

CHAPTER 863

S.B. No. 1425

AN ACT

relating to the regulation of marriage and family therapists and to the continuation and operation of the Texas State Board of Examiners of Marriage and Family Therapists; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsections (a) and (b), Section 3, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) ~~The Texas State Board of Examiners of Marriage and Family Therapists is [an advisory body to the Texas Board of Health. The board is]~~ composed of nine members appointed by the governor with the advice and consent of the senate. Four members must be members of the public. Five members must be persons eligible for a license under this Act, one of whom must be a professional educator in marriage and family therapy. These members must have engaged in the practice or education of marriage and family therapy for at least five years or have 5,000 hours of clinical experience in the practice of marriage and family therapy. In making the appointments of the five members eligible for a license under this Act, the governor shall consider recommendations made by recognized professional associations of marriage and family therapists in this state.

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

SECTION 2. Section 4, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. SUNSET PROVISION. ~~[(a)]~~ The Texas State Board of Examiners of Marriage and Family Therapists is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2005 [1993].

~~[(b) The board shall cooperate with the Sunset Advisory Commission in the commission's review of those agencies that license or regulate mental health professionals and will be reviewed for the Regular Session of the 73rd Legislature in 1993. The board shall assist the Sunset Advisory Commission in determining the extent to which the agencies that license or regulate mental health professionals should be combined into a single agency.]~~

SECTION 3. Section 6, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. OFFICERS. *The governor shall designate from the members of the board the chair of the board. The member designated as the chair serves in that capacity at the will of the governor. The board shall elect a [chair and] vice-chair from its members at the meeting of the board held closest to August 31 of each year. The [chair and] vice-chair shall serve as provided by board rules.*

SECTION 4. Section 9, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. RESTRICTIONS ON APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) A member of the board or an employee of the department who performs functions for the board may not{:

~~(1) be an officer, employee, or paid consultant of a trade association in the field of marriage and family therapy or a related mental health field;~~

~~(2) be related within the second degree by affinity or within the third degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the field of marriage and family therapy or a related mental health field; or~~

~~(3) communicate directly or indirectly with a party or the party's representative to a proceeding pending before the board if the member or employee is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding, unless notice and an opportunity to participate are given to each party to the proceeding.~~

(b) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member or employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a board member and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(e) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

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

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

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

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

~~*(f) [A public member of the board or the spouse of a public member may not have been or be related to a person within the second degree by affinity or the third degree by consanguinity who has, except as a consumer, a financial interest in the field of marriage and family therapy or a related mental health field.*~~

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

SECTION 5. Section 11, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), is amended by amending Subsections (b) and (c) and adding Subsections (d) through (h) to read as follows:

(b) The board shall keep an information file about each complaint filed with the board. The board's information file shall be kept current and contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

- (3) *an explanation of the legal basis and reason for a complaint that is dismissed; and*
 (4) *other relevant information [that the board has authority to resolve].*

(c) *If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.*

(d) *The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.*

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

(f) [(e)] *The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.*

(g) *The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification:*

(1) *on each registration form, application, or written contract for services of an individual or entity regulated by the board;*

(2) *on a sign prominently displayed in the place of business of each individual or entity regulated by the board; or*

(3) *in a bill for service provided by an individual or entity regulated by the board.*

(h) *The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.*

SECTION 6. The Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes) is amended by adding Sections 11A, 11B, and 11C to read as follows:

Sec. 11A. **COMPLAINT INVESTIGATION AND DISPOSITION.** (a) *The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection shall:*

(1) *distinguish between categories of complaints;*

(2) *ensure that complaints are not dismissed without appropriate consideration;*

(3) *require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;*

(4) *ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and*

(5) *prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.*

(b) *The board shall dispose of all complaints in a timely manner. The board shall establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.*

(c) *The executive director of the board shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.*

Sec. 11B. **INFORMAL PROCEEDINGS.** (a) *The board by rule shall adopt procedures governing:*

(1) *informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and*

(2) *informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.*

(b) *Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard and must require the presence of an attorney to advise the board or board's employees. The attorney must be a member of the board's legal staff if the board has a legal staff. If the board does not have a legal staff, the attorney must be an employee of the office of the attorney general.*

Sec. 11C. MONITORING OF LICENSE HOLDER. *The board by rule shall develop a system for monitoring license holders' compliance with the requirements of this Act. Rules adopted under this section shall include procedures for monitoring a license holder who is ordered by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.*

SECTION 7. Subsections (a), (b), and (c), Section 12, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) *The board [of health] shall by rule establish reasonable and necessary [set] fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering [for licenses, license renewals, examinations, and all other administrative expenses under] this Act.*

(b) *The fees set by the board may be adjusted so that the total fees collected are sufficient to meet the expenses of administering this Act. The board may not set a fee for an amount less than the amount of that fee on September 1, 1993 [The board of health shall set the fees in amounts that are reasonable and necessary to cover administrative costs].*

