

**Texas State Board of Social Worker Examiners  
PO BOX 141369  
Austin TX 78714-1369  
Consumer Complaints Hotline 1-800-942-5540**

Charles Horton  
Executive Director

Deborah Hammond, LMSW-ACP  
Chair

Complaints Management and Investigation Section  
512-834-6633-Office  
512-834-6718 - Fax

We have enclosed a complaint packet that includes instructions for completing the forms and a copy of the specific sections of the law and rules related to the complaints process.

To file a complaint, you will need to complete the enclosed *Complaint* and *General Release* form. Return both forms and any additional supporting documentation to the address listed above.

After the completed complaint packet is returned, you will be notified by letter acknowledging that your complaint has been received. The complaint will be reviewed to verify that the statement indicates a potential violation of the law or rules. If your complaint indicates a potential violation, we will notify you of the status of your complaint approximately every 90 days, until final action is taken. You will be notified when the complaint is to be presented to the Ethics Committee of the board. The notification will include the date, time and location of the Ethics Committee meeting. You may attend the Ethics Committee meeting, should you choose, in accordance with the Open Meetings Act of the State of Texas.

In some instances, a complaint may be investigated informally by staff. In other cases, a Texas Department of Health Investigator conducts investigations. The complaint may be investigated by telephone, mail and/or personal interviews. Information and/or documentation will be collected that is relevant to the complaint. After the investigation is completed, the report of investigation will be forwarded to the program for appropriate action.

Should you have any questions about completing the enclosed packet, feel free to call 1-800-942-5540.

# **The Texas State Board of Social Worker Examiners**

## **Complaint Process**

### **Introduction**

This booklet provides information on the complaint process. This information should be useful to anyone involved in the complaint: person(s) who wish to file a complaint against a licensed social worker and/or the social worker who has had a complaint filed against them. The stages of a complaint are described, copies of the applicable sections of the social work licensing law and rules are provided for reference, and the forms necessary to file a formal complaint are included.

### **What is a Complaint?**

Any sworn allegation that a person has violated social work licensing laws or rules that relate to the field of social work comprise a complaint. Copies of these regulations are included in this booklet. Any violation of these regulations is grounds to file a complaint with the board. Please contact the board office with questions concerning the regulations or complaint process.

### **How to File a Complaint**

To file an official complaint, you will need to complete the complaint form found on page 8 and sign it as a sworn statement before a Notary Public. You will also need to complete and sign the information release form on page 11. Place both documents in the pre-addressed envelope and mail it to the board.

### **Initial Complaint Review**

Once the complaint is received, it will be reviewed by board staff to verify that the statement indicates a potential violation of social work regulations and that the person who committed the potential violation is a licensed social worker in Texas. If no potential violation is noted in your statement, you will be notified and allowed to provide additional information. If there is a potential violation by a licensed social worker, you will be notified that an investigation has been initiated.

### **The Investigation**

In some instances a complaint may be investigated using phone or mail contacts. In other cases a professional investigator conducts investigations. Contact will be made with the complainant, the social worker in question, and other individuals deemed necessary to collect information and evidence relevant to the complaint. The social worker has the right to information on the complaint, including the name of the complainant. However, the social worker may not threaten or harass any witness or in any manner interfere with the investigation of the complaint.

### **The Ethics Committee**

Once the investigation is complete, the report of investigation is submitted to the members of the Ethics Committee for review. The complainant and social worker are notified that the case will be heard at the next meeting of the committee. Committee meetings are open to the public except when the committee goes into executive session to obtain legal counsel. The committee will discuss the complaint and may take statements from parties in attendance. Based on the preponderance of evidence in the case, the committee may find that a violation of the law or rules has or has not occurred. If no violation is found, the case is closed. If a violation is found, the committee may send a letter of warning, or recommend the social worker be reprimanded or recommend the social worker's license be suspended or revoked. The committee can recommend a social worker be placed on probation for part or in lieu of the suspension. In any case, the complainant and the social worker are notified of the committee's conclusions and recommendation.

### **Notice Letter**

If a violation is found, a certified letter is mailed to the social worker at the address on file with the board citing the sections of the law and/or rules that were violated, the action recommended by the committee, and the social worker's right to appeal. The notice states the time by which any appeal must be received by the board. If no written response is received within the time limit set out in the letter, the social worker will have waived the right to appeal the proposed action.

### **Letters of Advisement/Warning**

A letter of warning is a statement by the committee intended to bring a specific issue to the attention of the social worker. A warning is not necessarily a statement that a violation had occurred, but it does indicate the committee's concern for the social worker's actions in the case.

### **Reprimand**

A reprimand is a formal statement that a social worker has violated the law and/or rules and is therefore placed on notice to conform to accepted standards of practice and ethics as set out in the law and rules. The board must approve a reprimand. If a reprimand is recommended, the social worker is notified when the board will consider the recommendation and the social worker has the right to appear and be heard before the board accepts or denies the Ethics Committee's recommendation.

### **Due Process Rights**

If the committee recommends that a license be suspended, revoked or the social worker be placed on probation, no final action can be taken until the social worker has been notified and has had the opportunity to exercise the social worker's rights to due process. The social worker may: (1) surrender his/her license, (2) request an informal hearing, and (3) request a formal hearing before an administrative law judge (ALJ) [this is the only opportunity for the social workers to request a formal hearing]. If the social worker does not respond to the notice letter within the specified time period in the notice letter, the board will take action (approve or deny) on the proposed recommendation for disciplinary action by signing an agreed order by default.

**License surrender:** An offer to surrender a license may be accepted by board action. The board may issue an order accepting the surrender and may include a finding of fact that the surrender is deemed to be in lieu of disciplinary action.

