

TEXAS REGISTER

IN THIS ISSUE

Volume 19, Number 23 March 29, 1994

Page 2155-2242

Proposed Sections

Railroad Commission of Texas

Transportation Division

16 TAC §5.294.....2165

Texas Education Agency

Student Attendance

19 TAC §129.21.....2165

Texas State Board of Pharmacy

General Provisions

22 TAC §281.74.....2166

Licensing Requirements for Pharmacists

22 TAC §283.2, §283.4.....2167

Pharmacies

22 TAC §§291.31-291.36.....2168

22 TAC §291.52.....2174

22 TAC §§291.111-291.115.....2175

Generic Substitution

22 TAC §309.3, §309.5.....2179

Texas Real Estate Commission

Provisions of the Real Estate License Act

22 TAC §535.51.....2180

22 TAC §535.91.....2180

Provisions of the Residential Service Company Act

22 TAC §539.61.....2180

22 TAC §539.81.....2181

22 TAC §539.137.....2181

22 TAC §539.231.....2182

Texas Department of Mental Health and Mental Retardation

System Administration

25 TAC §§401.551-401.565.....2182

Texas Department of Insurance

General Administration

28 TAC §§1.1501-1.1506.....2186

Texas Department of Human Services

Community Care for Aged and Disabled

40 TAC §48.2904, §48.2924.....2189

Contents Continued Inside



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a section of the Office of the Secretary of State P.O. Box 13824 Austin, TX 78711-3824 (512) 463-5561 FAX (512) 463-5569

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Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except March 11, July 22, November 11, and November 29, 1994. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$7 per copy.

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POSTMASTER: Please send form 3579 changes to the Texas Register, P.O. Box 13824, Austin, TX 78711-3824.

How to Use the Texas Register

Information Available: The 10 sections of the Texas Register represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code, section numbers, or TRD number.

Texas Administrative Code

The Texas Administrative Code (TAC) is the official compilation of all final state agency rules published in the Texas Register. Following its effective date, a rule is entered into the Texas Administrative Code. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC. West Publishing Company, the official publisher of the TAC, releases cumulative supplements to each printed volume of the TAC twice each year.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The Official TAC also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the TAC or to inquire about WESTLAW access to the TAC call West: 1-800-328-9352.

The Titles of the TAC, and their respective Title numbers are:

- 1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the Texas Administrative Code; TAC stands for the Texas Administrative Code; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the Texas Register contains a cumulative Table of TAC Titles Affected for the preceding month. If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more Texas Register page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

Update by FAX: An up-to-date Table of TAC Titles Affected is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to Texas Register subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

Texas Veterans Commission

Veterans County Service Officers Accreditation

40 TAC §451.1, §451.3 2190

Adopted Sections

Texas Antiquities Committee

Practice and Procedure

13 TAC §§41.5, 41.7-41.9, 41.11, 41.17, 41.20, 41.21 2193

13 TAC §§41.10, 41.14, 41.26, 41.29, 41.30 2196

13 TAC §41.15 2196

State Preservation Board

Rules and Regulations of the Board

13 TAC §§111.3-111.5, 111.13, 111.16-111.23, 111.25 2197

13 TAC §111.15 2197

13 TAC §111.27, §111.28 2197

Texas Education Agency

School Districts

19 TAC §61.49 2197

Adaptations for Special Populations

19 TAC §89.6 2198

19 TAC §89.203 2199

19 TAC §§89.211, 89.213-89.229, 89.233, 89.235, 89.236, 89.238, 89.239, 89.242, 89.244 2199

19 TAC §89.219 2201

19 TAC §§89.250, 89.252-89.254 2202

Texas Board of Architectural Examiners

Landscape Architects

22 TAC §3.21, §3.25 2202

22 TAC §3.42, §3.43 2202

22 TAC §3.69 2202

22 TAC §3.87 2202

Board of Nurse Examiners

Bylaws

22 TAC §§211.1-211.10 2203

22 TAC §§211.1-211.12 2203

Texas State Board of Examiners of Professional Counselors

Professional Counselors

22 TAC §§681.1-681.23 2205

22 TAC §§681.1-681.19 2206

22 TAC §681.26 2206

22 TAC §§681.31-681.42 2207

22 TAC §§681.32-681.43 2207

22 TAC §§681.51-681.53 2210

22 TAC §681.51, §681.52 2210

22 TAC §§681.61-681.65 2211

22 TAC §§681.61-681.64 2211

22 TAC §§681.81-681.84 2212

22 TAC §§681.91-681.100 2214

22 TAC §§681.91-681.96 2214

22 TAC §§681.111-681.114 2215

22 TAC §§681.111-681.113 2215

22 TAC §§681.121-681.128 2216

22 TAC §§681.121-681.127 2216

22 TAC §§681.141-681.147 2217

22 TAC §§681.161-681.164 2217

22 TAC §§681.161-681.163 2217

22 TAC §§681.171-681.180 2217

22 TAC §§681.171-681.179 2217

22 TAC §§681.191-681.197 2219

22 TAC §§681.191-681.200 2219

22 TAC §§681.211-681.220 2221

Texas Department of Insurance

Exempt Filing Notification 2224

Exempt Filing Notification 2224

Open Meetings Sections

Texas Department of Agriculture 2225

Texas Board of Architectural Examiners 2225

Texas Board of Chiropractic Examiners 2225

Texas State Board of Examiners of Professional Counselors 2226

General Land Office 2226

Texas Guaranteed Student Loan Corporation 2227

Texas Department of Health 2227

Texas Department of Human Services 2227

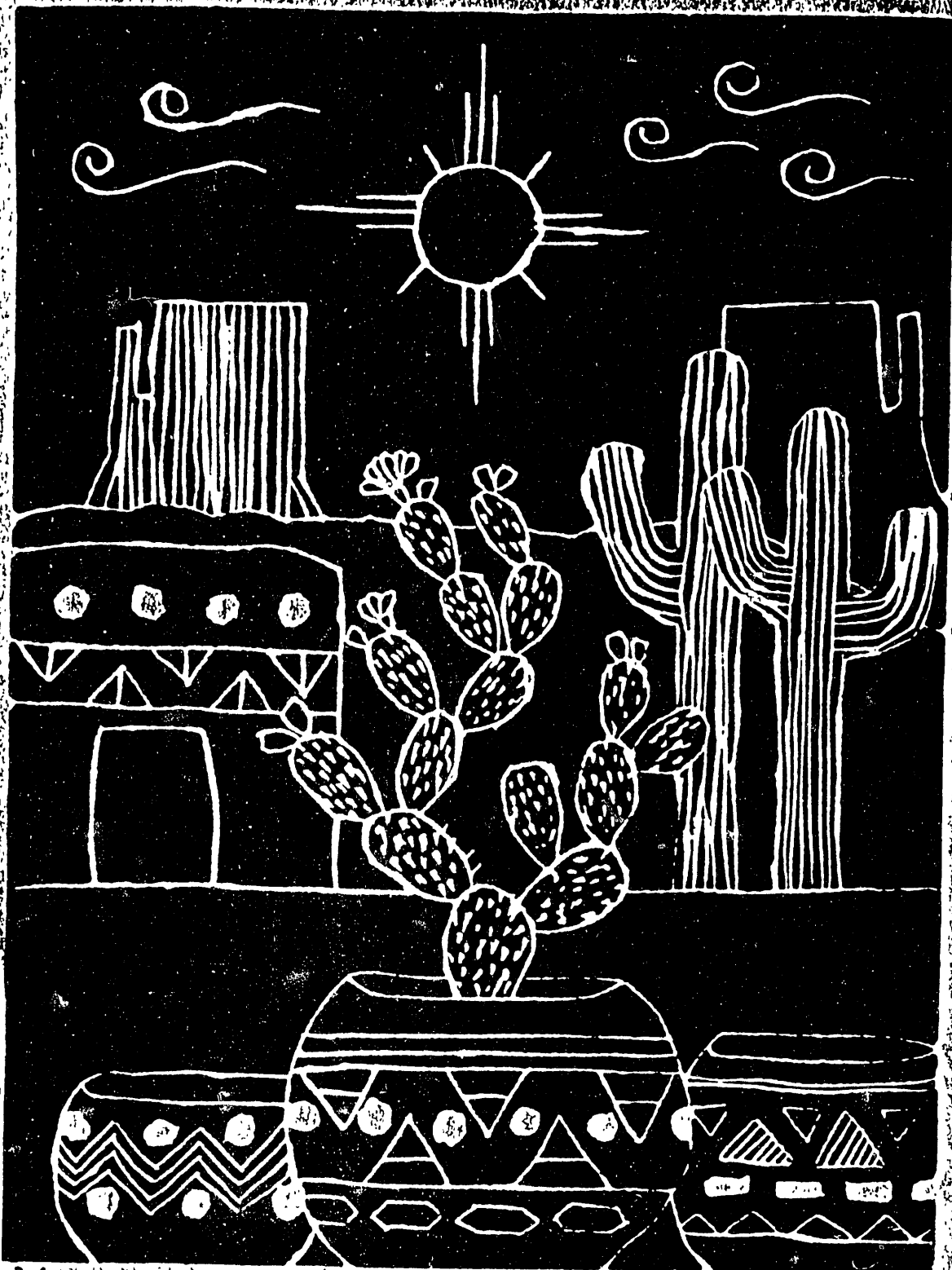
Texas Board of Professional Land Surveying.....	2227	Texas Department of Health	
Texas Department of Licensing and Regulation.....	2227	Notices of Emergency Cease and Desist Orders....	2236
Texas Council on Offenders with Mental Impairments	2228	Notices of Rescission of Orders	2236
Texas Natural Resource Conservation Commission....	2228	Sexual Assault Prevention and Crisis Services Funding	2237
Texas Board of Pardons and Paroles.....	2229	Texas Department of Health Schedule for Development and Review of Block Grant Funds.....	2237
Texas State Board of Licensure for Professional Medical Physicists.....	2230	Texas Department of Insurance	
Public Utility Commission of Texas	2230	Company License	2238
Texas Senate	2230	Legislative Budget Board	
Texas State Technical College System	2230	Budget Execution Proposals	2238
Texas Tech University	2231	Texas Department of Mental Health and Mental Retardation	
Texas Tech University Health Sciences Center.....	2231	Notice of Opportunity for Public Testimony to the Author- ity/Provider Task Force	2238
Texas Department of Transportation	2232	Texas Natural Resource Conservation Commission	
Texas Workers' Compensation Insurance Fund.....	2232	Notice of Opportunity to Comment on Administrative Actions.....	2239
Texas Council on Workforce and Economic Competitiveness.....	2232	Public Hearing Notice.....	2240
Regional Meetings	2233	North Central Texas Council of Governments	
<i>In Addition Sections</i>		Notice of Consultant Contract Award	2240
Texas Commission on Alcohol and Drug Abuse		Texas Water Development Board	
Consultant Services Contract Award	2235	Notice of Hearing to Receive Comments on Board Goals	2241
Texas Education Agency			
RFA #701-94-015	2235		



