The board shall accept no coursework which an applicant's transcript indicates was not completed with a passing grade or for credit.
- (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 a "B" or "pass" shall be counted toward meeting academic requirements for examination or licensure.
- (g) In evaluating transcripts, the board shall consider a quarter hour of academic credit as two-thirds of a semester hour.

§801.113. Academic Requirements.

- (a) Persons applying for the examination must have completed or be enrolled in a marriage and family therapy graduate internship program, or its equivalent, approved by the Board.
- (b) 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.

- (c) A degree or course work in a related mental health field is substantially equivalent if it is at least 45 semester hours which the applicant completed at a regionally accredited school. The 45 semester hours may be course work taken in the required graduate degree program.
- (d) A degree or course work in a related mental health field must have been 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.

§801.114. Academic Course Content. 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 equals three semester hours):

- (1) theoretical foundations of marriage and family therapy -- one course;
- (2) assessment and treatment in marriage and family therapy -- four courses;
- (3) human development, gender, multicultural issues, and family studies -- two courses;
- (4) psychopathology -- one course;
- (5) professional ethics -- one course;
- (6) applied professional research -- one course; and
- (7) supervised clinical practicum -- 12 months/nine hours.

SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR EXAMINATION AND LICENSURE

§801.141. Purpose. The purpose of this subchapter is to set out the experience requirements for examination and licensure as a marriage and family therapist.

§801.142. Supervised Clinical Experience Requirements and Conditions.

- (a) The applicant must have completed a minimum of two years of work experience in marriage and family therapy services that:
 - (1) includes at least 3,000 hours of clinical services to individuals, couples or families, of which at least 1,500 hours must be direct clinical services, 750 hours to couples or families, and the remaining 1,500 hours may come from related experiences that may include but not be limited to workshops, public

relations, writing case notes, consulting with referral sources, etc; and

- (2) the applicant must be supervised in a manner acceptable to the board, including:
 - (A) at least 200 hours of supervision;
 - (B) of the 200 hours, at least 100 hours must be individual supervision;
 - (C) of the 200 hours, no more than 100 hours may be transferred from the graduate program;
 - (D) at least 50 hours of the post-graduate supervision must be individual supervision.
- (b) An associate may practice marriage and family therapy in any established setting under supervision, such as a private practice, public or private agencies, hospitals, etc.
- (c) During the period of supervised experience, an associate may be employed on a salary basis or be used within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.
- (d) During the post graduate supervision, both the supervisor and the associate may have disciplinary actions taken against their licenses for violations of the Act or rules.
- (e) Supervision must be conducted under a supervision contract, which must be submitted to the board on the official form within 60 days of the initiation of supervision.
- (f) Group supervised experience of an associate may count toward an associate's supervision requirement only if the supervision group consisted of a minimum of three and no more than six associates during the supervision hour.
- (g) Individual supervised experience of an associate may count toward the associate's supervision requirement only if the supervision consisted of no more than two associates.
- (h) The 200 hours of supervision must be face-to-face. The associate must receive a minimum of one hour of supervision every two weeks. A supervision hour is 45 minutes.
- (i) An associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.
- (j) The associate may receive credit for up to 500 clock hours toward the required 3,000 hours of supervised clinical services by providing services via telephonic or other electronic media, as approved by the supervisor.

§801.143. Supervisor Requirements.

- (a) Supervisors are recognized by the board when subsection (a) or (b) of this section is met by submitting an application which includes the following four documents;
 - (1) a license (which is not a provisional or an associate license) issued by the board or a license as a marriage and family therapist in another state or territory;
 - (2) a graduate degree in marriage and family therapy or a graduate degree in a related mental health field, such as counseling and guidance, psychology, psychiatry, and clinical social work, from an accredited 801.2 of this title (relating to Definitions); institution as defined in
 - (3) one of the following:
 - (A) successful completion of a one-semester graduate course in marriage and family therapy supervision from an accredited institution; or
 - (B) a 40 hour continuing education course in clinical supervision offered by a board approved provider; and
 - (4) at least 3,000 hours of direct client contact in the practice of marriage and family therapy over a minimum of three years as a licensed marriage and family therapist.
- (b) In lieu of meeting the qualifications set forth in subsection (a) of this section, a person is an acceptable supervisor if the person has been designated as an approved supervisor or supervisor-in-training by the American Association of Marriage and Family Therapy (AAMFT) before the person provides any supervision.
- (c) A supervisor may not be employed by the person whom he or she is supervising.
- (d) 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.

SUBCHAPTER H. EXAMINATIONS

§801.171. Purpose. The purpose of this subchapter is to establish the rules governing the examinations for licensure.

§801.172. Frequency. The board, or its designee, shall administer licensure examinations at least semi-annually.

§801.173. Applying for Examination. A person must apply for the licensure examination in accordance with Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure) and §801.73 of this title (relating to Required Application Materials). The board shall notify an applicant of application approval or disapproval, and if disapproved, state the reason.

- (1) A person may apply to take the licensure examination after the person has submitted the necessary forms, fee and application in accordance with §801.73 of this title.
- (2) At least 60 days prior to the licensure examination, the executive director or the executive director's designee shall notify an applicant in writing that an application has been approved.
- (3) An applicant who wishes to take a scheduled examination must complete an examination registration form and return it to the board.

§801.174. Licensure and Jurisprudence Examinations.

- (a) The licensure examination shall be a written examination prescribed by the board which has been validated by an independent testing professional.
- (b) An applicant shall apply to take the licensure examination on a form prescribed by the board. The applicant will pay the examination fee at the examination site.
- (c) The board, or its designee, shall determine the times and places for licensing examinations and give reasonable public notice.
- (d) The board, or its designee, 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 shall notify the examinee as soon as possible regarding the delay.
- (e) Procedures for failure of an applicant to pass a licensure examination 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 an application.
 - (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) 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.
 - (h) The jurisprudence examination must have been completed no more than six months prior to the licensure application date.
 - (i) The jurisprudence examination is available as an online learning experience and applicable fees are payable directly to the approved vendor.
 - (j) 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.

SUBCHAPTER I. LICENSING

§801.201. General Licensing.

- d. Upon receipt and approval of application documentation and required fees, the board shall issue the person a license containing a license number within 30 days.
- e. The board will replace a lost, damaged, or destroyed license certificate upon a written request from the therapist and payment of the duplicate license fee. Requests must include a statement detailing the loss or destruction of the therapist's original license or be accompanied by the damaged certificate.
- f. Upon the written request and payment of the license certificate duplicate fee by a licensee, the board will provide a licensee with a duplicate license within 30 days for a second place of practice which is designated in a licensee's file.

APPENDIX B

**Adapted* from Appendix A of
Guidelines for Parenting Coordination
Developed by the AFCC Task Force on Parenting Coordination
May 2005**

RECOMMENDATIONS FOR COMPREHENSIVE TRAINING OF PCS

A PC should have training in each of the following subject areas as reflected in the modules below. It is anticipated that mental health and legal professionals will have acquired some of the knowledge and experience in the competency areas listed, particularly in Section II, and in mediation training. Training programs may want to accommodate different levels of prior training and experience by offering training in these four modules and developing a process for exempting certain professionals from any of the modules where competency is established. Individual jurisdictions should set guidelines, approve trainings, and assign trainers to ensure that candidates can demonstrate minimum competencies in order to begin practice, and should require the completion of scheduled follow up trainings to achieve mastery within a reasonable amount of time. Individual jurisdictions and provinces might consider developing mentoring programs to provide consultation and support for beginning “PCs” to reinforce and develop the skills that are covered in the recommended subject areas.