**Informal Hearing:** An informal hearing is an opportunity for the social worker to either demonstrate compliance with licensing rules and law or to request that the Ethics Committee reconsider an alternative to the proposed disciplinary action. All parties will be notified of the informal hearing date and time. All parties have the right to attend or to submit written statements to be considered at the hearing. The social worker and, if present, the complainant will be permitted to make a presentation to the committee or its representatives. The committee may question the social worker or other parties on issues related to the complaint and its resolution. The committee may continue with its original recommendation or may recommend alternative action. All parties will be notified of the Ethics Committee's decision.

**Formal Hearing:** A formal hearing is held when the social worker does not accept the proposed action of the committee (probation, suspension, or revocation of the license) and files a written request for a hearing within the specified time period stated in the notice letter. The hearing is held before an administrative law judge (ALJ). The social worker may be represented by his/her own legal counsel. Both the board and the social worker may offer evidence, present and cross-examine witnesses. The ALJ generally reaches a decision in the case within 60-90 days after the hearing.

### **Board Action**

Uncontested cases, agreed orders, license surrender's and ALJ recommendations are forwarded to the board for their consideration. These cases are placed on the board agenda and the board renders a decision on the case based on their review of information in the proposed orders, findings of fact, conclusions of law, and the hearing record if applicable. The board may not take any additional testimony or consider any new evidence from other sources including the Ethics Committee. All parties will be notified of the board's decision.

### **District Court Appeal**

Once the board has taken disciplinary action on a license, the social worker has the right to appeal that decision to District Court. District Court reviews the case to determine if due process was followed and that the board acted within the limits of state law.

### **Recommended Time Frames for Disposition of a Complaint**

It is the board's policy to dispose of complaints in a timely manner. The schedule below outlines the stages of the complaint process and the recommended time frames within which the board attempts to complete each stage. Please note that these are estimates of the time that is required. Actual times may be shorter or longer depending on the circumstances of the complaint.

**Day 1:** Complaint received and logged for review.

**Day 2 - 10:** Staff determines whether there is an allegation of a violation that is within the jurisdiction of the board.

**Day 11:** A letter is sent to the complainant stating one of the following:

1. the complaint has been accepted and an investigation has been initiated, or
2. requesting additional information, or
3. that the complaint is not within the jurisdiction of the board.

**Day 11:** Upon acceptance of a complaint, an investigation is initiated by:

1. forwarding the complaint to the investigation division requesting a report of investigation or a status report within 60 days, or
2. contacting the parties by mail and/or phone requesting written responses within 15 to 30 days.

**Day 70:** Parties are notified that:

1. the complaint is complete and the date on which it will be considered by the Ethics Committee, or
2. the status of the complaint investigation.

**Day 90:** Once the investigation is complete the Ethics Committee reviews all information available on the case. The committee will make their decision based on the validity of the complaint and recommends disciplinary action based on the preponderance of evidence.

**Day 100:** All parties are notified by mail of the committee's recommendation. If any action other than a letter of warning is recommended the following events may take place:

1. A formal reprimand must be placed on the next board meeting agenda. The board vote would generally occur within 3 months of the committee's action.
2. If probation, suspension, or revocation is recommended, the social worker has 10 days upon receiving the notice letter in which to request an informal and/or a formal hearing.

**Day 145:** Informal hearings are held by the Ethics Committee or their representative on or before the next scheduled Ethics Committee meeting. In either case, the committee takes action on the social worker's petition at the committee meeting and all parties are notified of that action within 7 days of that meeting.

**Day 190:** Formal hearings are held at the State Office of Administrative Hearings (SOAH) and are scheduled by the ALJ assigned to the case. The actual date of the Hearing may be from 3 to 6 months after a hearing is requested by the social worker. Hearings usually last 1 to 3 days, depending on the nature of the case. Upon completion of the Hearing, the ALJ is supposed to reach a decision within 90 days and notifies all parties of that decision. The ALJ's Proposal for Decision (PFD) is only a recommendation for action by the board. Once received, the PFD is placed on the next scheduled board meeting agenda.

**Day 360:** The board votes on the Proposal for Decision (PFD) written by the ALJ. If the board votes to take disciplinary action, the social worker has 30 days within which to file an appeal in District Court.

### **Questions**

If, after reading this material, you have any questions regarding the complaint process, please contact the board office at:

Texas State Board of Social Worker Examiners  
P.O. Box 141369  
Austin, TX 78714-1369  
1-800-232-3162 or 512-719-3521

## INSTRUCTIONS FOR COMPLETING THE COMPLAINT PACKET

Please read the following instructions prior to completing the complaint form. Your complaint will be reviewed to verify that the complaint is a potential violation of law/rules. A copy of the law/rules is enclosed for your information. Please type or print all information.

### COMPLAINT FORM

**PERSON REGISTERING COMPLAINT:** Please type or print your name, address and phone numbers.

**COMPLAINT REGISTERED AGAINST:** Please type or print the name, address, name of business and phone numbers of the person or establishment whom you are filing the complaint against. If you are filing a complaint against more than one individual, please list the names, addresses and phone numbers on a separate sheet.

**CLIENT-PATIENT INFORMATION (if applicable):** If you are filing a complaint on your own behalf, write ANot applicable≡ on the name line. If you are filing a complaint on behalf of someone other than yourself, please type or print that person's name, address and phone numbers.

**SUPPORTING DOCUMENTATION:** Supporting documentation is extremely important. Please enclose any documents, which support your complaint. Please retain all original documents; enclose only copies. You will be notified if original documents are needed.