3/4 "Stop the Violence"

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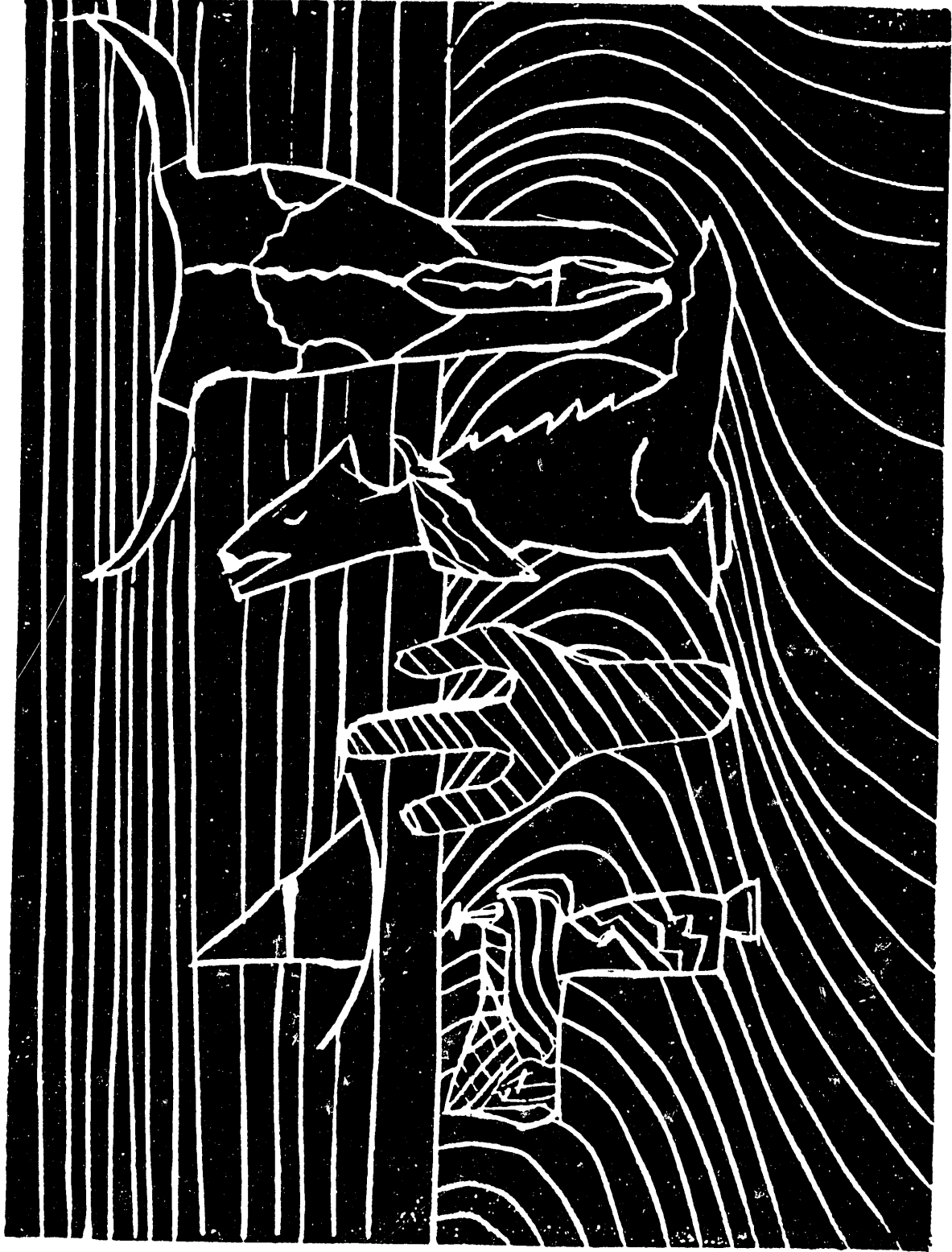


2/10

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1/7

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2
10

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Grade: 8
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PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 16. ECONOMIC REGULATIONS Part I. Railroad Commission of Texas Chapter 5. Transportation Division Subchapter P. Commercial Zones • 16 TAC §5.294

The Railroad Commission of Texas proposes an amendment to §5.294, concerning existing commercial zones. The amendment is proposed as a result of a petition for rulemaking filed by the Sherman Chamber of Commerce, Sherman Industrial District, Inc., the Denison Area Chamber of Commerce, and the Denison Industrial Foundation (collectively referred to herein as the Sherman Chamber). The amendment expands the Dallas and Fort Worth commercial zones to include Grayson County.

In support of its petition the Sherman Chamber alleges that the proposed expansion of the Dallas and Fort Worth commercial zones would facilitate industrial relocation and expansion in Grayson County, and would divert traffic from private carriers, but would pose no additional competitive threat to existing common carriers.

Jackye Greenlee, assistant director, central operations, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Martha V. Swanger, hearings examiner, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of administering the section will be to allow available for-hire carriers to transport commodities between the existing Dallas and Fort Worth commercial zones and those cities located in Grayson County without obtaining a certificate of authority or permit from the commission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted within 30 days to Martha V. Swanger, Hearings Examiner, Legal Division, Railroad Com-

mission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.

The amendment is proposed pursuant to Texas Civil Statutes, Article 911b, §1(g) (Vernon Supplement 1994), which authorize the commission to define and prescribe commercial zones adjacent to and commercially a part of any specified incorporated municipality.

The following is the statute affected by this rule: Texas Civil Statutes, Article 911b, (Vernon 1964 and Vernon Supplement 1994).

§5.294. Existing Commercial Zones. Commercial zones defined and prescribed by the commission after notice and hearing are as follows.

(1) The Dallas commercial zone shall include the following counties: Collin, Dallas, Denton, Ellis, Grayson, Johnson, Kaufman, Parker, Rockwall, and Tarrant.

(2) The Fort Worth commercial zone shall include the following counties: Collin, Dallas, Denton, Ellis, Grayson, Johnson, Kaufman, Parker, Rockwall, and Tarrant.