Module 1: The Parenting Coordination Process

- A. The various functions of the PC
- B. Limitations of the parenting coordination process
- ...
- C. Professional guidelines of practice for PCs
 - 1. The interplay between other professional guidelines and professional practice guidelines and local/state guidelines for court-appointed PCs
 - 2. The potential for conflict of interest of the PC and the people to whom parenting coordination services are offered
- D. Issues that are appropriate and not appropriate for parenting coordination
- E. Characteristics of individuals who are appropriate and not appropriate to participate in the parenting coordination process
 - 1. Appropriate courses of action when confronted with substance abuse during the parenting coordination process
 - 2. Screening for domestic violence and appropriate courses of action when confronted with domestic violence during the parenting coordination process
 - 3. The effect of domestic violence on parents involved in the parenting coordination process
 - 4. Situations in which the PC should suggest that the parties contact the supervising judicial officer, independent legal counsel, postpone or cancel the parenting coordination session, suspend the parenting

coordination process, or refer the parties to other resources

- F. When to refer parties to services for child protection or elder abuse, and the issue of confidentiality as it applies to each
- G. Special needs of the *pro se* or *pro per* party

Module 2: Family Dynamics in Separation and Divorce

- A. Psychological Issues in Separation and Divorce and Family Dynamics
 - 1. The impact divorce has on individuals and on family dynamics and the implications for the parenting coordination process
 - 2. Useful psychological research and theories applicable to the intervention for high conflict families
 - 3. How emotions impact on divorce issues and on a party’s ability to participate effectively in the parenting coordination process.
 - 4. Sources of divorce/separation impasses, including parental behaviors associated with personality disorders, and the related implications
 - 5. How to promote awareness by the parties of the interests of persons affected by actual or potential agreements, who are not represented during the parenting coordination process
 - a. The impact of grandparents, step-parents and significant others on family

- systems and the parenting coordination process
- b. Situations in which participation of non-parties (e.g., grandparents, children, new spouses) may be necessary in the parenting coordination process
- B. Issues concerning the needs of children in the context of divorce
 1. The needs and adjustment of children and the effect of divorce on their relationships with their mother, father, step-families, siblings and others in the family relationship
 2. Child(ren)'s developmental stages and how they relate to divorce and parenting arrangements
 3. The impact the parenting coordination process can have on the children's well-being and behavior
 4. When and how to involve children in the parenting coordination process
 5. Indicators of child abuse and/or neglect and the process and duty to report allegations of child abuse and/or neglect
- C. Dealing with high conflict parents
 1. The impact of parental conflict and appropriate parenting on children's well-being
 2. The dynamics of child alignments, estrangements and alienation
 3. Various parenting arrangements that consider the needs of the child(ren) and each parent's capacity to parent, including modifications for high conflict situations
- D. Dealing with domestic violence issues
 1. The different research-based types of domestic violence, including conflict-instigated violence, violence involving power, control, and coercion (often referred to as male battering), female violence, and separation-engendered violence
 2. The unique problems and inherent dangers presented by domestic violence of all types in terms of parental contacts, and the need for safe PC procedures and child exchanges
 3. The importance of monitoring compliance with the parenting plan...
 4. The psychological impact of domestic violence on child and adolescent development
- E. The different co-parenting relationships of cooperative, parallel, and conflicted parenting

Module 3: Parenting Coordination Techniques and Issues

- A. Structuring the parenting coordination process
 1. The initial session and preparing the parties for the process
 2. Scheduling the time and location, and establishing the format of each conference and focusing discussion
 3. Structuring and managing the discussion, maintaining control of the sessions, and utilizing appropriate case management skills
 4. Managing separate sessions, telephonic and e-mail communication
 5. Maintaining appropriate records and documentation as a PC
- B. The PC's informed consent, including limits on confidentiality
- C. The PC's service contract and fee allocation
- D. The role of the parenting plan in the parenting coordination process, including how to develop, monitor and modify a parenting plan
- E. The characteristics that enhance or undermine the effectiveness of the PC including, but not limited to: demonstrating empathy, building rapport, establishing trust, setting a cooperative tone, sympathetic listening and questioning, empowering the parties, remaining non-judgmental, language use, and non-verbal communication skills
- F. Awareness of personal biases, prejudices and styles that are the product of one's background and personal experiences that may affect the parenting coordination process
- G. Socio-economic, cultural, racial, ethnic, language, age, gender, religious, sexual orientation and disability issues, which may arise and/or affect the parties' negotiation styles, ability or willingness to engage in the parenting coordination process
- H. Building on partial agreements including when and how to switch between dispute resolution processes
- I. ...
- J. Appropriate techniques for handling difficult situations
- K. Appropriate boundaries of a PC
 1. Safety procedures for those participating in the parenting coordination process
 2. Office safety policies and working with clients having current restraining and protective orders
 3. Establishing appropriate limits for client demands
- L. When and how to use outside experts effectively
 1. How to assist the parties in deciding on

2. appropriate community resources
3. Developing a list of social service resources, including those for domestic violence situations
- M. The impact of high conflict client behavior on the parenting coordination process and the PC and avoiding professional burn-out
- N. Reasons for a PC to decline an appointment, withdraw or request appropriate assistance including, but not limited to, when the facts and circumstances of the case are beyond the PC's skill or experience
- O. The Americans with Disabilities Act (ADA) requirements and strategies for handling situations when faced with disability issues or special needs
- G. How to work with legal, mental health and other professional disciplines, and promote cooperation among those dealing with the family
- H. When and how to utilize a qualified expert and/or a team approach to best serve the parties in the parenting coordination process
- I. The grievance procedure contained in the local/state rules for PCs, if any
- J. Possible ethical dilemmas that may confront a PC and how to avoid them

** Portions of AFCC Guidelines not relevant to Texas law were removed.*

Module 4: Court Specific Parenting Coordination Procedures

- A. The PC's responsibility to the court
- B. Knowledge of and adherence to jurisdiction-specific qualifications for a PC
- C. Mentorship and certification requirements, if applicable
- D. Local/state/province family law as it may pertain to the parenting coordination process
 - d. The state statute and/or rule governing family parenting coordination
 - e. The difference between neutrality and impartiality as it applies to parenting coordination and the ability to demonstrate each appropriately
 - f. Legal concepts as they relate to the parenting coordination process including, but not limited to: geographic relocation, equitable distribution, child support, law of modification, parenting time adjustment, law of relocation, law of due process, law of ex parte communication, and law of privilege
 - g. The statutory constraints of parenting coordination where domestic violence exists and/or protective orders are in place
- E. How and when the PC should interface with the court system
 1. The appointment and discharge processes of the PC
 2. The importance of a court designation to the parenting coordination process
 3. The ethical constraints on confidentiality and both in relation to the entire parenting coordination process and separate sessions within the process
- F. Forms utilized in local courts pertaining to parenting coordination and local court

APPENDIX C

PC Credentials and Training (PCCAT) Portfolio

In order to market services and to verify to clients, attorneys, and judges what the qualifications of the LMFT-PC are, the following summary of core credentials is recommended.