**DETAILS OF COMPLAINT:** Below are suggestions that may help you in recalling details of your complaint.

- # **Dates of client-patient relationship:** List the date the client-patient relationship began and the date that it ended.
- # **Date(s) of violation(s):** List each date on which a violation (incident) occurred.
- # **Details of Complaint:** Describe your complaint. Your narrative should address the reason(s) for your complaint. Please be as specific as possible by providing dates, places, times, etc. If specific information is not available, please give the next best available; i.e., AI cannot recall the exact date, but it was a Monday in January...≡ It is helpful if you can note how you are able to recall the date or day of the week. It is important to identify any witness(es) who may have knowledge of the event(s) that you have described. If possible, any witness should be fully identified by name, address and phone numbers. You may attach additional pages if necessary. Please number and initial all pages of your narrative in the lower right hand corner. Your complaint should include Awho, what, when, where, why and how.≡
- # **Subscribed and sworn:** You will need to swear to and sign your completed statement in front of a Notary Public. Notary Publics are listed in the Yellow Pages of your phone book.

**GENERAL RELEASE FORM**

On the first blank line, please type or print your legal name as it appears on any official records. Sign your name and enter the current date.

**NOTE:**        **The General Release Form is a legal document, which permits individuals and agencies to release your records to the investigator. The investigator will only request access to records, which are relevant to the investigation of your complaint.**

**MAILING INSTRUCTIONS**

Please keep a copy of your completed **COMPLAINT FORM** and **GENERAL RELEASE FORM** and any documentation that you've included.

Mail your completed packet to: Texas State Board of Social Worker Examiners  
PO Box 141369  
Austin, TX 78714-1369  
1-800-232-3162 or 512-719-3521

# COMPLAINT FORM

## Texas State Board of Social Worker Examiners

### PERSON REGISTERING COMPLAINT

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
Street Address City State Zip

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

### COMPLAINT REGISTERED AGAINST

Name: \_\_\_\_\_

Business location: \_\_\_\_\_  
Street Address City State Zip

Home address: \_\_\_\_\_  
Street Address City State Zip

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

### CLIENT-PATIENT INFORMATION (if applicable)

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
Street Address City State Zip

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Complainant's Relationship to Client: \_\_\_\_\_

Is the client a minor? \_\_\_\_\_ No \_\_\_\_\_ Yes If yes, give age: \_\_\_\_\_

### SUPPORTING DOCUMENTATION

Attach documentation such as canceled checks or receipts, charts, notes, records; also, names, addresses, and phone numbers of others who may have information about the alleged violations, etc.









**Texas State Board of Social Worker Examiners  
1100 West 49th Street  
Austin, TX 78756-3183  
(800) 232-3162 or (512) 719-3521**

Andrew T. Marks, LMSW  
Executive Director

**GENERAL RELEASE**

I, \_\_\_\_\_, hereby authorize the release of any and all records and information pertinent to me for use by the Texas State Board of Social Worker Examiners in pending investigation and/or legal action.

I specifically direct that said records and information be released to the investigator assigned by the Texas Department of Health.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**TEXAS PROFESSIONAL SOCIAL WORK ACT**  
*Ch. 505, Occupations Code as amended by the 76th Legislature 1999*

**§505.002. Definitions.**

In this chapter:

- (1) "Advanced clinical practitioner" means a licensed master social worker recognized by the board as qualified for the practice of clinical social work.
- (2) "Board" means the Texas State Board of Social Worker Examiners.
- (3) "Council on Social Work Education" means the national organization that is primarily responsible for the accreditation of schools of social work in the United States.
- (4) "Department" means the Texas Department of Health.
- (5) "Licensed master social worker" means a person who holds a master social worker license issued by the board under this chapter.
- (6) "Licensed social worker" means a person who holds a social worker license issued by the board under this chapter.
- (7) "Professional social work" means:
  - (A) acts or services performed for compensation to change:
    - human behavior;
    - human emotional responses;
    - interpersonal relationships; and
    - the social conditions of individuals, families, groups, organizations, or communities;
  - (B) a practice guided by special knowledge, acquired through formal professional social work education, of:
    - social welfare policies and services;
    - social welfare systems and resources;
    - human development and behavior within the context of the social environment; and
    - methods to enhance the functioning of individuals, families, groups, communities, and social welfare organizations; and
  - (C) the disciplined application of social work values, principles, and methods, including psychotherapy, marriage and family therapy, couples therapy, group therapy, counseling, assessment, and evaluation.
- (8) "Social work associate" means a person who holds a social work associate license issued by the board under this chapter.
- (9) "Social worker" means a person who holds any license issued by the board under this chapter.

**§505.451. Subchapter I. Denial of License or Order and Disciplinary Procedures grounds For Denial, Revocation, or Suspension of License or Order of Recognition of Specialty.** The board shall deny an application for a license or order of recognition of specialty and shall revoke or suspend, including a suspension on an emergency basis, a license or order, place a holder of a license or order that has been suspended on probation, or reprimand a holder of a license or order for:

- (1) violating this chapter or a rule adopted by the board under this chapter;
- (2) circumventing or attempting to circumvent the requirements of this chapter or a rule adopted by the board under this chapter;
- (3) directly or indirectly participating in a scheme to evade the requirements of this chapter or a rule adopted by the board under this chapter;
- (4) engaging in unethical conduct;
- (5) engaging in conduct that discredits or tends to discredit the social work profession;
- (6) performing an act, allowing an omission, or making an assertion or representation that is fraudulent, deceitful, or misleading or that tends to create a misleading impression;
- (7) knowingly associating with or permitting the use of a license holder's professional services or identification in connection with an enterprise that the person knows or should have known in the exercise of reasonable diligence violates this chapter or a rule adopted by the board under this chapter;
- (8) knowingly associating with or permitting the use of a license holder's name, professional services or identification, or endorsement in connection with an enterprise that the person knows or should have known in the exercise of reasonable diligence is a trade, business, or professional practice of a fraudulent, deceitful, or misleading nature;
- (9) directly or indirectly revealing or causing to be revealed a confidential communication transmitted to the license holder by a client or other recipient of the license holder's services unless revealing the communication is required by law;
- (10) having been denied an application for a license or certificate to practice social work in another jurisdiction for a reason that the board determines would be a violation of this chapter or a rule adopted by the board under this chapter;
- (11) holding a license or certificate in another jurisdiction that is suspended or revoked for a reason that the board determines would be a violation of this chapter or a rule adopted by the board under this chapter;
- (12) having been convicted of a felony in this state, another state, or the United States;
- (13) refusing to perform an act or service within the scope of the license holder's license solely because of the recipient's age, sex, race,

religion, national origin, color, or political affiliation; or

(14) committing an act for which liability exists under Chapter 81, Civil Practice and Remedies Code.

**§ 50.022. Disciplinary Proceedings.**

(a) A proceeding under Section 50.021 begins when a charge is filed with the department and referred to the board in writing and under oath. The charge may be made by any person.

(b) A person is entitled to notice and a hearing before the State Office of Administrative Hearings before a sanction is imposed under Section 50.021.

(c) Disciplinary proceedings and the appeals from the proceedings are governed by Chapter 2001, Government Code. The board by rule shall adopt a broad schedule of sanctions for violations under this chapter. The State Office of Administrative Hearings shall use the schedule for any sanction imposed as the result of a hearing conducted by that office.

(d) A person whose license or order of recognition has expired and who is found by the board to have violated this chapter or a rule adopted under this chapter during the time the license or order of recognition was unexpired is subject to a sanction under this chapter. Subsections (b) and (c) apply to a proceeding against a person under this subsection.

**§505.452. Conditions of Probation.** The board may require a person for whom a suspension of a license or order of recognition of specialty is probated to:

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

(2) limit practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the person attains a degree of skill satisfactory to the board in each area that is a basis of the probation.

**§505.453. Emergency Suspension.** The suspension by the board of a license or order of recognition of specialty on an emergency basis is effective immediately. The board shall provide an opportunity for a hearing to be held not later than the 20th day after the date of the emergency suspension.

**§505.454. Sanctions for Holder of Expired License or Order of Recognition of Specialty.**

(a) A person who holds an expired license or order of recognition of specialty under this chapter is subject to a sanction under this chapter if the board determines that the person violated this chapter or a rule adopted by the board under this chapter during the period in which the license or order was valid.

(b) Sections §505.455(b) and (c) and §505.456 apply to a disciplinary proceeding against a person under this section.

**§505.455. Procedure; Hearing.**

(a) A proceeding under Section §505.451 is initiated when a person files a written charge under oath with the department that is referred to the board. A charge may be filed by any person.

(b) A person subject to a sanction under Section §505.451 is entitled to notice and hearing before the State Office of Administrative Hearings before the sanction is imposed.

(c) Disciplinary proceedings and appeals from disciplinary proceedings of the board are governed by Chapter 2001, Government Code.

**§505.456. Schedule of Sanctions.**

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

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

**§505.457. Informal Procedures.**

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

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

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

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

(1) provide the complainant and the holder of a license or order of recognition of specialty an opportunity to be heard; and

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

**TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS RULES**  
**22Texas Administrative Code, Part 34, Chapter 781**

**Subchapter D. CODE OF ETHICS AND PROFESSIONAL STANDARDS OF PRACTICE**

**781.401 Code of Ethics**

(a) A social worker must observe and comply with the code of ethics and standards of practice set forth in this Subchapter. Any violation of the code of ethics or standards of practice will constitute unethical conduct or conduct that discredits or tends to discredit the profession of social work and is grounds for disciplinary action.

(1) A social worker shall not refuse to do or refuse to perform any act or service for which the person is licensed solely on the basis of a client's age, gender, race, color, religion, national origin, disability, sexual orientation, or political affiliation.

(2) A social worker shall truthfully report or present her or his services, professional credentials and qualifications to clients or potential clients.

(3) A social worker 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. **(Revised 6/7/99)**

(4) A social worker shall strive to maintain and improve her or his professional knowledge, skills and abilities.

(5) A social worker shall base all services on an assessment, evaluation or diagnosis of the client.

(6) A social worker shall provide the client with a clear description of services, schedules, fees and billing at the initiation of services.

(7) A social worker shall safeguard the client's rights to confidentiality within the limits of the law.

(8) A social worker shall be responsible for setting and maintaining professional boundaries. **(Revised 1/12/96)**

(9) A social worker shall not have sexual contact with a client or a person who has been a client. **(Revised 8/20/96)**

(10) A social worker shall refrain from providing service while impaired due to the social worker's physical or mental health or the use of medication, drugs or alcohol.

(11) A social worker shall not exploit his or her position of trust with a client or former client. **(Revised 8/20/96)**

(12) A social worker 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.

(13) A social worker shall refer a client for those services that the social worker is unable to meet and terminate service to a client when continued service is no longer in the client's best interest.

(b) The grounds for disciplinary action of a social worker shall be based on the code of ethics or standards of practice in effect at the time of the violation.