(3)-(6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437952

Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas-Section
Railroad Commission of
Texas

Earliest possible date of adoption: April 29, 1994

For further information, please call: (512) 463-7013



TITLE 19. EDUCATION Part II. Texas Education Agency Chapter 129. Student Attendance Subchapter B. Student Atten- dance Accounting • 19 TAC §129.21

The Texas Education Agency (TEA) proposes an amendment to §129.21, concerning requirements for student attendance accounting for state funding purposes. Many school districts have adjunct staff members supervising and/or directing school approved activities. The amendment would allow students to be considered in attendance if they are under the direction of professional or adjunct staff members of the school district. The adjunct staff member must meet certain requirements.

Marvin Veselka, associate commissioner for curriculum, assessment, and textbooks, has determined that for the first five-year period the rule is in effect there will be fiscal implications as a result of enforcing or administering the rule. The effect on state and local government for the first five-year period the section will be in effect cannot be accurately determined at this time. The fiscal impact would be approximately \$25 per student for each day absent that would be counted as present under the proposed rule.

Mr. Veselka and Criss Cloudt, associate commissioner for policy planning and evaluation, have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that more students will be allowed to participate in off-campus activities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act and the Texas Register Act must be received by the commissioner of education not more than 15 calendar days after

notice of a proposed change in the rule has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §16.005, which authorizes the commissioner of education, in accordance with the rules of the State Board of Education, to take such action and require such reports consistent with the terms of this chapter as may be necessary to implement and administer the Foundation School Program.

§129.21. *Requirements for Student Attendance Accounting for State Funding Purposes.*

(a)-(j) (No change.)

(k) A student not actually on campus at the time attendance is taken may be considered in attendance for Foundation School Program purposes under the following conditions.

(1) The student is participating in an activity which is approved by the local board of school trustees and is under the direction of a member of the professional staff of the school district, or an adjunct staff member who: [.]

(A) has a minimum of a bachelor's degree; and

(B) is eligible for participation in the Teacher Retirement System of Texas.

(2)-(3) (No change.)

(l)-(n) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 23, 1994

TRD-9437991

Criss Cloutt
Associate Commissioner,
Policy Planning and
Evaluation
Texas Education Agency

Earliest possible date of adoption. April 29, 1994

For further information, please call: (512) 463-9701

TITLE 22. EXAMINING BOARDS

Part XV. Texas State Board of Pharmacy

Chapter 281. General Provision

• 22 TAC §281.74

The Texas State Board of Pharmacy proposes new §281.74, concerning Charges for Public Records. If adopted, the rule will establish the charges the agency will assess for

copies of public records. Through the enactment of House Bill 1009, the 73rd Texas Legislature amended the Texas Open Records Act to require each state agency to specify, by rule, the charges the agency will make for copies of public records. This bill states that a state agency may establish a charge for a copy of a public record that is equal to the full cost to the agency in providing the copy. This bill also requires the General Services Commission (GSC) to specify by rule the methods and procedures that a state agency may use in determining the amounts that the agency should charge to recover the full cost to the agency in providing copies of public records.

Fred S. Brinkley, Jr., R.Ph., M.B.A., has determined that there will be minimal fiscal implications as a result of enforcing or administering the rule. The first five-year period the proposed sections are in effect there should be minimal fiscal implications for state government as a result of implementing or administering these sections. The exact amount of the fiscal impact is not subject to determination since it depends upon the number of open records requests processed by the agency and the amount of data requested.

There will be no effect on local government for the first five-year period the rule will be in effect. There is no cost for businesses to comply with the rule.

Mr. Brinkley has determined that for each year of the first five years the rule as proposed will be in effect the public benefits anticipated as a result of enforcing the rule as proposed will be clearer in providing access to, and copies of, public records. The adoption of consistent and reasonable charges should result in better services to the public and in fees that are not so high as to impede access to public information.

Comments on the proposal may be submitted to Gay Dodson, Director of Compliance, 8505 Cross Park Drive, Suite 110, Austin, Texas 78754

This rule is proposed under the authority Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes), §16(a), which gives the Board authority to adopt rules for the proper administration and enforcement of the Texas Pharmacy Act and House Bill 1009, Chapter 428, Acts, 73rd Legislature, Regular Session (1993).

The new section implements Texas Civil Statutes, Article 4542a-1.

§281.74 *Charges for Public Records.* In accordance with the Act, 73rd Legislature, Regular Session (1993), Chapter 428, §5, the following specifies the charges the Texas State Board of Pharmacy will make for copies of public records. These charges are based on the full cost to the agency for providing the copies.

(1) Definitions: The following words and terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise:

(A) Standard-size copy—A printed impression on one side of a piece of paper that measures up to 8-1/2 X 14 inches. Each side of the paper on which an impression is made is counted as a single copy. A piece of paper printed on both sides is counted as two copies.

(B) Copy charge—A charge for costs incurred in copying standard-size paper copies reproduced by an office machine copier or a computer printer.

(C) Postage and shipping charge—A charge for costs incurred in sending information to a requestor, such as cost of postage, envelope or long-distance phone call for facsimile transmission.

(D) Personnel Charge—A charge imposed for costs incurred for personnel time expended in processing a request for public information. This charge may include the time any employee spends reading/reviewing the initial request for records, making copies of records, conducting a file search, conducting a computer search, preparing and reviewing the response to the records request (administrative oversight/review), and any other type of personnel time necessary to respond to the request.

(E) Overhead Charge—A charge for direct and indirect costs incurred in addition to the personnel charge. This charge covers such costs as depreciation of capital assets, rent, maintenance and repair, and utilities.

(F) Microfiche and microfilm charge—A charge for costs incurred for making a copy of microfiche or microfilm.

(G) Remote document retrieval charge—A charge for costs incurred in obtaining information not in current use in remote storage locations.

(H) Computer Resource Charge—A charge for costs incurred in obtaining information on computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources. This charge may also include programming time if a request requires a programmer to enter data in order to execute an existing program or create a new program so that requested information may be accessed.

(I) Readily Available Information—Information that is readily available may include any information that does not

fall under the "Not Readily Available Information" defined below.

(J) Not Readily Available Information—Information that is not readily available includes information that requires personnel to locate and retrieve a specific file, review the file to locate the record, and replace the file after the record has been located. Information that is not readily available also includes information that requires personnel review to determine if the information is what the requestor has asked for, or a review to determine if the records contain information confidential under the Texas Pharmacy Act or other law. Information that is not readily available includes, but is not limited to:

- (i) information in pharmacist licensing files;
- (ii) information in pharmacy licensing files;
- (iii) information in compliance files;
- (iv) information in adjudicative files;
- (v) information in personnel files; and
- (vi) information in the agency's computerized data base system.

(2) Charges:

(A) For 1 to 50 standard-size copies of readily available information, the charge shall be \$0.10 per page.

(B) For 51 pages or more of readily available information, or any quantity of not readily available information, the charge shall be the sum of the following:

- (i) \$0.15 per page,
- (ii) personnel charge in an amount reflecting the average hourly cost for classified state employees as determined from time to time by the General Services Commission;
- (iii) overhead charge in an amount to be determined in accordance with the guidelines of the General Services Commission;
- (iv) microfiche and microfilm charge (if applicable) in an amount equal to the actual cost to the agency of the reproduction, or in accordance with General Services Commission Guidelines;
- (v) remote document retrieval charge (if applicable) in an amount equal to the actual cost to the agency of the retrieval or in accordance with General Services Commission Guidelines;
- (vi) computer resource charge (if applicable), including any pro-

gramming time, in an amount equal to the cost to the agency, or in accordance with General Services Commission Guidelines; and

(vii) actual cost of miscellaneous supplies (if applicable) in an amount equal to the actual cost to the agency.

(C) If a request for information may result in charges exceeding \$100, the agency may require the requestor to make a deposit in the anticipated approximate amount of the charges, which may be applied to the costs incurred in responding to the request.

(D) If a particular request may involve considerable time and resources to process, the agency may advise the requesting party of what may be involved and provide an estimate of date of completion and the charges that may result.

(E) The agency has the discretion to furnish public records without charge or at a reduced charge if the agency determines that a waiver or reduction is in the public interest.

(F) Nothing herein shall prevent the agency from charging for its publications, such as the Texas State Board of Pharmacy Law Reference Manual, or portions thereof.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 22, 1994.

TRD-9437880 Fred S. Brinkley
Executive
Director/Secretary
Texas State Board of
Pharmacy

Proposed date of adoption: May 3, 1994

For further information, please call. (512) 832-0661

◆ ◆ ◆
**Chapter 283. Licensing
Requirements for
Pharmacists**

• **22 TAC §283.2, §283.4**

The Texas State Board of Pharmacy proposes amendments to §283.2 and §283.4, concerning Definitions and Internship Requirements. The rule amendments, if adopted, will specify the requirements for an out-of-state college of pharmacy internship program to be an approved internship program in Texas.