TRAINING CRITERIA	VERIFICATION
Masters or Doctoral degree in Marriage & Family Therapy or a related mental health field	Copy of the diploma
3 years related professional post-degree experience	Resume including a list of references who know your work history
Current professional license/s	Copy of license/s
8 hours of family violence training	Copy of certificate
16-hour parenting coordination training	Copy of certificate
Continuing education related to parenting coordination	Summary of past 12 months CE activities
Mediation training [preferred]	Copy of certificate
Collaborative law training [if relevant]	Copy of certificate
Membership in TAMFT [recommended]	Verification

Recommendation to TAMFT Board: A master list of PCs who meet the above criteria is recommended to be posted on the TAMFT website to facilitate referral sources, especially when multiple PCs are required to coordinate for families with substantial distance between the parents.

RELEVANT ETHICAL GUIDELINE RESOURCES

References:

- 1. AAMFT Code of Ethics**
- 2. US Constitution**
- 3. HIPAA**
- 4. Texas Administrative Code Chapter 801 Subchapter C: Licensure Code of Ethics**
- 5. Texas Civil Practice and Remedies Code, Section 81.001 & Section 154.073**
- 6. Texas Health and Safety Code, Chapter 611**
- 7. Texas Family Code, Sections 153.601-611, 153.0071(g)**

AAMFT Code of Ethics July 1, 2001 excerpts:

1.8 Marriage and family therapists respect the rights of clients to make decisions and help them to understand the consequences of these decisions. Therapists clearly advise the clients that they have the responsibility to make decisions regarding relationships such as cohabitation, marriage, divorce, separation, reconciliation, custody, and visitation.

1.9 Marriage and family therapists continue therapeutic relationships only so long as it is reasonably clear that clients are benefiting from the relationship.

2.1 Marriage and family therapists disclose to clients and other interested parties, as early as feasible in their professional contacts, the nature of confidentiality and possible limitations of the clients' right to confidentiality. Therapists review with clients the circumstances where confidential information may be requested and where disclosure of confidential information may be legally required. Circumstances may necessitate repeated disclosures.

2.2 Marriage and family therapists do not disclose client confidences except by written authorization or waiver, or where mandated or permitted by law. Verbal authorization will not be sufficient except in emergency situations, unless prohibited by law. When providing couple, family or group treatment, the therapist does not disclose information outside the treatment context without a written authorization from each individual competent to execute a waiver. In the context of couple, family or group treatment, the therapist may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

3.3 Marriage and family therapists seek appropriate professional assistance for their personal problems or conflicts that may impair work performance or clinical judgment.

3.4 Marriage and family therapists do not provide services that create a conflict of interest that may impair work performance or clinical judgment.

3.7 While developing new skills in specialty areas, marriage and family therapists take steps to ensure the competence of their work and to protect clients from possible harm. Marriage and family therapists practice in specialty areas new to them only after appropriate education, training, or supervised experience.

3.11 Marriage and family therapists do not diagnose, treat, or advise on problems outside the recognized boundaries of their competencies.

3.13 Marriage and family therapists, because of their ability to influence and alter the lives of others, exercise special care when making public their professional recommendations and opinions through testimony or other public statements.

3.14 To avoid a conflict of interests, marriage and family therapists who treat minors or adults involved in custody or visitation actions may not also perform forensic evaluations for custody, residence, or visitation of the minor. The marriage and family therapist who treats the minor may provide the court or mental health professional performing the evaluation with information about the minor from the marriage and family therapist's perspective as a treating marriage and family therapist, so long as the marriage and family therapist does not violate confidentiality.

US Constitution Amendment XIV excerpt:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

["Procedural Due Process: . . . This has meant that state laws that take away a person's property or otherwise jeopardize their life or liberty must afford persons a fair and impartial way to challenge that action. For example, the due process clause . . . has meant that parents who are accused of child abuse, or the mentally ill who are being committed will have the opportunity to contest the state's allegations in a court hearing. Often thought of as a provision that guarantees fairness, the due process clause requires government to use even-handed procedures, so that it is less likely to act in an arbitrary way.

Substantive Due Process: . . . (T)he Court has held that substantive due process will provide some protections for parents' rights to care for their children, a woman's ability to use contraception and to have an abortion; and other significant freedoms." From THE UNITED STATES CONSTITUTION: WHAT IT SAYS, WHAT IT MEANS: a Hip Pocket Guide, by JusticeLearning.org, published by Oxford University Press, 2005, pp. 42 & 43]

HIPAA excerpts from SUMMARY OF THE HIPAA PRIVACY RULE by HHS Office for Civil Rights, pp 4-11:

General Principle for Uses and Disclosures -- Basic Principle. A major purpose of the Privacy Rule is to define and limit the circumstances in which an individual's protected health information may be used or disclosed by covered entities. A covered entity may not use or disclose protected health information, except either: (1) as the Privacy Rule permits or requires; or (2) as the individual who is the subject of the information (or the individual's personal representative) authorizes in writing.¹⁶

Required Disclosures. A covered entity must disclose protected health information in only two situations: (a) to individuals (or their personal representatives) specifically when they request access to, or an accounting of disclosures of, their protected health information; and (b) to HHS when it is undertaking a compliance investigation or review or enforcement action.¹⁷ See [OCR "Government Access" Guidance](#).

Permitted Uses and Disclosures. A covered entity is permitted, but not required, to use and disclose protected health information, without an individual's authorization, for the following purposes or situations: (1) To the Individual (unless required for access or accounting of disclosures); (2) Treatment, Payment, and Health Care Operations; (3) Opportunity to Agree or Object; (4) Incident to an otherwise permitted use and disclosure; (5) Public Interest and Benefit Activities; and OCR Privacy Rule Summary 5 Last Revised 05/03 (6) Limited Data Set for the purposes of research, public health or health care operations.¹⁸ Covered

entities may rely on professional ethics and best judgments in deciding which of these permissive uses and disclosures to make.

(1) To the Individual. A covered entity may disclose protected health information to the individual who is the subject of the information.

(2) Treatment, Payment, Health Care Operations. A covered entity may use and disclose protected health information for its own treatment, payment, and health care operations activities.¹⁹ A covered entity also may disclose protected health information for the treatment activities of any health care provider, the payment activities of another covered entity and of any health care provider, or the health care operations of another covered entity involving either quality or competency assurance activities or fraud and abuse detection and compliance activities, if both covered entities have or had a relationship with the individual and the protected health information pertains to the relationship. See [OCR “Treatment, Payment, Health Care Operations” Guidance](#).

Treatment is the provision, coordination, or management of health care and related services for an individual by one or more health care providers, including consultation between providers regarding a patient and referral of a patient by one provider to another.²⁰

Payment encompasses activities of a health plan to obtain premiums, determine or fulfill responsibilities for coverage and provision of benefits, and furnish or obtain reimbursement for health care delivered to an individual²¹ and activities of a health care provider to obtain payment or be reimbursed for the provision of health care to an individual.

Health care operations are any of the following activities: (a) quality assessment and improvement activities, including case management and care coordination; (b) competency assurance activities, including provider or health plan performance evaluation, credentialing, and accreditation; (c) conducting or arranging for medical reviews, audits, or legal services, including fraud and abuse detection and compliance programs; (d) specified insurance functions, such as underwriting, risk rating, and reinsuring risk; (e) business planning, development, management, and administration; and (f) business management and general administrative activities of the entity, including but not limited to: de-identifying protected health information, creating a limited data set, and certain fundraising for the benefit of the covered entity.²² Most uses and disclosures of psychotherapy notes for treatment, payment, and health care operations purposes require an authorization as described below.²³ Obtaining “consent” (written permission from individuals to use and disclose their protected health information for treatment, payment, and health care operations) is optional under the Privacy Rule for all covered entities.²⁴ The content of a consent form, and the process for obtaining consent, are at the discretion of the covered entity electing to seek consent.