**781.402 Standards of Practice**

(a) A licensee shall not knowingly make any misleading, deceptive, fraudulent or exaggerated claim or statement about any aspect of the licensee's services or qualifications or continue to permit such claims on the licensee's behalf.

(b) If the licensee learns that inappropriate claims regarding the licensee's services have been made, the licensee will immediately notify the board and take all available steps to correct the inappropriate claims and to prevent their reoccurrence.

(c) A licensee shall inform an individual before or at the time of the individual's initial session with the licensee of the following:

(1) fees and arrangements for payment;

(2) purposes, goals, and techniques;

(3) any restrictions placed on the licensee by the board;

(4) the limits on confidentiality; and

(5) any intent of the licensee to use another individual to provide social work services to the client.

(d) A licensee shall inform the client of any changes to the items in subsection (c) of this section prior to or promptly after initiating the change.

(e) The provisions of the Health and Safety Code, 161.091, et seq. relating to the prohibition of illegal remuneration for the securing or soliciting of clients apply to licensees.

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

(g) A licensee shall avoid dual client relationships which could impair the licensee's professional judgment or otherwise increase the risk of client exploitation. A licensee shall not have any relationship with a client that requires more than minimal time with the client outside of the provisions of social work services. These relationships may be, but are not limited to employment, business, financial, personal, social and/or family relationships. A licensee shall not provide professional services to a member of the licensee's own family, an intimate friend, a close associate, or others whose welfare might be jeopardized by such a dual relationship. **(Revised 6/7/99)**

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

(i) For each client, a licensee shall keep records of the dates of social work services, types of social work services, and billing information. The record shall include documentation of an assessment, evaluation, or diagnosis of a client. **(Revised 9/18/97)**

(1) Records held by a licensee shall be kept for five years for adult clients and two years beyond the age of 18 for minor clients. Records held or owned by governmental agencies or educational institutions are not subject to this requirement. **(Revised 9/18/97)**

(2) The licensee must establish a plan for the care and control of the client's records if, for any reason, the licensee is unable or unavailable to exercise his or her responsibility for those records. **(Revised 9/18/97)**

(j) A licensee shall bill or permit clients or third parties to be billed on his or her behalf only for those services actually rendered or as legally agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement.

(1) Billing should accurately reflect the name(s) of the person(s) providing services.

(2) On the written request of a client, a client's guardian, or a client's parent or managing or possessory conservator if the client is a minor, a licensee shall provide, in plain language, a written explanation of the charges for social work services previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(3) A licensee may not persistently or flagrantly overcharge a client.

(4) A licensee may not submit to a client or a third party a bill for social work services when the licensee knows that the services were not provided or were improper, unreasonable, or medically or clinically unnecessary.

(k) A licensee shall terminate social work services when in the licensee's professional opinion the client is not benefiting from those services. When services to the client are still indicated, the licensee shall take reasonable steps to facilitate the transfer to an appropriate referral or source.

(1) A licensee shall not state a professional judgment of any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the statement that the licensee has not personally interviewed the individual.

(m) A licensee may not persistently or flagrantly overtreat a client.

(n) A licensee shall not aid and abet a person's violation of the Act, 50.010.

(o) A social worker shall not have sexual contact or engage in any sexually exploitive behavior with a person who is or has been a client. **(Revised 8/20/96)**

(1) A licensee shall not commit an act for which liability exists under the Texas Civil Practice and Remedies Code, Chapter 81, concerning sexual exploitation by a mental health services provider. The licensee need not actually have had a judgment rendered against the licensee under Chapter 81.

(2) In the case of sexual contact or sexual exploitive behavior with a person who has been a client and under exceptional circumstances which would constitute a violation of this subsection, it is the responsibility of the social worker to assume the full burden of demonstrating that the person has not been exploited, or abused intentionally or unintentionally. **(Revised 8/20/96)**

(3) It is not a defense that the sexual contact or sexually exploitive behavior took place with the client's consent, outside the treatment sessions or off the premises where social work services took place. **(Revised 8/20/96)**

(p) If a licensee has reasonable cause to suspect that a client has been sexually exploited by a mental health services provider during the course of treatment, or if a client alleges sexual exploitation by a mental health services provider during a course of treatment, the licensee must make a report as provided in the Texas Civil Practice and Remedies Code, 81.006. A report under this subsection need contain only the information needed to:

(1) identify the reporter;

(2) identify the alleged victim, unless the alleged victim has requested anonymity;

(3) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and

(4) provide the name of the alleged perpetrator.

(q) A licensee shall not:

(1) use alcohol or drugs in a manner which impairs the licensee's ability to provide social work services;

(2) use illegal drugs of any kind; or

(3) promote, encourage, or concur in the illegal use or possession of alcohol or drugs.

(r) A licensee shall not disclose any confidential information except as provided in the Health and Safety Code, Chapter 611, or other applicable state or federal statutes or rules. A licensee may take reasonable action to inform medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury to the client or others or there is a probability of immediate mental or emotional injury to the client.

(s) A licensee shall comply with the Texas Health and Safety Code, Chapter 611, concerning access to records.

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

(u) A licensee shall keep his or her board file updated by notifying the board in writing of changes of name, home and business address, home and business telephone number, and employment.

(v) A licensee shall cooperate with the board by furnishing required documents or information and by responding to a request for

information from or a subpoena issued by the board or its authorized representative.

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

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

(y) A licensee shall not file a complaint with the board in bad faith.

(z) A licensee shall not reproduce, allow to be reproduced, or display a license issued by the board which has been reproduced, expired, suspended, or revoked. (Written or verbal verifications of licenses are available from the board.) **(Revised 6/7/99)**

(aa) A licensee shall not make any alteration on a license issued by the board.