These rule amendments will allow an out-of-state student in an approved out-of-state col-

lege of pharmacy program to be designated an intern while they are working in a Texas licensed facility.

Fred S. Brinkley, Jr., R.Ph., M.B.A., has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

There is no cost for businesses or individuals to comply with the rule.

Mr. Brinkley also has determined that for each year of the first five years the rule as proposed will be in effect the public benefits anticipated as a result of enforcing the rule as proposed will be the establishment of standards for approval of out-of-state college-based internship programs.

Comments on the proposal may be submitted to Gay Dodson, Director of Compliance, 8505 Cross Park Dr., Suite 110, Austin, Texas 78754.

The amendments are proposed under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes), §17(a), which gives the Board the authority to regulate the training, qualifications, and employment of pharmacist-interns; and §16(a), which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act.

The amendments implement Texas Civil Statutes, Article 4542a-1.

§283.2. *Definitions.* The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Pharmacist-intern—An undergraduate student in a [Texas] college of pharmacy lacking no more than 30 credit hours of work towards a professional degree in pharmacy and participating in a school-based board-approved internship program or an extended-intern participating in a board-approved internship program.

§283.4. *Internship Requirements.*

- (a)-(b) (No change)
- (c) [Texas] Colleges of Pharmacy Internship Programs.

(1) **Texas Colleges of Pharmacy Internship Programs.**

(A) The board shall review for approval Texas colleges of pharmacy internship programs on or before September 1 of each fiscal year. The purpose of the board review will be to determine if such internship programs demonstrate that the competencies listed in subsection (a) of this section are capable of being met by each student completing the internship. The board reserves the right to set conditions relating to the approval of such programs.

(B)[(2)] The Texas colleges of pharmacy shall determine through examinations that each student completing the college internship program meets the competencies listed in subsection (a) of this section.

(C)[(3)] A maximum of 500 hours of the total 1,500 hours internship experience requirement may be awarded to a student who is registered for and participates in a board-approved internship and who lacks more than 30 credit hours of work towards a professional degree in pharmacy. Such student may not perform the duties of a pharmacist-intern as described in §283.5 of this title (relating to Pharmacist-Intern Duties) except in a pharmacy under the operation and control of a university that has a college or school of pharmacy, provided such student is under the direct supervision of a pharmacist licensed and in good standing with the board, who is a member of the faculty or staff of the respective college or school of pharmacy.

(C)[(4)] A student who is registered for and participates in a board-approved internship program at a Texas college of pharmacy and who is lacking no more than 30 credit hours of work towards a professional degree in pharmacy may be designated as a pharmacist-intern and may perform the duties of a pharmacist-intern as described in §283.5 of this title (relating to Pharmacist-Intern Duties) in the presence of and under the direct supervision of a board-approved preceptor. Pharmacist-interns may perform the duties of a pharmacist-intern as described in §283.5 of this title (relating to Pharmacist-Intern Duties) only during times and in sites assigned by the respective colleges of pharmacy.

(D)[(5)] Internship experience shall be gained under a pharmacist licensed by the board and approved as a preceptor by the board.

(E)[(6)] All internship sites shall be approved by the board. Externship sites shall be pharmacies licensed and in good standing with the board.

(F)[(7)] Any individual having completed an internship program may no longer be designated a pharmacist-intern, except as provided in subsection (d) of this section.

(G)[(8)] Prior to taking the licensure examination any applicant participating in a Texas college-based internship shall complete the requirements of such internship.

(H)[(9)] Pharmacist-interns completing a board-approved Texas college-based structured internship divided equitably among community, institutional, and clinical pharmacy practice will be awarded 1,500 hours of internship experience. No credit shall be awarded for didactic experience.

(I)[(10)] If a Texas college of pharmacy determines through evaluation and examination that an individual student is competent in institutional practice, the college may petition the board to allow such student to substitute any or all of the institutional practice component of the internship with practical experience substantially related to the practice of pharmacy, such as practical experience in pharmaceutical manufacturing, nuclear pharmacy, or pharmacy administration.

(J)[(11)] If a Texas college of pharmacy determines through evaluation and examination that an individual student is competent in community practice, the college may petition the board to allow such student to substitute any or all of the community practice component of the internship with practical experience substantially related to the practice of pharmacy, such as practical experience in pharmaceutical manufacturing, nuclear pharmacy, or pharmacy administration.

(2) Other Colleges of Pharmacy Internship Programs.

(A) The board may designate as a pharmacist-intern a student enrolled in a College of Pharmacy not located in Texas if:

(i) the professional degree program of the college of pharmacy has been accredited by ACPE and meets the requirements of the board;

(ii) the board reviews the school-based structured internship program and determines that the program or part of the program to be completed in Texas is substantially equivalent to the Texas colleges of pharmacy internship programs approved by the board under paragraph (1) of this subsection;

(iii) during the time the student is working as a pharmacist-intern, the student is working in a pharmacy licensed in Texas under the supervision of a board approved preceptor; and

(iv) the pharmacist-intern complies with the provisions of subsection (e) of this section and §283.5 of this title (relating to Pharmacist-Intern Duties).

(B) Internship experience earned in the program specified in subparagraph (A) of this paragraph shall not be reported to the board but may be reported to the board of pharmacy in the state in which the out-of-state college of pharmacy is located.

(C) Internship experience earned in the program described in subparagraph (A) may be applied toward the internship hours requirement specified in subsection (b) of this section only if approved and certified to the board by the board of pharmacy in the state in which the college of pharmacy is located.

(d)-(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 18, 1994.

TRD-9437879 Fred S. Brinkley
Executive
Director/Secretary
Texas State Board of
Pharmacy

Proposed date of adoption: May 3, 1994

For further information, please call: (512) 832-0661

Chapter 291. Pharmacies Community Pharmacy (Class A)

• 22 TAC §§291.31-291.36

The Texas State Board of Pharmacy proposes amendments to §§291.31-291.36 concerning Definitions, Personnel, Operational Standards, Records, Triplicate Prescription Requirements, and Class A Pharmacies Compounding Sterile Pharmaceuticals. The amendments will implement recommendations from the Board's Ad Hoc Advisory Committee on Standards for Pharmacy Compounding which specify minimum standards for the compounding of non-sterile drug products in licensed pharmacies, and make changes to the rules necessary to be consistent with changes made to the Texas Pharmacy Act, as amended by Senate Bill 472, passed by the 73rd Legislature.

The Board's Ad Hoc Advisory Committee on Standards for Pharmacy Compounding was appointed by the Board for the limited purpose of: reviewing current practices concerning the compounding of non-sterile pharmaceuticals; identifying trends, potential advances, and regulatory efforts in this area of pharmacy practice; and making recommendations to the Board concerning amendments to current rules, and of adoption of new rules in this area. The committee met twice and presented their recommendations to the Board on November 18, 1993. These proposed amendments implement the recommendations of the Ad Hoc Advisory Committee.

Fred S. Brinkley, Jr., R.Ph., M.B.A., has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Mr. Brinkley also has determined that for each year of the first five years the rule as proposed will be in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be the protection of the public health and welfare by establishing minimum standards for the compounding of non-sterile drug products and the increased accessibility to pharmaceutical services allowed by changes to the Texas Pharmacy Act. Businesses (pharmacies) already engaged in non-sterile compounding will have no anticipated cost to comply with the rule. Businesses (pharmacies) which start non-sterile compounding are anticipated to have costs between \$50 and \$500 depending on the extent of their involvement in compounding. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Gay Dodson, Director of Compliance, 8505 Cross Park Drive, Suite 110, Austin, Texas 78754.

The amendments are proposed under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes), §4, which specifies that the purpose of the Texas Pharmacy Act is to protect the public partly through the effective control and regulation of the practice of pharmacy; §5(38), which defines the term "Practice of Pharmacy" to include responsibility for compounding and labeling of drugs and devices; and §16(a), which gives Texas State Board of Pharmacy the authority to adopt rules for the proper administration and enforcement of the Act.

The amendments implement Texas Civil Statutes, Article 4542a-1.

§291.31. *Definitions.* The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Component—Any ingredient intended for use in the compounding of a drug product, including those that may not appear in such product.

Compounding—The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug order or initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns; or

(C) for the purpose of or as an incident to research, teaching, or

chemical analysis and not for sale or dispensing.