(3) Uses and Disclosures with Opportunity to Agree or Object. Informal permission may be obtained by asking the individual outright, or by circumstances that clearly give the individual the opportunity to agree, acquiesce, or object. Where the individual is incapacitated, in an emergency situation, or not available, covered entities generally may make such uses and disclosures, if in the exercise of their professional judgment, the use or disclosure is determined to be in the best interests of the individual.

Facility Directories. It is a common practice in many health care facilities, such as hospitals, to maintain a directory of patient contact information. A covered health care provider may rely on an individual’s informal permission to list in its facility directory the individual’s name, general condition, religious affiliation, and location in the provider’s facility.²⁵ The provider may then disclose the individual’s condition and location in the facility to anyone asking for the individual by name, and also may disclose religious affiliation to clergy. Members of the clergy are not required to ask for the individual by name when inquiring about patient religious affiliation.

For Notification and Other Purposes. A covered entity also may rely on an individual’s informal permission to disclose to the individual’s family, relatives, or friends, or to other persons whom the individual identifies, protected health information directly relevant to that person’s involvement in the individual’s care or payment for care. ²⁶ This provision, for example, allows a pharmacist to dispense filled prescriptions to a person acting on behalf of the patient. Similarly, a covered entity may rely on an individual’s informal permission to use or disclose protected health information for the purpose of notifying

(including identifying or locating) family members, personal representatives, or others responsible for the individual's care of the individual's location, general condition, or death. In addition, protected health information may be disclosed for notification purposes to public or private entities authorized by law or charter to assist in disaster relief efforts.

(4) Incidental Use and Disclosure. The Privacy Rule does not require that every risk of an incidental use or disclosure of protected health information be eliminated. A use or disclosure of this information that occurs as a result of, or as "incident to," an otherwise permitted use or disclosure is permitted as long as the covered entity has adopted reasonable safeguards as required by the Privacy Rule, and the information being shared was limited to the "minimum necessary," as required by the Privacy Rule.²⁷ See [OCR "Incidental Uses and Disclosures" Guidance](#).

(5) Public Interest and Benefit Activities. The Privacy Rule permits use and disclosure of protected health information, without an individual's authorization or permission, for 12 national priority purposes.²⁸ These disclosures are permitted, although not required, by the Rule in recognition of the important uses made of health information outside of the health care context. Specific conditions or limitations apply to each public interest purpose, striking the balance between the individual privacy interest and the public interest need for this information.

Required by Law. Covered entities may use and disclose protected health information without individual authorization as *required by law* (including by statute, regulation, or court orders).²⁹

Public Health Activities. Covered entities may disclose protected health information to: (1) public health authorities authorized by law to collect or receive such information for preventing or controlling disease, injury, or disability and to public health or other government authorities authorized to receive reports of child abuse and neglect; (2) entities subject to FDA regulation regarding FDA regulated products or activities for purposes such as adverse event reporting, tracking of products, product recalls, and post marketing surveillance; (3) individuals who may have contracted or been exposed to a communicable disease when notification is authorized by law; and (4) employers, regarding employees, when requested by employers, for information concerning a work-related illness or injury or workplace related medical surveillance, because such information is needed by the employer to comply with the Occupational Safety and Health Administration (OSHA), the Mine Safety and Health Administration (MSHA), or similar state law.³⁰ See [OCR "Public Health" Guidance](#); [CDC Public Health and HIPAA Guidance](#).

Victims of Abuse, Neglect or Domestic Violence. In certain circumstances, covered entities may disclose protected health information to appropriate government authorities regarding victims of abuse, neglect, or domestic violence.³¹

Health Oversight Activities. Covered entities may disclose protected health information to health oversight agencies (as defined in the Rule) for purposes of legally authorized health oversight activities, such as audits and investigations necessary for oversight of the health care system and government benefit programs.³²

Judicial and Administrative Proceedings. Covered entities may disclose protected health information in a judicial or administrative proceeding if the request for the information is through an order from a court or administrative tribunal. Such information may also be disclosed in response to a subpoena or other lawful process if certain assurances regarding notice to the individual or a protective order are provided.³³

Law Enforcement Purposes. Covered entities may disclose protected health information to law enforcement officials for law enforcement purposes under the following six circumstances, and subject to specified conditions: (1) as required by law (including court orders, court-ordered warrants, subpoenas) and administrative requests; (2) to identify or locate a suspect, fugitive, material witness, or missing person; (3) in response to a law enforcement official's request for information about a victim or suspected victim of a crime; (4) to alert law enforcement of a person's death, if the covered entity suspects that criminal activity caused the death; (5) when a covered entity believes that protected health information is evidence of a crime that occurred on its premises; and (6) by a covered health care provider in a medical emergency not occurring on its premises, when necessary to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crime.³⁴ [OCR Privacy Rule Summary 8 Last Revised 05/03](#)

Decedents. Covered entities may disclose protected health information to funeral directors as needed, and to coroners or medical examiners to identify a deceased person, determine the cause of death, and perform other functions authorized by law.³⁵

Cadaveric Organ, Eye, or Tissue Donation. Covered entities may use or disclose protected health information to facilitate the donation and transplantation of cadaveric organs, eyes, and tissue.³⁶

Research. “Research” is any systematic investigation designed to develop or contribute to generalizable knowledge.³⁷ The Privacy Rule permits a covered entity to use and disclose protected health information for research purposes, without an individual’s authorization, provided the covered entity obtains either: (1) documentation that an alteration or waiver of individuals’ authorization for the use or disclosure of protected health information about them for research purposes has been approved by an Institutional Review Board or Privacy Board; (2) representations from the researcher that the use or disclosure of the protected health information is solely to prepare a research protocol or for similar purpose preparatory to research, that the researcher will not remove any protected health information from the covered entity, and that protected health information for which access is sought is necessary for the research; or (3) presentations from the researcher that the use or disclosure sought is solely for research on the protected health information of decedents, that the protected health information sought is necessary for the research, and, at the request of the covered entity, documentation of the death of the individuals about whom information is sought.³⁸ A covered entity also may use or disclose, without an individuals’ authorization, a limited data set of protected health information for research purposes (see discussion below).³⁹ See [OCR “Research” Guidance](#); [NIH Protecting PHI in Research](#).

Serious Threat to Health or Safety. Covered entities may disclose protected health information that they believe is necessary to prevent or lessen a serious and imminent threat to a person or the public, when such disclosure is made to someone they believe can prevent or lessen the threat (including the target of the threat). Covered entities may also disclose to law enforcement if the information is needed to identify or apprehend an escapee or violent criminal.⁴⁰

Essential Government Functions. An authorization is not required to use or disclose protected health information for certain essential government functions. Such functions include: assuring proper execution of a military mission, conducting intelligence and national security activities that are authorized by law, providing protective services to the President, making medical suitability determinations for U.S. State Department employees, protecting the health and safety of inmates or employees in a correctional institution, and determining eligibility for or conducting enrollment in certain government benefit programs.⁴¹ [OCR Privacy Rule Summary 9 Last Revised 05/03](#)

Workers’ Compensation. Covered entities may disclose protected health information as authorized by, and to comply with, workers’ compensation laws and other similar programs providing benefits for work-related injuries or illnesses.⁴² See [OCR “Workers’ Compensation” Guidance](#).

(6) Limited Data Set. A limited data set is protected health information from which certain specified direct identifiers of individuals and their relatives, household members, and employers have been removed.⁴³ A limited data set may be used and disclosed for research, health care operations, and public health purposes, provided the recipient enters into a data use agreement promising specified safeguards for the protected health information within the limited data set.