(c) *The marriage and family therapists licensing account is created in the General Revenue Fund and may be used only by the board [of health] and the department in the administration of this Act. All money paid to [Fees received by] the board [of health] under this Act shall be deposited in the General Revenue Fund to the credit of the account.*

SECTION 8. Subsection (c), Section 13, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) *The [Based on rules adopted by the board of health, the] board shall determine the qualifications and fitness of applicants for licenses under this Act.*

SECTION 9. Section 14, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) *The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.*

SECTION 10. The Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes) is amended by adding Section 14C to read as follows:

Sec. 14C. PROGRAM ACCESSIBILITY. *The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.*

SECTION 11. The Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes) is amended by adding Sections 14D and 14E to read as follows:

Sec. 14D. TRAINING; STANDARDS OF CONDUCT INFORMATION. (a) *Each board member shall comply with the board member training requirements established by any other state agency that is given authority to establish the requirements for the board.*

(b) *The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.*

Sec. 14E. TRAINING AND GUIDELINES FOR MEMBERS OF THE BOARD. (a) The board shall establish a training program for the members of the board.

(b) Before a member of the board may assume the member's duties, the member must complete at least one course of the training program established under this section.

(c) A training program established under this section shall provide information to a participant regarding:

- (1) the enabling legislation that created the board to which the member is appointed;*
- (2) the programs operated by the board;*
- (3) the role and functions of the board;*
- (4) the rules of the board with an emphasis on the rules that relate to disciplinary and investigatory authority;*
- (5) the current budget for the board;*
- (6) the results of the most recent formal audit of the board;*
- (7) the requirements of the:*

(A) open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments;

(B) open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(C) Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

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

(d) In developing the training requirements provided for in this section, the board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.

(e) In the event that another state agency or entity is given the authority to establish the training requirements, the board shall allow that training in lieu of developing its own program.

SECTION 12. Subsections (a) and (d), Section 19, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Unless exempted from the examination requirement under Section 30 of this Act or by a determination of the board based on the applicant's education and professional experience, each applicant for a license under this Act must pass an examination prescribed by the board. *The board shall have the written portion of the examination, if any, validated by an independent testing professional [and approved by the commissioner of health].* The examination may be composed of:

- (1) a written examination;
- (2) a field examination, through questionnaires answered by the applicant's instructors, employers, supervisors, or other persons who are competent in the judgment of the board to assess the applicant's professional ability, and that may include written case studies and taped interviews;
- (3) an oral examination; or
- (4) any combination of those examinations.

(d) Unless the examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than *the 30th day after the day on which a licensing examination is administered under this Act [30 days after the examination date]. However, if [If] the examination is [so] graded or reviewed by a national testing service, the board shall notify each examinee of the results not later than the 14th day [15 days] after the date on which the board receives the results from the national testing service. If the notice of examination results graded or reviewed by a national testing service*

will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay *before* ~~[not later than]~~ the 90th day ~~[after the examination date]~~.

SECTION 13. Section 20, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), is amended by adding Subsection (c) to read as follows:

(c) The board by rule may provide for the issuance of a temporary license. Rules adopted under this subsection shall include a time limit for a temporary license.

SECTION 14. Section 21, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 21. LICENSE RENEWAL. (a) A license issued under this Act is subject to annual renewal. The board shall adopt a system under which licenses expire on various dates during the year.

(b) A license holder may renew an unexpired license by paying to the board ~~[the renewal fee]~~ before the expiration date of the license *the required renewal fee*.

(c) If a person's license has been expired for ~~[less than]~~ 90 days or less, the person may renew the license by paying to the board *the required renewal fee and a fee that is one-half of the examination fee for the license* ~~[the unpaid renewal fees plus a late renewal fee in an amount determined by the board]~~.

(d) *If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.*

(e) If the person's license has been expired for *one year or longer* ~~[90 days or more]~~, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. *However, the board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee that is equal to the examination fee for the license.*

(f) ~~[(e)]~~ The board shall notify each license holder in writing of the pending license expiration not later than the 30th day before the date on which the license expires.

(g) ~~[(f)]~~ The board shall establish a mandatory ~~[may prepare or approve]~~ continuing education program ~~[programs]~~ for license holders ~~[and may require each license holder to participate in an approved continuing education program in order to renew a license issued under this Act]~~.

(h) *The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this Act. The board may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by the board. The board by rule shall develop a process to evaluate and approve continuing education courses.*

(i) *The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The board shall implement a procedure to assess a license holder's participation in continuing education programs.*

SECTION 15. Section 22, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 22. PROVISIONAL LICENSE BY ENDORSEMENT ~~[RECIPROCITY]~~. (a) *The board may grant a provisional license to a [A] person who is licensed or otherwise registered as a marriage and family therapist by another state or other jurisdiction, whose requirements for licensing or registration were, on the date of the licensing or registration, substantially equal to those prescribed by this Act, is entitled to a license without examination on submission of an application form and payment of an administrative fee]. An applicant for a provisional license under this section must:*

(1) be licensed in good standing as a marriage and family therapist in another state or jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this Act;

(2) have passed a national or other examination recognized by the board relating to marriage and family therapy; and

(3) be sponsored by a person licensed by the board under this Act with whom the provisional license holder may practice under this section.