[Confidential health information—Any health related information maintained by the pharmacy in the patient's records, is privileged and may be released only to:

[(A) the patient, or as the patient directs;

[(B) those health care professionals where, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well being; or

[(C) other such persons or governmental agencies authorized by law to receive such confidential information.]

Confidential record—Any health-related record maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication order.

Drug regimen review—An evaluation of prescription drug orders and patient medication records for:

(A) known allergies;

(B) rational therapy-contraindications;

(C) reasonable dose and route of administration;

(D) reasonable directions for use;

(E) duplication of therapy;

(F) drug-drug interactions;

(G) drug-food interactions;

(H) drug-disease interactions;

(I) adverse drug reactions; and

(J) proper utilization, including overutilization or underutilization.

Manufacturing—The production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological

synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of the container and the promotion and marketing of such drugs or devices. Manufacturing also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons but does not include compounding.

Pharmaceutical Care—The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

Prospective drug use review—A review of the patient's drug therapy [medication record] and prescription drug order or medication order prior to dispensing or distributing the drug.

Supportive personnel—Those individuals utilized in pharmacies whose responsibility it shall be to provide [nonjudgmental] technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist.

§291.32. *Personnel.*

(a) (No change.)

(b) Pharmacists.

(1) (No change.)

(2) Duties. Duties which may only be performed by a pharmacist are as follows:

(A)-(D) (No change.)

(E) [compounding prescription drug orders;

[(F) bulk compounding;

[(G)]affixing the label to the prescription container and performing the final check of the dispensed prescription before delivery to the patient;

(F)[(H)] communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgement, the pharmacist deems significant, as specified in §291.33(c) of this title (relating to Operational Standards);

(G)[(I)] communicating to the patient or the patient's agent on his or her request, information concerning any prescription drugs dispensed to the patient by the pharmacy; [and]

(H)(J) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records; and

(I) interpreting patient medication records and performing drug regimen reviews.

(3) Special Requirements for Non-Sterile Compounding.

(A) All pharmacists engaged in compounding shall possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised. Continuing education shall include training in the art and science of compounding and the legal requirements for compounding.

(B) A pharmacist shall inspect and approve all components, drug product containers, closures, labeling, and any other materials involved in the compounding process.

(C) A pharmacist shall review all compounding records for accuracy and conduct in-process and final checks to assure that errors have not occurred in the compounding process.

(D) A pharmacist is responsible for the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(c)-(d) (No change.)

§291.33. Operational Standards.

(a) Licensing requirements.

(1)-(8) (No change.)

(9) A Class A (Community) pharmacy engaged in the compounding of sterile pharmaceuticals shall comply with the provisions of §291.36 of this title (relating to Class A Pharmacies Compounding Sterile Pharmaceuticals).

(b) Environment.

(1) (No change.)

(2) Special Requirements for Non-Sterile Compounding.

(A) Pharmacies regularly engaging in compounding shall have a designated and adequate area for the safe and orderly compounding of drug products, including the placement of equipment and materials. Pharmacies involved in occasional compounding shall prepare an area prior to each compounding activ-

ity which is adequate for safe and orderly compounding.

(B) Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of a drug compounding operation.

(C) A sink with hot and cold running water exclusive of rest room facilities, shall be accessible to the compounding areas and be maintained in a sanitary condition. Supplies necessary for adequate washing shall be accessible in the immediate area of the sink and include:

(i) soap or detergent; and

(ii) air-driers or single-use towels.

(D) If drug products which require special precautions to prevent contamination, such as penicillin, are involved in a compounding operation, appropriate measures, including dedication of equipment for such operations or the meticulous cleaning of contaminated equipment prior to its use for the preparation of other drug products, must be utilized in order to prevent cross-contamination.

(3)(2) Security.

(A)-(B) (No change.)

(c) Prescription Dispensing and Delivery.

(1) (No change.)

(2) Prospective Drug Use Review.

view.

(A)-(B) (No change.)

(3) (No change.)

(4) Labeling. At the time of delivery of the drug, the dispensing container shall bear a label with at least the following information:

(A)-(J) (No change.)

(K) if the pharmacist has selected a generically equivalent drug pursuant to the provisions of the Act, §40, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand-name product prescribed;

(L) (No change.)

(M) the name and strength of the actual drug product dispensed, unless otherwise directed by the prescribing practitioner.

(i) The name shall be either:

(I) (No change.)

(II) if no brand name, then the generic name and name of the manufacturer or distributor of such generic drug. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug products having no brand name, the principal active ingredients shall be indicated on the label).

(ii) Except as provided in subparagraph (K) of this paragraph, the brand name of the prescribed drug shall not appear on the prescription container label unless it is the drug product actually dispensed.

(d) Equipment and Supplies.

(1) Class A pharmacies dispensing prescription drug orders shall have the following equipment and supplies:

(A)(1) typewriter or comparable equipment;

(B)(2) refrigerator;

(C)(3) adequate supply of child-resistant, light-resistant, and tight containers;

(D)(4) adequate supply of prescription, poison, and other applicable labels;

(E)(5) appropriate equipment necessary for the proper preparation of prescription drug orders; and

(F) [(6)] metric-apothecary weight and measure conversion charts. [; and]

(2)(7) If the community pharmacy compounds prescription drug orders, the pharmacy shall:

(A) have a Class A prescription balance, or analytical balance and weights [Such balance] which shall be properly maintained and inspected at least every three years by the appropriate authority as prescribed by local, state, or federal law or regulations; and [.]

(B) have equipment and utensils necessary for the proper compounding of prescription drug orders. Such equipment and utensils used in the compounding process shall be:

(i) of appropriate design, appropriate capacity, and be operated within designed operational limits;

(ii) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug product beyond acceptable standards;

(iii) cleaned and sanitized immediately prior to each use; and

(iv) routinely inspected, calibrated (if necessary), or checked to ensure proper performance.

(e) (No change.)

(f) Drugs

(1) -(3) (No change)

(4) Drugs, Components, and Materials Used in Non-Sterile Compounding.

(A) Drugs used in non-sterile compounding shall:

(i) meet official compendia requirements; or

(ii) be of a chemical grade in one of the following categories:

(I) Chemically Pure (CP);

(II) Analytical Reagent (AR); or

(III) American Chemical Society (ACS); or

(iii) in the professional judgement of the pharmacist, be of high quality and obtained from acceptable and reliable alternative sources.

(B) All components shall be stored in properly labeled containers in a clean, dry area, under proper temperatures as defined in paragraph (1) of this subsection.

(C) Drug product containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or pu-

rity of the compounded drug product beyond the desired result.

(D) Components, drug product containers, and closures shall be rotated so that the oldest stock is used first.

(E) Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug product.

(g)-(h) (No change)

(i) Non-Sterile Compounding.

(1) Purpose. The purpose of this subsection is to provide standards for the compounding of non-sterile drug products in licensed pharmacies for dispensing and/or administration to humans or animals. Licensed pharmacies compounding non-sterile drug products shall comply with the following paragraphs in addition to all other provisions of §§291.31-291.35 of this title (relating to Definitions, Personnel, Operational Standards, Records, and Triplicate Prescription Requirements).

(2) General Requirements.

(A) Non-sterile drug products may be compounded in licensed pharmacies:

(i) when there exists a valid pharmacist/patient/prescriber relationship and upon the presentation of a valid prescription drug order; or

(ii) in anticipation of future prescription drug orders based on routine, regularly observed prescribing patterns.

(B) Non-sterile compounding in anticipation of future prescription drug orders must be based upon a history of receiving valid prescriptions issued within an established pharmacist/patient/prescriber relationship, provided, that in the pharmacist's professional judgement the quantity prepared is stable for the anticipated shelf time.

(i) The pharmacist's professional judgement should be based on criteria such as:

(I) physical and chemical properties of active ingredients;

(II) use of preservatives and/or stabilizing agents;

(III) dosage form;

(IV) storage conditions; and

(V) scientific, laboratory, or reference data.

(ii) Documentation of the criteria used to determine the stability for the anticipated shelf time must be maintained with the non-sterile compounding record.

(iii) Any product compounded in anticipation of future prescription drug orders shall be labeled. Such label shall contain:

(I) name and strength of the compounded medication or list of the active ingredients and strengths;

(II) facility's lot number;

(III) "use by" date as determined by the pharmacist using appropriate documented criteria as outlined in subparagraph (B)(i) of this paragraph; and

(IV) quantity or amount in the container.