Authorized Uses and Disclosures -- Authorization. A covered entity must obtain the individual’s written authorization for any use or disclosure of protected health information that is not for treatment, payment or health care operations or otherwise permitted or required by the Privacy Rule.⁴⁴ A covered entity may not condition treatment, payment, enrollment, or benefits eligibility on an individual granting an authorization, except in limited circumstances.⁴⁵ An authorization must be written in specific terms. It may allow use and disclosure of protected health information by the covered entity seeking the authorization, or by a third party. Examples of disclosures that would require an individual’s authorization include disclosures to a life insurer for coverage purposes, disclosures to an employer of the results of a pre-employment physical or lab test, or disclosures to a pharmaceutical firm for their own marketing purposes. All authorizations must be in

plain language, and contain specific information regarding the information to be disclosed or used, the person(s) disclosing and receiving the information, expiration, right to revoke in writing, and other data. The Privacy Rule contains transition provisions applicable to authorizations and other express legal permissions obtained prior to April 14, 2003.⁴⁶

Psychotherapy Notes⁴⁷. A covered entity must obtain an individual's authorization to use or disclose psychotherapy notes with the following exceptions⁴⁸:

- The covered entity who originated the notes may use them for treatment.
- A covered entity may use or disclose, without an individual's authorization, the psychotherapy notes, for its own training, and to defend itself in legal proceedings brought by the individual, for HHS to investigate or determine the covered entity's compliance with the Privacy Rules, to avert a serious and imminent threat to public health or safety, to a health oversight agency for lawful oversight of the originator of the psychotherapy notes, for the lawful activities of a coroner or medical examiner or as required by law.

Marketing. Marketing is any communication about a product or service that encourages recipients to purchase or use the product or service.⁴⁹ The Privacy Rule carves out the following health-related activities from this definition of marketing:

- Communications to describe health-related products or services, or payment OCR Privacy Rule Summary 10 Last Revised 05/03 for them, provided by or included in a benefit plan of the covered entity making the communication;
- Communications about participating providers in a provider or health plan network, replacement of or enhancements to a health plan, and health-related products or services available only to a health plan's enrollees that add value to, but are not part of, the benefits plan;
- Communications for treatment of the individual; and
- Communications for case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or care settings to the individual.

Marketing also is an arrangement between a covered entity and any other entity whereby the covered entity discloses protected health information, in exchange for direct or indirect remuneration, for the other entity to communicate about its own products or services encouraging the use or purchase of those products or services. A covered entity must obtain an authorization to use or disclose protected health information for marketing, except for face-to-face marketing communications between a covered entity and an individual, and for a covered entity's provision of promotional gifts of nominal value. No authorization is needed, however, to make a communication that falls within one of the exceptions to the marketing definition. An authorization for marketing that involves the covered entity's receipt of direct or indirect remuneration from a third party must reveal that fact. See [OCR "Marketing" Guidance](#).

Limiting Uses and Disclosures to the Minimum Necessary -- Minimum Necessary. A central aspect of the Privacy Rule is the principle of "minimum necessary" use and disclosure. A covered entity must make reasonable efforts to use, disclose, and request only the minimum amount of protected health information needed to accomplish the intended purpose of the use, disclosure, or request.⁵⁰ A covered entity must develop and implement policies and procedures to reasonably limit uses and disclosures to the minimum necessary. When the minimum necessary standard applies to a use or disclosure, a covered entity may not use, disclose, or request the entire medical record for a particular purpose, unless it can specifically justify the whole record as the amount reasonably needed for the purpose. See [OCR "Minimum Necessary" Guidance](#).

The minimum necessary requirement is not imposed in any of the following circumstances: (a) disclosure to or a request by a health care provider for treatment; (b) disclosure to an individual who is the subject of the information, or the individual's personal representative; (c) use or disclosure made pursuant to an authorization; (d) disclosure to HHS for complaint investigation, compliance review or enforcement; (e) use

or disclosure that is required by law; or (f) use or disclosure required for compliance with the HIPAA Transactions Rule or other HIPAA Administrative Simplification Rules.

Access and Uses. For internal uses, a covered entity must develop and implement policies and procedures that restrict access and uses of protected health information based on the specific roles of the members of their workforce. These policies and procedures must identify the persons, or classes of persons, in the workforce who need access to protected health information to carry out their duties, the categories of OCR Privacy Rule Summary 11 Last Revised 05/03 protected health information to which access is needed, and any conditions under which they need the information to do their jobs.

Disclosures and Requests for Disclosures. Covered entities must establish and implement policies and procedures (which may be standard protocols) for *routine, recurring disclosures, or requests for disclosures*, that limits the protected health information disclosed to that which is the minimum amount reasonably necessary to achieve the purpose of the disclosure. Individual review of each disclosure is not required. For non-routine, non-recurring disclosures, or requests for disclosures that it makes, covered entities must develop criteria designed to limit disclosures to the information reasonably necessary to accomplish the purpose of the disclosure and review each of these requests individually in accordance with the established criteria.

Reasonable Reliance. If another covered entity makes a request for protected health information, a covered entity may rely, if reasonable under the circumstances, on the request as complying with this minimum necessary standard. Similarly, a covered entity may rely upon requests as being the minimum necessary protected health information from: (a) a public official, (b) a professional (such as an attorney or accountant) who is the covered entity's business associate, seeking the information to provide services to or for the covered entity; or (c) a researcher who provides the documentation or representation required by the Privacy Rule for research.

Texas Administrative Code

Title 22. Examining Boards

Part 35. Marriage and Family Therapists

Chapter 801. Licensure and Regulation of Marriage and Family Therapists

New Amendments effective May 18, 2008

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

§801.41. Purpose. The purpose of this subchapter is to provide guidelines regarding the provision of professional therapeutic services and to establish standards of professional and ethical conduct required of a licensee.

§801.42. Professional Therapeutic Services. The following are professional therapeutic services which may be provided by a Licensed Marriage and Family Therapist or a Licensed Marriage and Family Therapist Associate:

(1) **marriage therapy** 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 marriage life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of either partner;

(2) **sex therapy** 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;

(3) **family therapy** 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** 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** 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** 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** 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** 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. Court appointed mediation requires specialized training period;

(9) **group therapy** 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** 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** which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-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** 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** 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** 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** 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** 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** 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** 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, pertaining to parenting plan and **parenting coordinator**;

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

(21) **life coaching**; and any related techniques or modalities; and

(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 shall indicate his or her licensure status as a Licensed Marriage and Family Therapist, including any probationary status or other restrictions placed on the licensee by the board.

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

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

§801.44. Relationships with Clients.

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

(b) A licensee shall make known to a prospective client the important aspects of the professional relationship, including but not limited, to the licensee's status as 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 shall obtain an appropriate consent for treatment before providing professional services. A licensee shall make reasonable efforts to determine whether the conservatorship, guardianship, or parental rights of the client have been modified by a court.

(d) A licensee shall make known 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 shall be given or received by a licensee for the referral of clients for professional services.

(f) A licensee shall not use relationships with clients to promote, for personal gain or for the profit of an agency, commercial enterprises of any kind.

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

(h) A licensee 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 shall set and maintain professional boundaries. A licensee shall make a reasonable effort to avoid dual relationships. A dual relationship is considered any non-therapeutic activity initiated by either the licensee or the client for the purposes of establishing a non-therapeutic relationship. It is the responsibility of the licensee to ensure the welfare of the client if a dual relationship arises.