(bb) A licensee shall include in any advertisement only information which is true, accurate, illuminating, complete, in context, straightforward and readily verifiable. Advertisement includes, but is not limited to, any announcement of social work services, letterhead, business cards, commercial products, and billing statements.

(cc) In any public representation or advertising of a licensee's professional social work credentials, a licensee shall use only those degrees which were received from an accredited college or university as defined in 781.102 of this title (relating to Definitions). A degree received at a foreign university may be used if the degree would be accepted as a transfer degree by accredited or universities.

**(Revised 9/18/97)**

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

(ee) A licensee shall confine the use of data obtained from social work services for the purposes of education or research to content that can be disguised to ensure full protection of the identity of the subject client.

(ff) A licensee shall report if required by any of the following laws:

(1) Family Code, Chapter 261, concerning abuse or neglect of children; **(Revised 8/20/96)**

(2) Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons;

(3) Health and Safety Code, Chapter 161, Subchapter K, 161.131 et seq., concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an inpatient mental health facility, a chemical dependency treatment facility or a hospital providing comprehensive medical rehabilitation services; and **(Revised 9/18/97)**

(4) Civil Practice and Remedies Code, 81.006, concerning sexual exploitation by a mental health services provider. **(Revised 9/18/97)**

(gg) A licensee shall comply with the rules adopted under the Family Code, Chapter 107, while conducting court ordered social studies for a suit affecting the parent-child relationship. **(Revised 8/20/96)**

(hh) If a licensee barter for services, it is the licensee's responsibility to assure that the market value of the barter does not exceed the customary charge for the service. **(New 6/7/99)**

(ii) A social worker shall not give or receive anything of value for the referral of a client. **(New 6/7/99)**

## **Subchapter F. COMPLAINTS AND VIOLATIONS**

### **781.601 Purpose**

The purpose of this Subchapter is to set out grounds for denial of an application or discipline of a licensee and the procedures for reporting alleged violations of the Act or this chapter.

### **781.602 Disciplinary Action; Notices**

(a) The board shall revoke, suspend, suspend on an emergency basis, or deny a license or order of recognition, place on probation a person whose license or order of recognition has been suspended, or reprimand a person with a license or order of recognition for any of the following reasons: **(Revised 6/7/99)**

(1) violation of any provision of the Act;

(2) violation of any rule adopted by the board;

(3) failure to cooperate in the investigation of a complaint filed under the provisions of this chapter;

(4) physical or mental incompetency to perform social work services as determined by the board;

(5) provision of false or misleading information to the board regarding his or her qualifications for licensure or renewal or to an inquiry by the board;

(6) any of the grounds described in the Act, 50.021(a); or

(7) violation of law or rules of another health or mental health profession resulting in disciplinary action by the regulatory body of that profession. **(New 6/7/99)**

(b) Prior to institution of formal disciplinary proceedings against a licensee, the board shall give written notice to the licensee by certified mail, return receipt requested or registered mail. The notice of violation letter will include the facts or conduct alleged to warrant revocation, suspension, or reprimand and the severity level from the sanction guide. The licensee shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter. **(Revised 6/7/99)**



- (c) The licensee or applicant must request, in writing, a formal hearing within ten days of receipt of the notice, or the right to a hearing shall be waived and the license or recognition shall be denied, revoked, suspended, probated, or reprimanded. **(Revised 6/7/99)**
- (d) Receipt of a notice under subsection (b) or (c) of this section is presumed to occur on the tenth day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt or other official receipt.
- (e) The licensee will be considered to have received notice of board disciplinary action if the notice is mailed to the last address provided in writing to the board by the licensee. **(Revised 9/18/97)**
- (f) If a notice is mailed to the last known address of the licensee and the licensee fails to respond to the notice within 10 days from receipt of the notice, the licensee will be considered to have waived his or her right to a hearing in the matter. **(Revised 9/18/97)**
- (g) No notice or hearing is required for the board to issue a reprimand other than notice to the licensee of the board meeting where the reprimand will be considered. The licensee shall be given an opportunity to present information at the board meeting.