(C) Commercially available drug products may be compounded for individual patients under the provisions of subparagraph (A) of this paragraph provided the prescribing practitioner has requested that the drug product be compounded;

(D) Drug products may be compounded for the exclusive use of the pharmacy where the products are compounded. Compounded drug products may not be distributed for resale, including distribution to pharmacies under common ownership or control, except that a practitioner may obtain compounded drug products for administration to patients, but not for dispensing. Products compounded for physician administration to patients shall be labeled. Such label shall contain:

(i) the statement: "For Office Use Only;"

(ii) name and strength of the compounded medication or list of the active ingredients and strengths;

(iii) facility's control number;

(iv) "use by" date as determined by the pharmacist using appropriate documented criteria as outlined in subparagraph (B)(i) of this paragraph; and

(v) quantity or amount in the container.

(E) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide non-sterile prescription compounding services, but shall not solicit business by promoting to compound specific drug products.

(3) Compounding Process.

(A) Any person with an apparent illness or open lesion that may adversely affect the safety or quality of a drug product being compounded shall be excluded from direct contact with components, drug product containers, closures, any materials involved in the compounding process, and drug products until the condition is corrected.

(B) Personnel engaged in the compounding of drug products shall wear clean clothing appropriate to the operation being performed. Protective apparel, such as coats/jackets, aprons, hair nets, gowns, hand or arm coverings, or masks shall be worn as necessary to protect personnel from chemical exposure and drug products from contamination.

(C) At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(D) The pharmacist shall establish and conduct quality control procedures to monitor the output of compounded drug products for uniformity and consistency such as capsule weight variations, adequacy of mixing, clarity, or pH of solutions. Such procedures shall be documented in the non-sterile compounding record.

(E) Compounding records for all drugs compounded shall be maintained by the pharmacy electronically or manually as part of the prescription, formula record, formula book, or compounding log and shall include:

(i) the date of preparation;

(ii) facility's lot number;

(iii) manufacturer's lot number(s) and expiration date(s) for all components (If the original manufacturer's lot number(s) and expiration date(s) are not known, the pharmacy shall record the source of acquisition of the components.);

(iv) a complete formula, including methodology and necessary equipment;

(v) signature or initials of the pharmacist or supportive person performing the compounding;

(vi) signature or initials of the pharmacist responsible for supervising supportive personnel and conducting in-process and final checks of compounded products if supportive personnel perform the compounding function;

(vii) the name(s) of the manufacturer(s) of the raw materials;

(viii) the quantity in units of finished products or grams of raw materials;

(ix) the package size and the number of units prepared;

(x) documentation of performance of quality control procedures; and

(xi) if compounded in anticipation of future prescription drug orders or for a practitioner's "office use", the criteria used to determine the "use by" date.

§291.34 Records.

(a) (No change.)

(b) Prescriptions

(1)-(4) (No change)

(5) Authorization for substitution

(A) Generic substitution.

(i) A pharmacist may dispense a generically equivalent drug product if.

(I)(i) the generic product cost the patient less than the prescribed drug product,

(II)(i) the patient does not refuse the substitution; and

(III)(iii) the prescribing practitioner authorizes the substitution of a generically equivalent product; or

(IV)(iv) the practitioner or practitioner's agent does not clearly indicate that the verbal or FAX prescription drug order shall be dispensed as ordered

(ii)(B) Practitioners shall indicate their dispensing instructions by signing on either the "Dispense as Written" or "Product Selection Permitted" line on the prescription drug order. If the practitioner's signature does not clearly indicate the prescription drug order shall be dispensed as written, the pharmacist may substitute a generically equivalent drug product

(iii)(C) A pharmacist may not substitute on prescription drug orders identified in paragraph (2)(B)(ii) [(1)(B)(ii)] of this subsection unless the practitioner has authorized substitution on the prescription drug order.

(iv)(D) If the practitioner has not authorized substitution on the written prescription drug order, a pharmacist shall not substitute a generically equivalent drug product unless:

(I)(i) the pharmacist obtains verbal or written authorization from the practitioner (such authorization shall be noted on the original prescription drug order); or

(II)(ii) the pharmacist obtains written documentation regarding substitution requirements from the State Board of Pharmacy in the state, other than Texas, in which the prescription drug order was issued. The following is applicable concerning this documentation

(-a)-(I) The documentation shall state that a pharmacist may substitute on a prescription drug order issued in such other state unless the practitioner prohibits substitution on the original prescription drug order.

(-b)-(II) The pharmacist shall note on the original prescription drug order the fact that documentation from such other state board of pharmacy is on file

(-c)-(III) Such documentation shall be updated yearly.

(B) Substitution of dosage form. A pharmacist may dispense, with the patient's consent and notification to the practitioner, a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or

liquid instead of tablets, provided the dosage form so dispensed:

(i) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(ii) is not an enteric-coated or time release product; and

(iii) does not alter desired clinical outcomes

(6)-(7) (No change.)

(8) Refills.

(A)-(D) (No change.)

(E) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) either:

(I) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(II) the pharmacist is unable to contact the practitioner after a reasonable effort;

(iii) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iv) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills; and

(v) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time.

(c) Patient Medication Records.

(1) (No change.)

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months which is necessary for the dispensing pharmacist to conduct a prospective drug use review at the time a prescription drug order is presented for dispensing

(3) The pharmacist-in-charge shall assure that a reasonable effort is made to obtain and record in the patient medication record at least the following information:

(A)-(D) (No change.)

(E) any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs currently being used by the patient which may relate to prospective drug use review;

(F)-(G) (No change.)

(4)-(5) (No change.)

(d)-(j) (No change.)

(k) Confidentiality

(1) A pharmacist shall provide adequate security of prescription drug orders, [order] and patient medication records to prevent indiscriminate or unauthorized access to confidential health information.

(2) Confidential records are privileged and may be released only to:

(A) the patient or the patient's agent;

(B) practitioners and other pharmacists when, in the pharmacist's professional judgement, such release is necessary to protect the patient's health and well-being;

(C) other persons, the board, or other state or federal agencies authorized by law to receive such information;

(D) a law enforcement agency engaged in investigation of suspected violations of the Controlled Substances Act or the Dangerous Drug Act;

(E) a person employed by any state agency which licenses a practitioner as defined in the Act if such person is engaged in the performance of the person's official duties; or

(F) an insurance carrier or other third party payor authorized by a patient to receive such information.

§291.35 *Triplicate Prescription Requirement.*

(a)-(d) (No change.)

(e) Partial dispensing of Schedule II controlled substances.

(1) If unable to supply the full quantity called for in a written or emergency oral prescription for a Schedule II controlled substance, the pharmacist may

partially dispense the prescription and complete the prescription under the following conditions.

(A) The pharmacist notes the initial partial quantity dispensed on the face of the written prescription or emergency oral prescription.

(B) The remaining portion of the prescription is dispensed within 72 hours of the first partial dispensing. No further quantity may be dispensed beyond 72 hours without a new prescription.

(C) If the remaining portion of the prescription is not or cannot be dispensed within the 72-hour period, the pharmacist shall notify the prescribing practitioner.

(2) A pharmacist may dispense a prescription for a Schedule II controlled substance in partial quantities to include individual dosage units, for a patient in a long-term facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness under the following conditions.

(A) The pharmacist must record on the prescription whether the patient is "terminally ill" or an "LTCF patient." A prescription that is partially filled and does not contain the notation "terminally ill" or "LTCF patient" shall be deemed to have been filled in violation of the Texas Controlled Substances Act.

(B) If there is any question about whether a patient may be classified as having a terminal illness, the pharmacist must contact the practitioner prior to partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient.

(C) For each partial dispensing, the dispensing pharmacist shall record on the back of Copy 1 and Copy 2 of the prescription the:

(i) date of the partial dispensing;

(ii) quantity dispensed;

(iii) remaining quantity authorized to be dispensed; and

(iv) identification of the dispensing pharmacist.

(D) Prior to any subsequent partial dispensing the pharmacist

must determine that the additional partial dispensing is necessary.

(E) The total quantity of the Schedule II controlled substances dispensed in all partial dispensings must not exceed the total quantity prescribed.

(F) Schedule II prescriptions for patients in a long-term care facility or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 30 days from the issue date unless sooner terminated by discontinuance of the medication.

(f)(e) Exceptions to use of triplicate prescriptions

(1)-(2) (No change)

(g)(f) Pharmacist responsibilities

(1)-(3) (No change)

(4) Within 30 days from the date a pharmacist fills a triplicate prescription or no later than the 30th day after completion of a prescription dispensed under subsection (e)(2) of the section, the pharmacy is required to mail copy 1 of the form to the Texas Department of Public Safety, Triplicate Prescription Section, P O Box 4087, Austin, Texas 78773

(5) (No change)

§291.36. Class A Pharmacies Compounding Sterile Pharmaceuticals

(a)-(c) (No change)

(d) Operational Standards

(1) Licensing requirements

(A)-(H) (No change)

(I) A Class A pharmacy engaged in non-sterile compounding of drug products shall comply with the provisions of §§291.31-291.34 of this title (relating to definitions, personnel, operational standards, and records for Class A (Community) Pharmacies) to the extent such rules are applicable to non-sterile compounding of drug products.