(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 shall take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(l) 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 five years for an adult client and 5 years beyond the age of 18 years of age for a minor.

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

(n) A licensee shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from it. Upon termination, if the client still requires mental health services, the licensee shall make reasonable efforts in writing to refer the client to appropriate services.

(o) A licensee who engages in interactive therapy via the telephone or internet must provide the client with his/her license number and information on how to contact the board by telephone or mail, and must adhere to all other provisions of this chapter.

(p) A licensee shall only offer those services that are within his or her professional competency, and the services provided shall be within accepted professional standards of practice and appropriate to the needs of the client.

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

(r) A licensee shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.

(s) A licensee shall not promote or encourage the illegal use of alcohol or drugs by clients.

§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 Penal Code, §21.01;

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

(C) sexual intercourse as defined by 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 shall not engage in sexual contact with a person who is:

(1) a client;

(2) a former client with whom there has been no therapeutic contact for a minimum of two years;

(3) an associate or an intern for whom the licensee has administrative or clinical responsibility;

(4) an intern in a marriage and family therapy graduate program in which the licensee offers professional or educational services; or

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

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

(d) A licensee shall not practice therapeutic deception or sexual exploitation.

(e) Because sexual contact with former clients are so frequently harmful to the client, and because such contacts undermine public confidence in the marriage and family therapy profession and thereby deter the public's use of needed services, marriage and family therapists do not engage in sexual contact with former clients even after a two-year interval except in the most unusual circumstances. A licensee who engages in such activity after the two years following cessation or termination of therapy bears the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including:

(1) the amount of time has passed since therapy terminated;

(2) the nature and duration of the therapy;

(3) the circumstances of termination;

(4) the client's personal history;

(5) the client's current mental status;

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

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

(f) 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.

(g) The following, when done in the context of professional services, 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, associate, or former client to masturbate in the presence of the licensee; and
- (13) masturbation by the licensee when a client, student, associate, or former client is present.

(h) Examples of sexual contact shall include those activities and behaviors described in Texas Penal Code, §21.01.

§801.46. Testing.

- (a) A licensee shall make known to clients the purposes and explicit use to be made of any testing done as part of a professional relationship.
- (b) A licensee shall not appropriate, reproduce, or modify published tests or parts thereof without the acknowledgment and permission of the publisher.
- (c) A licensee 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 shall not:

- (1) use alcohol or drugs in a manner which adversely affects the licensee's ability to provide treatment intervention services; or
- (2) use illegal drugs of any kind.

§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, and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice.
- (b) A licensee shall not disclose any communication, record, or identity of a client except as provided in Texas Health and Safety Code, Chapter 611, or other state or federal statutes or rules.
- (c) A licensee shall comply with Texas Health and Safety Code, Chapter 611, 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 shall report information if required by any of the following statutes:
 - (1) Texas Family Code, Chapter 2614, concerning abuse or neglect of minors;
 - (2) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons;
 - (3) Texas Health and Safety Code, Chapter 161, Subchapter K, §161.131 et seq., concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an in-patient mental health facility, a chemical dependency treatment facility or a hospital providing comprehensive medical rehabilitation services; and
 - (4) Texas Civil Practice and Remedies Code, §81.006, concerning sexual exploitation by a mental health services provider.

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

(e) 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 for a minor.

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

(g) In independent practice, 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 shall report alleged misrepresentations or violations of this chapter to the board.

(c) The licensee shall report name changes, any changes in home or business, address or phone number, employment setting, or other relevant changes to the board in writing 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 shall provide documentation to the board within 30 days of the granting of an academic degree relevant to the practice of marriage and family therapy.

§801.50. Assumed 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 must not be false, deceptive, or misleading.

§801.51. Consumer Complaint Information.

(a) A licensee 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 shall prepare information of consumer interest that describes the regulatory functions of the board and board procedures for handling and resolving complaints.

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

§801.52. Display of License Certificate.

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

(b) A licensee shall display only an original of the license certificate or annual renewal card issued by the board.

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

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

§801.53. Advertising and Announcements.

(a) Information used by a licensee in any advertisement or announcement of services 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 person licensed by the board shall clearly state the licensee's licensure status by the use of a title such as "Licensed Therapist", or "Licensed Marriage and Family Therapist", or "L.M.F.T.", "Licensed Marriage and Family Therapist Associate" or "LMFT-A", or a statement such as "licensed by the Texas State Board of Examiners of Marriage and Family Therapists."

(e) A licensee 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 LMFTA holding a provisional license 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 subject's welfare throughout a project and shall take reasonable precautions so that the subject shall suffer no injurious emotional, physical, or social effect.

(b) A licensee shall disguise data obtained from a therapeutic relationship for the purposes of education or research to ensure full protection of the identity of the 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.

SUBCHAPTER D. APPLICATION PROCEDURES

§801.71. Purpose. The purpose of this subchapter is to set out the application procedures for examination and licensure.

§801.72. General.

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

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

(c) An application must be complete 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 voided.

§801.73. Required Application Materials.

(a) Application form. The application form shall contain:

(1) specific information regarding personal data, employment and type of practice, other state licenses and certifications held, 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 them;

(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 non-refundable;

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

(7) an official transcript.

(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.

(c) 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.

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

Website: <http://www.dshs.state.tx.us/mft/default.shtm>

Texas Civil Practice & Remedies Code, Chapter 81 Section 81.001 [Mental Health Services] & Chapter 154 Section 154.073 [ADR Procedures]:

Sec. 81.001. DEFINITIONS. In this chapter:

(1) "Mental health services" means assessment, diagnosis, treatment, or counseling 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" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by Section 505.002, Occupations Code;

(B) chemical dependency counselor as defined by Section 504.001, Occupations Code;

(C) licensed professional counselor as defined by Section 503.002, Occupations Code;

(D) licensed marriage and family therapist as defined by Section 502.002, Occupations

Code;

(E) member of the clergy;

(F) physician who is practicing medicine as defined by Section 151.002, Occupations

Code;

(G) psychologist offering psychological services as defined by Section 501.003, Occupations Code; or

(H) special officer for mental health assignment certified under Section 1701.404, Occupations Code.

(3) "Patient" means an individual who seeks or obtains mental health services. The term includes a person who has contact with a special officer for mental health assignment because of circumstances relating to the person's mental health.

Sec. 154.073. CONFIDENTIALITY OF CERTAIN RECORDS AND COMMUNICATIONS. (a) Except as provided by Subsections (c), (d), (e), and (f), a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(b) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(c) An oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable if it is admissible or discoverable independent of the procedure.

(d) A final written agreement to which a governmental body, as defined by Section 552.003, Government Code, is a signatory that is reached as a result of a dispute resolution procedure conducted under this chapter is subject to or excepted from required disclosure in accordance with Chapter 552, Government Code.

(e) If this section conflicts with other legal requirements for disclosure of communications, records, or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure.

(f) This section does not affect the duty to report abuse or neglect under Subchapter B, Chapter 261, Family Code, and abuse, exploitation, or neglect under Subchapter C, Chapter 48, Human Resources Code.

(g) This section applies to a victim-offender mediation by the Texas Department of Criminal Justice as described in Article 56.13, Code of Criminal Procedure.

Texas Health and Safety Code, Chapter 611 [Mental Health Records]:

Sec. 611.001. DEFINITIONS. In this chapter:

(1) "Patient" means a person who consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction.