### **781.603 Complaint Procedures**

- (a) A person wishing to report an alleged violation of the Act or this chapter by a licensee or other person shall notify the executive director. The initial notification may be in writing, by telephone, or by personal visit to the board office.
- (b) The executive director will be responsible for the receipt and processing of complaints. The executive director will maintain a log of the receipt, investigation and disposition of all complaints. The board chairperson will appoint an ethics committee to work with the executive director. **(Revised 6/7/99)**
- (c) On receipt of a complaint, the executive director shall send an acknowledgment letter. If the complaint is not in the form of a sworn statement, a copy of applicable rules, and an official form will be included with the letter of acknowledgment and further action on the complaint may, at the discretion of the executive director, be delayed until a sworn statement is received. The executive director may accept an anonymous complaint or a complaint that is not a sworn statement if there is sufficient information for the investigation; however, the executive director shall then complete a complaint form under oath. **(Revised 9/18/97)**
- (d) Within 15 days of the receipt of a complaint, the executive director shall review the complaint to assure that there is sufficient information to initiate an investigation and that the allegations contained in the complaint fall within the board's jurisdiction. If the complaint is against a person licensed by another board, the executive director will forward the complaint to that board not later than the 15th day after the date the agency determines that the information should be referred to the appropriate agency as provided in Government Code, Chapter 774. **(Revised 6/7/99)**
  - (1) If the allegations do not fall within the board's jurisdiction, the executive director shall refer the complaint to the ethics committee. Based on its review of the complaint, the ethics committee may instruct the executive director to: **(Revised 6/7/99)**
    - (A) close the complaint with a letter to the complainant explaining why the complaint is not within the board's jurisdiction; or **(Revised 9/18/97)**
    - (B) advise the complainant of the additional information necessary to initiate an investigation. **(Revised 9/18/97)**
  - (2) If the allegations in the complaint are within the board's jurisdiction and sufficient for investigation, the executive director shall:
    - (A) evaluate the threat to public health and safety documented by the complaint;
    - (B) establish an appropriate plan and schedule for its investigation to be noted in the complaint log;
    - (C) notify all parties, as appropriate, to the circumstances of the complaint, that an investigation has been initiated, and provide a copy of the board's policy regarding the time frame for conducting an investigation; and
    - (D) report the status of all continuing investigations to the complainant and the licensee or applicant every 90 days.
- (e) The executive director will initiate the investigation of a complaint by requesting statements and evidence from all parties; may request that the complaint investigation be conducted by a department investigator; or may enlist the service of a private investigator. **(Revised 9/18/97)**
- (f) If an investigation is assigned to an investigator, the executive director will request a written report of the progress of the investigation at least two weeks before each meeting of the ethics committee until the investigation is complete and will provide a copy of the report to the committee. **(Revised 6/7/99)**
- (g) If an investigation uncovers evidence of a criminal act, the appropriate law enforcement officials will be notified only with approval of the executive director or the ethics committee. In any case, the complaint process will continue to its completion unless a written request is received from a law enforcement agency requesting that action on the complaint be delayed, stating the reason for requesting the delay, and stating an anticipated date by which that agency plans to take action on the case. **(Revised 6/7/99)**
- (h) If a law enforcement agency has requested a delay in the complaint process in writing, the executive director will request timely updates on that agency's progress in bringing the matter to a close. **(Revised 9/18/97)**
- (i) The executive director will inform the board if the services of a private investigator are needed for the timely completion of a complaint investigation or for any other reason.
- (j) The subject of the complaint will be notified of the allegations either in writing, by phone or in person by the executive director or the

investigator assigned to the case and will be required to provide a sworn response to the allegations within two weeks of that notice. Failure to respond to the allegations within the two-week period is evidence of failure to cooperate with the investigation and subject to disciplinary action.

(k) The ethics committee will review the complaint log to ensure that: **(Revised 6/7/99)**

- (1) complaint investigations are being handled in a timely manner;
- (2) complaints are not dismissed without appropriate consideration;
- (3) a person who files a complaint has an opportunity to explain the allegations made in the complaint; and
- (4) any issues related to complaints which arise under the Act or this chapter are resolved.

(l) The ethics committee shall determine whether a violation exists and whether to dismiss the complaint as unsubstantiated or to consider appropriate disciplinary action. **(Revised 6/7/99)**

(m) If a violation is found but it does not seriously affect the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as a cease and desist order or an informal agreement with the violator to correct the violation.

(n) If the complaint is not resolved by the committee, the committee may recommend that disciplinary action be taken or that other appropriate action as authorized by law be taken, including injunctive relief or civil penalties. Action may be taken based on the allegations in the complaint or any violations found during investigation.

(o) If no violation exists or the complaint is dismissed as unsubstantiated, the complainant and the licensee or applicant shall be notified in writing of the finding. The committee may include in that notice a statement of issues and recommendations that the committee wishes to bring to the attention of the subject of the complaint. **(Revised 11/24/95)**

(p) If the executive director receives credible evidence that a licensee is engaging in acts that pose an immediate and significant threat of physical or emotional harm to the public, the executive director shall consult with the members of the ethics committee for authorization for an emergency suspension of the license. **(New 6/7/99)**

#### **§781.604. Ethics Committee Meetings and Policy. (New Section 6/7/99)**

(a) The ethics committee will meet on a regular basis to review and recommend action on complaints filed against social workers.

Additionally, the committee will hold informal hearings to review previous committee actions at the request of a party to a complaint.

(b) An agenda and completed reports of complaint investigations will be sent to committee members approximately two weeks prior to each meeting. The agenda will list all items to be considered by the committee. Complaints will be listed on the agenda by the assigned complaint tracking number.

(c) Persons who are not members of the committee are permitted to observe committee work unless the committee enters into executive session for legal consultation. Only committee members, staff, and consultants may participate in the discussion of a complaint pending action before the committee. Persons wishing to provide information to the committee regarding a complaint must submit that information in writing.

(d) A report on all completed investigations will be provided to committee members. The report will include copies of information obtained in the investigation and a summary sheet with a staff recommendation for the disposition for each case. Cases will be grouped on the agenda according to their recommended disposition. Cases that are recommended for closure will be listed together as a consent agenda item. Cases may be removed from the consent agenda for individual review upon request by any committee member, consultant, or staff person. All cases left on the consent agenda will be voted on as a group for closure. All other cases will be considered on an individual basis.

(e) The committee will base its decision regarding the validity of a complaint on the evidence documented in the report of the investigation. The committee may find that there is or is not evidence of a violation of licensing law or rules or the committee may request additional information of a case for later review. If the committee finds that a social worker has violated licensing law or rules, the committee will consider the established policy guidelines and other relevant factors in their recommendation of disciplinary action.

(f) All parties to a complaint will be notified of the findings and recommendations of the committee. Any party to the complaint who disagrees with the action of the committee may submit a written statement of the reasons for his or her disagreement, and may request an informal hearing before the committee. Request for an informal hearing must be made within 10 days of the date of the letter stating the disposition of the case.