(b) An applicant for a provisional license may be excused from the requirement of Subsection (a)(3) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this Act to the holder of a provisional license under this section if:

(1) the provisional license holder passes the examination required by Section 19 of this Act;

(2) the board verifies that the provisional license holder has the academic and experience requirements for a license under this Act; and

(3) the provisional license holder satisfies any other license requirements under this Act.

(d) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day deadline to allow for the receipt and tabulation of pending examination results.

SECTION 16. Section 25, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 25. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE; CIVIL PENALTY. (a) ~~The [After a hearing, the] board shall [may deny,] suspend[,]~~ suspend[,]

or revoke a license, place on probation a person whose license has been suspended, or reprimand ~~[or otherwise discipline]~~ a license holder if ~~[the applicant for license or]~~ the license holder has:

- (1) been convicted of a felony or a misdemeanor involving moral turpitude;
- (2) obtained or attempted to obtain registration by fraud or deception;
- (3) used drugs or alcohol to an extent that affects professional competence;
- (4) been grossly negligent in performing professional duties;
- (5) been adjudicated mentally incompetent by a court of competent jurisdiction;
- (6) practiced in a manner detrimental to the public health or welfare;
- (7) advertised in a manner that tends to deceive or defraud the public;
- (8) had a license or certification revoked by a licensing agency or by a certifying professional organization; or
- (9) otherwise violated this Act or a rule or code of ethics adopted under this Act.

(b) A person who violates this Act or a rule or order adopted by the board under this Act is subject to a civil penalty of \$1,000 for each day of violation. At the request of the board or department, the attorney general shall bring an action to recover a civil penalty authorized under this subsection.

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

- (1) report regularly to the board on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the board; or
- (3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

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

(e) The board by rule shall adopt a broad schedule of sanctions for violations under this Act. The State Office of Administrative Hearings shall use the schedule for any sanction imposed as the result of a hearing conducted by that office.

SECTION 17. The Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes) is amended by adding Section 25A to read as follows:

Sec. 25A. ADMINISTRATIVE PENALTY. (a) The commissioner of health may impose an administrative penalty against a person licensed or regulated under this Act who violates this Act or a rule or order adopted by the board under this Act.

(b) The penalty for a violation may be in an amount not to exceed \$1,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the commissioner of health determines that a violation has occurred, the commissioner may issue to the board a report that states the facts on which the determination is based and the commissioner's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the commissioner shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the commissioner, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held by a hearing examiner designated by the department. The hearing examiner shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, the person shall:

(1) pay the amount of the penalty;

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

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

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

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

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

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

(B) giving a copy of the affidavit to the commissioner of health by certified mail.

(l) If the commissioner of health receives a copy of an affidavit under Subsection (k)(2) of this section, the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner of health may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

SECTION 18. The Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes) is amended by adding Section 27A to read as follows:

Sec. 27A. COMPETITIVE BIDDING; ADVERTISING. (a) The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the use of any medium for advertising;

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

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

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

SECTION 19. Subdivision (2), Section 2, and Subsection (b), Section 13, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes), are repealed.

SECTION 20. (a) The changes in law made by this Act to the requirements for membership on the Texas State Board of Examiners of Marriage and Family Therapists apply only to an appointment made on or after the effective date of this Act and do not affect the entitlement of a member serving on the board immediately before the effective date of this Act to continue to hold office for the remainder of the term for which the person was appointed.

(b) The changes in law made by this Act relating to a civil or administrative penalty apply only to a violation of the Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes) or a rule or order adopted by the Texas State Board of Examiners of Marriage and Family Therapists that occurs on or after the effective date of this Act. A violation occurs on or after the effective date of this Act only if each element of the violation occurs on or after that date. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for this purpose.

SECTION 21. On and after January 1, 1994, the State Office of Administrative Hearings shall assume responsibility for hearings held with respect to contested cases arising under the Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes) and its subsequent amendments. The Texas State Board of Examiners of Marriage and Family Therapists and the chief administrative law judge of the State Office of Administrative Hearings may agree to transfer contested cases pending before the board to the State Office of Administrative Hearings before January 1, 1994.

SECTION 22. The Texas State Board of Examiners of Marriage and Family Therapists shall adopt rules required by this Act not later than December 31, 1993.

SECTION 23. This Act takes effect September 1, 1993.

SECTION 24. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 5, 1993, by a viva-voce vote; the Senate concurred in House amendment on May 26, 1993, by a viva-voce vote; passed the House, with amendment, on May 21, 1993, by a non-record vote.

Approved June 18, 1993.

Effective Sept. 1, 1993.