(2) "Professional" means:

(A) a person authorized to practice medicine in any state or nation;

(B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or

(C) a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

Sec. 611.002. CONFIDENTIALITY OF INFORMATION AND PROHIBITION AGAINST DISCLOSURE. (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

(c) This section applies regardless of when the patient received services from a professional.

Sec. 611.003. PERSONS WHO MAY CLAIM PRIVILEGE OF CONFIDENTIALITY. (a) The privilege of confidentiality may be claimed by:

- (1) the patient;
- (2) a person listed in Section 611.004(a)(4) or (a)(5) who is acting on the patient's behalf;

or

- (3) the professional, but only on behalf of the patient.

(b) The authority of a professional to claim the privilege of confidentiality on behalf of the patient is presumed in the absence of evidence to the contrary.

Sec. 611.004. AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION OTHER THAN IN JUDICIAL OR ADMINISTRATIVE PROCEEDING. (a) A professional may disclose confidential information only:

- (1) to a governmental agency if the disclosure is required or authorized by law;
- (2) to medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient;
- (3) to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);
- (4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;
- (5) to the patient's personal representative if the patient is deceased;
- (6) to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;
- (7) to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;
- (8) in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c);
- (9) to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody;
- (10) to an employee or agent of the professional who requires mental health care information to provide mental health care services or in complying with statutory, licensing, or accreditation requirements, if the professional has taken appropriate action to ensure that the employee or agent:
 - (A) will not use or disclose the information for any other purposes; and
 - (B) will take appropriate steps to protect the information; or
- (11) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code.

(b) Personnel who receive confidential information under Subsection (a)(3) may not directly or indirectly identify or otherwise disclose the identity of a patient in a report or in any other manner.

(c) The exception in Subsection (a)(8) applies only to records created by the state hospital or state school or by the employees of the hospital or school. Information or records that identify a patient may be released only with the patient's proper consent.

(d) A person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information. This subsection does not apply to a person listed in Subsection (a)(4) or (a)(5) who is acting on the patient's behalf.

Sec. 611.0045. RIGHT TO MENTAL HEALTH RECORD. (a) Except as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient.

(b) The professional may deny access to any portion of a record if the professional determines that release of that portion would be harmful to the patient's physical, mental, or emotional health.

(c) If the professional denies access to any portion of a record, the professional shall give the patient a signed and dated written statement that having access to the record would be harmful to the

patient's physical, mental, or emotional health and shall include a copy of the written statement in the patient's records. The statement must specify the portion of the record to which access is denied, the reason for denial, and the duration of the denial.

(d) The professional who denies access to a portion of a record under this section shall redetermine the necessity for the denial at each time a request for the denied portion is made. If the professional again denies access, the professional shall notify the patient of the denial and document the denial as prescribed by Subsection (c).

(e) If a professional denies access to a portion of a confidential record, the professional shall allow examination and copying of the record by another professional if the patient selects the professional to treat the patient for the same or a related condition as the professional denying access.

(f) The content of a confidential record shall be made available to a person listed by Section 611.004(a)(4) or (5) who is acting on the patient's behalf.

(g) A professional shall delete confidential information about another person who has not consented to the release, but may not delete information relating to the patient that another person has provided, the identity of the person responsible for that information, or the identity of any person who provided information that resulted in the patient's commitment.

(h) If a summary or narrative of a confidential record is requested by the patient or other person requesting release under this section, the professional shall prepare the summary or narrative.

(i) The professional or other entity that has possession or control of the record shall grant access to any portion of the record to which access is not specifically denied under this section within a reasonable time and may charge a reasonable fee.

(j) Notwithstanding Section 159.002, Occupations Code, this section applies to the release of a confidential record created or maintained by a professional, including a physician, that relates to the diagnosis, evaluation, or treatment of a mental or emotional condition or disorder, including alcoholism or drug addiction.

(k) The denial of a patient's access to any portion of a record by the professional or other entity that has possession or control of the record suspends, until the release of that portion of the record, the running of an applicable statute of limitations on a cause of action in which evidence relevant to the cause of action is in that portion of the record.

Sec. 611.005. LEGAL REMEDIES FOR IMPROPER DISCLOSURE OR FAILURE TO DISCLOSE. (a) A person aggrieved by the improper disclosure of or failure to disclose confidential communications or records in violation of this chapter may petition the district court of the county in which the person resides for appropriate relief, including injunctive relief. The person may petition a district court of Travis County if the person is not a resident of this state.

(b) In a suit contesting the denial of access under Section 611.0045, the burden of proving that the denial was proper is on the professional who denied the access.

(c) The aggrieved person also has a civil cause of action for damages.

Sec. 611.006. AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION IN JUDICIAL OR ADMINISTRATIVE PROCEEDING. (a) A professional may disclose confidential information in:

(1) a judicial or administrative proceeding brought by the patient or the patient's legally authorized representative against a professional, including malpractice proceedings;

(2) a license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;

(3) a judicial or administrative proceeding in which the patient waives the patient's right in writing to the privilege of confidentiality of information or when a representative of the patient acting on the patient's behalf submits a written waiver to the confidentiality privilege;

(4) a judicial or administrative proceeding to substantiate and collect on a claim for mental or emotional health services rendered to the patient;

(5) a judicial proceeding if the judge finds that the patient, after having been informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's mental or emotional condition or disorder, except that

those communications may be disclosed only with respect to issues involving the patient's mental or emotional health;

- (6) a judicial proceeding affecting the parent-child relationship;
- (7) any criminal proceeding, as otherwise provided by law;
- (8) a judicial or administrative proceeding regarding the abuse or neglect, or the cause of abuse or neglect, of a resident of an institution, as that term is defined by Chapter 242;
- (9) a judicial proceeding relating to a will if the patient's physical or mental condition is relevant to the execution of the will;
- (10) an involuntary commitment proceeding for court-ordered treatment or for a probable cause hearing under:
 - (A) Chapter 462;
 - (B) Chapter 574; or
 - (C) Chapter 593; or
- (11) a judicial or administrative proceeding where the court or agency has issued an order or subpoena.

(b) On granting an order under Subsection (a)(5), the court, in determining the extent to which disclosure of all or any part of a communication is necessary, shall impose appropriate safeguards against unauthorized disclosure.

Sec. 611.007. REVOCATION OF CONSENT. (a) Except as provided by Subsection (b), a patient or a patient's legally authorized representative may revoke a disclosure consent to a professional at any time. A revocation is valid only if it is written, dated, and signed by the patient or legally authorized representative.

(b) A patient may not revoke a disclosure that is required for purposes of making payment to the professional for mental health care services provided to the patient.

(c) A patient may not maintain an action against a professional for a disclosure made by the professional in good faith reliance on an authorization if the professional did not have notice of the revocation of the consent.

Sec. 611.008. REQUEST BY PATIENT. (a) On receipt of a written request from a patient to examine or copy all or part of the patient's recorded mental health care information, a professional, as promptly as required under the circumstances but not later than the 15th day after the date of receiving the request, shall:

- (1) make the information available for examination during regular business hours and provide a copy to the patient, if requested; or
- (2) inform the patient if the information does not exist or cannot be found.

(b) Unless provided for by other state law, the professional may charge a reasonable fee for retrieving or copying mental health care information and is not required to permit examination or copying until the fee is paid unless there is a medical emergency.

(c) A professional may not charge a fee for copying mental health care information under Subsection (b) to the extent the fee is prohibited under Subchapter M, Chapter 161.