(2)-(10) (No change)

(e)-(f) (No change)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 18, 1994

TRD-9437878

Fred S Brinkley
Executive
Director/Secretary
Texas State Board of
Pharmacy

Proposed date of adoption May 3, 1994

For further information, please call (512) 832-0661

Nuclear Pharmacy (Class B)

• 22 TAC §291.52

The Texas State Board of Pharmacy proposes an amendments to §291 52, concerning personnel The amendment specifies minimum training requirements which must be met for a pharmacist to be the pharmacist in charge of a Class B (Nuclear) Pharmacy

The proposed amendments match the training requirements for nuclear pharmacists proposed by the federal Nuclear Regulatory Commission It was agreed that rules for the training of nuclear pharmacists should be adopted by the Texas State Board of Pharmacy

Fred S Brinkley, Jr , R Ph , M B A , has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section

Mr Brinkley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pharmacists in-charge of Nuclear Pharmacies meet minimum education requirements

There will be no effect on small businesses The anticipated economic cost to persons who are required to comply with the rule as proposed will be the cost to obtain training, which will very greatly depending upon the type of training chosen and/or the cost to take the certification exam It is anticipated that all current pharmacist-in-charge of nuclear pharmacies will meet the proposed standards without additional training

Comments on the proposed rules may be submitted to Gay Dodson, Director of Compliance, 8505 Cross Park Drive, Suite 110, Austin, Texas 78754

The amendment is proposed under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes), §(4), which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy, and §16(a), which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act

The amendment implements Texas Civil Statutes, Article 4542a-1

§291 52 Personnel

(a) Pharmacist-in-charge of a nuclear pharmacy

(1) (No Change)

(2) General qualifications for a nuclear pharmacy pharmacist-in-charge are the following. A pharmacist shall

(A)-(B) (No change.)

(C) submit to the board either:

(i) certification that he or she has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

(ii) certification signed by a pharmacist-in-charge of a nuclear pharmacy, that he or she has achieved a level of competency sufficient to be a pharmacist-in-charge of a nuclear pharmacy and has satisfactorily completed 700 hours in a structured educational program consisting of both:

(I) didactic training in the following areas

(-a-) radiation physics and instrumentation;

(-b-) radiation protection;

(-c-) mathematics pertaining to the use and measurement of radioactivity;

(-d-) chemistry of byproduct material for medical use; and

(II) supervised experience in a nuclear pharmacy involving the following:

(-a-) shipping, receiving, and performing related radiation surveys;

(-b-) using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(-c-) calculating, assaying, and safely preparing dosages for patients or human research subjects;

(-d-) using administrative controls to avoid mistakes in the administration of byproduct material; and

(-e-) using procedures to prevent or minimize contamination and using proper decontamination procedures. [completed a minimum of four months on-the-job training providing radioactive drug services under the supervision of a pharmacist in a nuclear pharmacy;

(ii) certification that he or she has completed a nuclear pharmacy training program in an accredited college; or

(iii) an application, in affidavit form, along with such other informa-

tion the board may require, requesting partial or equivalent credit for education and experience gained in programs not sponsored by an accredited college of pharmacy.]

(3) The board may issue a letter of notification that the evidence submitted by the pharmacist meets the requirements of paragraph (2)(A)-(C) of this subsection and has been accepted by the board and that, based thereon, the pharmacist is recognized as a pharmacist-in-charge of a nuclear pharmacy.

(b)-(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 18, 1994.

TRD-9437877 Fred S Brinkley
Executive
Director/Secretary
Texas State Board of
Pharmacy

Proposed date of adoption: May 3, 1994

For further information, please call: (512) 832-0661

◆ ◆ ◆
**Home and Community Service
Support Agency Pharmacy
(Class F)**

• **22 TAC §§291.111-291.115**

The Texas State Board of Pharmacy proposes new §§291.111-291.114, concerning purpose, definitions, operational standards, and records in a Class F pharmacy. The new rules will provide standards in the conduct and practice activities of a Class F pharmacy

Senate Bill 472, passed by the 73rd Legislative Session, created a new class of pharmacy, a Class F pharmacy. The bill specified that a Class F Pharmacy is a pharmacy located in a facility that is licensed under Chapter 142 of the Health and Safety Code for the purpose of dispensing, distributing, or administering to their patients under physicians orders the following dangerous drugs sterile water for injection and irrigations, sterile saline for injection and irrigation, and heparin flush kits for intravenous flushes. The bill also specified that a Class F pharmacy was required to be under the continuous supervision of a pharmacist.

In drafting the proposed rules Board staff consulted informally with representatives of the Texas Home Care Association and the Texas Pharmaceutical Association. These rules were patterned after the Board's rules for Class D pharmacies.

Fred S. Brinkley, Jr., R.Ph., M.B.A., has determined that there will be fiscal implications as a result of enforcing or administering the rule. The effect on state government for the first five-year period the rules are in effect will

be an estimated cost of \$43,365 in FY94 and \$79,319 per year for FY95-FY98.

There will be no effect on local government for the first five-year period the rules will be in effect. The cost for businesses to comply with the rules will range from approximately \$650 to \$5,150, depending on the activity of the pharmacy. This cost estimate is based on the cost of the license (\$152 per year) and the cost to employ a pharmacist to operate the pharmacy. The cost to contract with a pharmacist will vary depending upon the amount of time the pharmacist is needed. It is estimated that a pharmacist services may range from \$500 to \$5,000 per year, depending on the volume in the pharmacy.

Mr. Brinkley also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the protection of the public through the establishment of standards for operation of Class F pharmacies.

A public hearing will be held at 9:00 a.m. on May 3, 1993 at 1812 Centre Creek Drive, Room 203, Austin, Texas 78754. Comments on the proposal may be submitted to Gay Dodson, Director of Compliance, 8505 Cross Park Drive, Suite 110, Austin, Texas 78754.

The new rules are proposed under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes), §17(b)(2), which gives the Board the authority to specify minimum standards for professional environment, technical equipment, and security in the prescription dispensing area, §17(b)(3), which gives the Board the authority to specify minimum standards for drug storage, maintenance of prescription drug records, and procedures for the delivery, and providing of prescription drugs or devices, §29(b)(6), which establishes the Class F pharmacy; §29(c)(6), which establishes the requirements for pharmacist supervision in a Class F pharmacy, §29(d), which gives the Board the authority to establish the standards that each pharmacy and its employees or personnel involved in the practice of pharmacy shall meet to qualify for the licensing or relicensing as a pharmacy in each classification, and §16(a), which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act.

The new rules implement Texas Civil Statutes, Article 4542a-1.

§291.111. Purpose. The purpose of these sections is to provide standards in the conduct, practice activities, and operation of a pharmacy located in a facility that is licensed under Health and Safety Code, Chapter 142, as a Home and Community Service Support Agency. A Class F Pharmacy license is issued for the purpose of dispensing, distributing, or administering to agency patients under physicians' orders the following dangerous drugs: sterile water for injection and irrigation, sterile saline for injection and irrigation, and heparin flush kits for intravenous flushes.

§291.112. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act—The Texas Pharmacy Act, Texas Civil Statutes, Article 4542a-1, as amended.

Agency—A home and community support services agency that is licensed under Health and Safety Code, Chapter 142.

Administer—The direct application of a prescription drug by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner or an authorized agent under his supervision or other person authorized by law; or

(B) the patient at the direction of a practitioner.

Authorized dangerous drug—Any of the following dangerous drugs which are required to bear the legend "Caution: federal law prohibits dispensing without prescription."

(A) sterile water for injection or irrigation;

(B) sterile saline for injection or irrigation; and

(C) heparin flush kits for intravenous flushes.

Board—The Texas State Board of Pharmacy.

Continuous supervision—supervision provided by the pharmacist-in-charge and/or another designated pharmacist, and consists of on-site and telephone supervision, routine inspection, and a policy and procedure manual.

Controlled substance—A drug, immediate precursor, or other substance listed in Schedules I-V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended or a drug, immediate precursor, or other substance included in Schedule I-V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

Dangerous drug—Any drug or device that is not included in Penalty Groups 1-4 of the Controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(A) Caution: federal law prohibits dispensing without prescription; or

(B) Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

Deliver or delivery—The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

Dispense—Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

Distribute—The delivery of a prescription drug or device other than by administering or dispensing.