#### **§781.607. Suspension, Revocation, or Nonrenewal. (New Section 6/7/99)**

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

(b) While on suspension, the licensee shall comply with the renewal requirements in this chapter including payment of fees and completion of continuing education; however, the suspension shall remain in effect pursuant to subsection (a) of this section.

(c) Upon revocation, suspension or nonrenewal of a license, a licensee shall return his or her license to the board.

#### **§781.608. Informal Disposition. (New Section 6/7/99)**

(a) If a licensee agrees to the disciplinary action proposed by the ethics committee, an agreed order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law.

(1) The licensee or applicant shall execute the order and return the signed order to the board office within ten days of his or her receipt of the order.

(2) If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire board for its approval. Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by the board.

(3) If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(4) If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the executive director for appropriate action.

(b) The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(c) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted settlement recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(d) If the board does not approve a proposed agreed order, the licensee or applicant and the complainant shall be so informed. The matter shall be referred to the executive director for other appropriate action.

(e) A proposed agreed order is not effective until the full board has approved the agreed order. The order shall then be effective in accordance with the APA.

(f) A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the APA, 2001.054(c).

#### **§781.609. Default Orders. (New Section 6/7/99)**

(a) If a right to a hearing is waived under §781.602(c) of this title (relating to Disciplinary Action; Notices) or §781.703(b) of this title (relating to Notice), the board shall consider an order taking disciplinary action as described in the written notice to the licensee or applicant.

(b) The licensee or applicant and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(c) The board's legal counsel or any attorney from the Texas Department of Health's Office of General Counsel shall attend the board meeting.

(d) Upon an affirmative majority vote, the board shall enter an order imposing appropriate disciplinary action.

#### **Subchapter H. SANCTION GUIDELINES (New Subchapter 6/7/99)**

##### **§781.801. Purpose.**

The schedule of sanctions is adopted by rule pursuant to the Act, §50.022. The schedule is intended to be used by the ethics committee as a guide in assessing sanctions for violations of the Act or this chapter. The schedule is also intended to serve as a guide to administrative law judges, and as a written statement of applicable rules or policies of the Board pursuant to the Government Code, §2001.058(c). The failure of an administrative law judge to follow the schedule may serve as a basis to vacate or modify an order pursuant to the Government Code, §2001.058(e). No two disciplinary cases are the same. This schedule is not intended as a substitute for thoughtful consideration of each individual disciplinary matter.

##### **§781.802. Relevant Factors.**

When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction: (i) the degree of culpability of the licensee; (ii) the harm caused or posed; and (iii) appropriate deterrence. Specific factors are to be considered as set forth below. It is the responsibility of the licensee to bring exonerating factors to the attention of the ethics committee or administrative law judge.

(1) Seriousness of Violation. The following factors are identified:

(A) the nature of the harm caused, or the risk posed, to the health, safety or welfare of the public, such as emotional, physical, or financial;

(B) the extent of the harm caused, or the risk posed, to the health, safety or welfare of the public, such as whether the harm is low, moderate or severe, and the number of persons harmed or exposed to risk; and

(C) the frequency and time-periods covered by the violations, such as whether there were multiple violations and the period of time over which the violations occurred.

(2) Nature of the Violation. The following factors are identified:

(A) the relationship between the licensee and the person harmed, or exposed to harm;

- (B) the vulnerability of the person harmed, or exposed to harm;
  - (C) the degree of culpability of the licensee, such as whether the violation was:
    - (i) intentional or premeditated;
    - (ii) due to blatant disregard or gross neglect; or
    - (iii) resulted from simple error or inadvertence; and
  - (D) the extent to which the violation evidences lack of character, such as lack of integrity, trustworthiness, or honesty of the licensee.
- (3) Personal Accountability. The following factors are identified:
- (A) admission of wrong or error, and acceptance of responsibility;
  - (B) appropriate degree of remorse or concern;
  - (C) efforts to ameliorate the harm or make restitution;
  - (D) efforts to ensure future violations do not occur; and
  - (E) cooperation with any investigation or request for information.
- (4) Prevention of Violations. The following factors are identified:
- (A) the sanction required to deter future similar violations by the licensee;
  - (B) sanctions necessary to ensure compliance by the licensee of other provisions of the Act or this chapter; and
  - (C) sanctions necessary to deter other licensees from such violations.
- (5) Miscellaneous Factors. The following factors are identified:
- (A) professional experience at time of violation;
  - (B) presence or absence of prior or subsequent violations;
  - (C) conduct and work activity prior to and following the violation;
  - (D) character references; and
  - (E) any other factors justice may require.

**§781.803. Severity Level and Sanction Guide.**

The following severity levels and sanction guides are based on the relevant factors in §781.802 of this title (relating to Relevant Factors):

- (1) Level One - revocation of license. These violations evidence intentional or gross misconduct on the part of the licensee and/or cause or pose a high degree of harm to the public and/or require severe punishment as a deterrent to the licensee, or other licensees. Examples include sexual misconduct with a client or former client, or any failure to comply with an order of the Board. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure.
- (2) Level Two - extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require termination of licensure for a period of not less than one year. An example is the use of alcohol or drugs to an extent that the licensee's ability to perform services is impaired.
- (3) Level Three - moderate suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level Two violations, but require termination of licensure for some period of time. An example is promoting the licensee's personal or non-social work business activities to a client.
- (4) Level Four - probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Possible probationary terms are set out as in §781.806 of this title (relating to Probation) and may be ordered as appropriate. An example is failure to set and maintain professional boundaries where no harm is shown.
- (5) Level Five - reprimand. These violations involve minor misconduct not directly involving the health, safety or welfare of the particular member of the public at issue. An example is failing to keep client records as required.