Texas Family Code, Sections 153.601-611, 153.0071(g) [SUBCHAPTER K. PARENTING PLAN AND PARENTING COORDINATOR]:

Sec. 153.601. DEFINITIONS. In this subchapter:

- (1) "Dispute resolution process" means:
 - (A) a process of alternative dispute resolution conducted in accordance with Section 153.0071 of this chapter and Chapter 154, Civil Practice and Remedies Code; or
 - (B) any other method of voluntary dispute resolution.
- (2) "High-conflict case" means a suit affecting the parent-child relationship in which the court finds that the parties have demonstrated an unusual degree of:
 - (A) repetitiously resorting to the adjudicative process;
 - (B) anger and distrust; and

(C) difficulty in communicating about and cooperating in the care of their children.

(3) "Parenting coordinator" means an impartial third party appointed by the court on its own motion or on a motion or agreement of the parties to assist parties in resolving parenting issues.

(4) "Parenting plan" means the provisions of a final court order that:

(A) set out rights and duties of a parent or a person acting as a parent in relation to the child;

(B) provide for periods of possession of and access to the child, which may be the terms set out in the standard possession order under Subchapter F and any amendments to the standard possession order agreed to by the parties or found by the court to be in the best interest of the child;

(C) provide for child support; and

(D) optimize the development of a close and continuing relationship between each parent and the child.

Sec. 153.602. PARENTING PLAN NOT REQUIRED IN TEMPORARY ORDER. A temporary order in a suit affecting the parent-child relationship rendered in accordance with Section 105.001 is not required to include a temporary parenting plan. The court may not require the submission of a temporary parenting plan in any case or by local rule or practice.

Sec. 153.603. REQUIREMENT OF PARENTING PLAN IN FINAL ORDER. (a) Except as provided by Subsection (b), a final order in a suit affecting the parent-child relationship must include a parenting plan.

(b) The following orders are not required to include a parenting plan:

(1) an order that only modifies child support;

(2) an order that only terminates parental rights; or

(3) a final order described by Section 155.001(b).

(c) If the parties have not reached agreement on a final parenting plan on or before the 30th day before the date set for trial on the merits, a party may file with the court and serve a proposed parenting plan.

(d) This section does not preclude the parties from requesting the appointment of a parenting coordinator to resolve parental conflicts.

Sec. 153.6031. EXCEPTION TO DISPUTE RESOLUTION PROCESS REQUIREMENT. A requirement in a parenting plan that a party initiate or participate in a dispute resolution process before filing a court action does not apply to an action:

(1) to modify the parenting plan in an emergency;

(2) to modify child support;

(3) alleging that the child's present circumstances will significantly impair the child's physical health or significantly impair the child's emotional development;

(4) to enforce; or

(5) in which the party shows that enforcement of the requirement is precluded or limited by Section 153.0071.

Sec. 153.605. APPOINTMENT OF PARENTING COORDINATOR. (a) In a suit affecting the parent-child relationship, the court may, on its own motion or on a motion or agreement of the parties, appoint a parenting coordinator to assist the parties in resolving parenting issues.

(b) The court may not appoint a parenting coordinator unless, after notice and hearing, the court makes a specific finding that:

(1) the case is a high-conflict case; or

(2) there is good cause shown for the appointment of a parenting coordinator and the appointment is in the best interest of any minor child in the suit.

(c) Notwithstanding any other provision of this subchapter, a party may at any time file a written objection to the appointment of a parenting coordinator on the basis of family violence having been committed by another party against the objecting party or a child who is the subject of the suit. After an objection is filed, a parenting coordinator may not be appointed unless, on the request of a party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If a parenting coordinator is appointed, the court shall order appropriate measures be taken to ensure the

physical and emotional safety of the party who filed the objection. The order may provide that the parties not be required to have face-to-face contact and that the parties be placed in separate rooms during the parenting coordination.

Sec. 153.606. DUTIES OF PARENTING COORDINATOR. (a) The duties of a parenting coordinator must be specified in the order appointing the parenting coordinator. The duties of the parenting coordinator are limited to matters that will aid the parties in:

- (1) identifying disputed issues;
- (2) reducing misunderstandings;
- (3) clarifying priorities;
- (4) exploring possibilities for problem solving;
- (5) developing methods of collaboration in parenting;
- (6) understanding parenting plans and reaching agreements about parenting issues to be included in a parenting plan; and
- (7) complying with the court's order regarding conservatorship or possession of and access to the child.

(b) The appointment of a parenting coordinator does not divest the court of:

- (1) its exclusive jurisdiction to determine issues of conservatorship, support, and possession of and access to the child; and
- (2) the authority to exercise management and control of the suit.

(c) The parenting coordinator may not modify any order, judgment, or decree. If a suit is pending, any agreement made by the parties with the assistance of the parenting coordinator must be reduced to writing, signed by the parties and their attorneys, if any, and filed with the court.

(d) Meetings between the parenting coordinator and the parties may be informal and are not required to follow any specific procedures.

Sec. 153.607. REMOVAL OF PARENTING COORDINATOR. (a) Except as otherwise provided by this section, the court shall reserve the right to remove the parenting coordinator in the court's discretion.

(b) The court shall remove the parenting coordinator:

- (1) on the request and agreement of both parties; or
- (2) on the motion of a party, if good cause is shown.

Sec. 153.608. REPORT OF PARENTING COORDINATOR. A parenting coordinator shall submit a written report to the court and to the parties as often as ordered by the court. The report must be limited to a statement of whether the parenting coordination should continue.

Sec. 153.609. COMPENSATION OF PARENTING COORDINATOR. (a) A court may not appoint a parenting coordinator, other than a domestic relations office or a comparable county agency appointed under Subsection (c) or a volunteer appointed under Subsection (d), unless, after notice and hearing, the court finds that the parties have the means to pay the fees of the parenting coordinator.

(b) Any fees of a parenting coordinator appointed under Subsection (a) shall be allocated between the parties as determined by the court.

(c) Public funds may not be used to pay the fees of a parenting coordinator. Notwithstanding this prohibition, a court may appoint the domestic relations office or a comparable county agency to act as a parenting coordinator if personnel are available to serve that function.

(d) If due to hardship the parties are unable to pay the fees of a parenting coordinator, and a public employee is not available under Subsection (c), the court, if feasible, may appoint a person to act as a parenting coordinator on a volunteer basis.

Sec. 153.610. QUALIFICATIONS OF PARENTING COORDINATOR. (a) The court shall determine the required qualifications of a parenting coordinator, provided that a parenting coordinator must at least:

- (1) hold a bachelor's degree in counseling, education, family studies, psychology, or social work and, unless waived by the court, complete a parenting coordinator course of at least 16 hours; or
- (2) hold a graduate degree in a mental health profession, with an emphasis in family and children's issues.

(b) In addition to the qualifications prescribed by Subsection (a), a parenting coordinator must complete at least eight hours of family violence dynamics training provided by a family violence service provider.

(c) The actions of a parenting coordinator who is not an attorney do not constitute the practice of law.

Sec. 153.611. EXCEPTION FOR CERTAIN TITLE IV-D PROCEEDINGS. Notwithstanding any other provision of this subchapter, this subchapter does not apply to a proceeding in a Title IV-D case relating to the determination of parentage or establishment, modification, or enforcement of a child support or medical support obligation.

Sec. 153.0071(g) The provisions for confidentiality of alternative dispute resolution procedures under Chapter 154, Civil Practice and Remedies Code, apply equally to the work of a parenting coordinator, as defined by Section 153.601, and to the parties and any other person who participates in the parenting coordination. This subsection does not affect the duty of a person to report abuse or neglect under Section 261.101.