Pharmacist—A person licensed by the board to practice pharmacy.

Pharmacist-in-charge—The pharmacist designated on a pharmacy license as the pharmacist who is responsible for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

Practitioner—

(A) a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to distribute or dispense a prescription drug or device in the course of professional practice in this state;

(B) a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs or a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule II-V controlled substances in such other state; or

(C) a person licensed in the Dominion of Canada or the United Mexican States in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs; and

(D) does not include a person licensed under the Act.

Standing delegation order—Written orders from a physician and designed for a patient population with specific diseases, disorders, health problems, or sets of symptoms, which provide authority for and a plan for use with patients presenting themselves prior to being examined or evaluated by a physician to assure that such acts are carried out correctly and are distinct from specific orders written for a particular patient.

Standing medical order—Written orders, from a physician or the medical staff of an institution for patients which have been examined or evaluated by a physician and which are used as a guide in preparation for and carrying out medical and/or surgical procedures.

Supportive personnel—Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist.

Texas Controlled Substances Act—The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

§291.113. Personnel.

(a) Pharmacist-in-charge.

(1) General.

(A) Each Class F pharmacy shall have one pharmacist-in-charge who is employed or under written agreement, at least on a consulting or part-time basis, but may be employed on a full-time basis, if desired, and who may be pharmacist-in-charge of more than one Class F pharmacy.

(B) A written agreement shall exist between the agency and the pharmacist-in-charge, and a copy of the written agreement shall be made available to the board upon request.

(2) Responsibilities. The pharmacist-in-charge shall have at a minimum, the responsibility for the following:

(A) continuous supervision of registered nurses, licensed vocational nurses, physician assistants, supportive personnel, and assistants when such persons are carrying out the pharmacy related aspects of distribution;

(B) documented periodic on-site visits to the Class F Pharmacy as specified in the rules either personally or by another designated pharmacist, to insure that the Class F Pharmacy is following set policies and procedures

(C) procurement and storage of drugs but he/she may receive input from other appropriate staff of the agency;

(D) determining specifications of all drugs procured by the Class F Pharmacy;

(E) maintenance of records of all transactions of the pharmacy as may be required by applicable law, and as may be necessary to maintain accurate control over and accountability for all authorized dangerous drugs;

(F) development and periodic review of a policy and procedure manual for the pharmacy in conjunction with appropriate agency staff; and

(G) meeting inspection and other requirements of the Texas Pharmacy Act and these sections.

(b) Pharmacists.

(1) The pharmacist-in-charge may be assisted by a sufficient number of additional pharmacists as may be required to operate the Class F pharmacy competently, safely, and adequately to meet the needs of the patients of the agency.

(2) Such pharmacists shall assist the pharmacist-in-charge in meeting the responsibilities as outlined in subsection (a) of this section and in ordering, supervising, and accounting for authorized dangerous drugs.

(3) All pharmacists shall be responsible for any delegated act performed by supportive personnel under his or her supervision.

(d) Supportive personnel.

(1) Qualifications.

(A) Supportive personnel shall possess education and training necessary to carry out their responsibilities.

(B) Supportive personnel shall be qualified to perform the pharmacy tasks assigned to them.

(2) Duties. Duties include:

(A) distribution of authorized dangerous drugs to licensed nurses of the agency for administration to agency patients in accordance with written policies and procedures;

(B) maintaining inventories of authorized dangerous drugs; and

(C) maintaining pharmacy records.

(3) Absence of the pharmacist. The pharmacist-in-charge shall designate from among the supportive personnel a person to supervise the day-to-day pharmacy-related operations of the Class F Pharmacy.

§291.114. Operational Standards.

(a) Licensing.

(1) All Class F pharmacies shall be by the board and renew such license annually with the board on a form provided by the board, following the proce-

dures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) All Class F pharmacies shall provide a copy of their policy and procedure manual to the board with the initial license application

(3) The license form shall be signed by the pharmacist-in-charge of the Class F pharmacy.

(4) The owner or managing officer of the agency shall sign the license form and shall agree to comply with the rules adopted by the board governing Class F pharmacies.

(5) The license form shall be certified and state whether the Class F pharmacy is a sole ownership and give the name of the owner, or if a partnership, name all the managing partners, or if a corporation, name of all the managing officers.

(6) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance of a new license and for each renewal.

(7) When a Class F pharmacy changes ownership, a new and separate license application must be filed with the board and the old license returned to the board's office.

(8) A separate license is required for each principle place of business and only one pharmacy license may be issued to a specific location.

(9) A Class F pharmacy shall notify the board in writing of any change in name or location within 10 days

(10) A Class F pharmacy shall notify the board in writing within 10 days of a change of the pharmacist-in-charge.

(11) A Class F pharmacy shall notify the board in writing within 10 days of permanent closing.

(b) Environment.

(1) General Requirements

(A) The Class F pharmacy shall have a designated area(s) for the storage of authorized dangerous drugs

(B) No person may operate a pharmacy which is unclean, unsanitary, or under any condition which endangers the health, safety, or welfare of the public.

(C) The pharmacy shall comply with all federal, state, and local health laws and ordinances.

(2) Security.

(A) Only authorized personnel may have access to storage areas for authorized dangerous drugs.

(B) All storage areas for authorized dangerous drugs shall be locked by key or combination, so as to prevent access by unauthorized personnel.

(C) The pharmacist-in-charge shall be responsible for the security of all storage areas for authorized dangerous drugs including provisions for adequate safeguards against theft or diversion of dangerous drugs, and records for such drugs.

(D) The pharmacist-in-charge shall consult with agency personnel with respect to security of the pharmacy, including provisions for adequate safeguards against theft or diversion of authorized dangerous drugs, and records for such dangerous drugs

(c) Library. A reference library shall be maintained which includes:

(1) current copies of the following laws:

(A) Texas Pharmacy Act and Rules; and

(B) Texas Dangerous Drug Act and Rules; and

(2) current patient information reference text or leaflets which provide patient information concerning the heparin or heparin flush kits

(d) Drugs.

(1) Formulary.

(A) The formulary shall be limited to the following dangerous drugs:

(i) sterile water for injection or irrigation,

(ii) sterile saline for injection or irrigation; and

(iii) heparin flush kits.

(B) The formulary shall not contain any other dangerous drugs or Schedule I-V controlled substances.

(2) Storage.

(A) Authorized dangerous drugs which bear the words: "Caution, federal law prohibits dispensing without prescription," shall be stored in secured storage areas.

(B) All drugs shall be stored at the proper temperatures, as defined by the following terms.

(i) cold—any temperature not exceeding 8 degrees Celsius (46 degrees Fahrenheit). A refrigerator is a cold place in which the temperature is maintained thermostatically between 2 degrees and 8 degrees Celsius (36 degrees and 46 degrees Fahrenheit). A freezer is a cold place in which the temperature is maintained thermostatically between -20 degrees and -10 degrees Celsius (-4 degrees and 14 degrees Fahrenheit).

(ii) cool—any temperature between 8 degrees and 15 degrees Celsius (46 degrees and 59 degrees Fahrenheit). An article for which storage in a cool place is directed may, alternatively, be stored in a refrigerator, unless otherwise specified in the individual monograph.

(iii) room temperature—the temperature prevailing in a working area. Controlled room temperature is a temperature maintained thermostatically between 15 degrees and 30 degrees Celsius (59 degrees and 86 degrees Fahrenheit).

(iv) warm—any temperature between 30 degrees and 40 degrees Celsius (86 degrees and 104 degrees Fahrenheit).

(v) excessive heat—temperature above 40 degrees Celsius (104 degrees Fahrenheit).

(vi) protection from freezing—where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to destructive alteration of the dosage form, the container label bears an appropriate instruction to protect the product from freezing.

(C) Any drug bearing an expiration date may not be distributed or administered beyond the expiration date of the drug

(D) Outdated drugs shall be removed from stock and shall be quarantined together until such drugs are disposed.

(E) Controlled substances and dangerous drugs other than authorized dangerous drugs may not be stored at the Class F pharmacy.

(3) Distribution for emergency administration. Authorized dangerous drugs may be distributed to licensed nurses of the agency for emergency administration to patients of the agency provided:

(A) authorized dangerous drugs are distributed in accordance with the system of control and accountability for drugs distributed by agency. Such system

shall be developed and supervised by the pharmacist-in-charge;

(B) only authorized dangerous drugs are distributed;

(C) authorized dangerous drugs are only be distributed in original manufacturer's containers;

(D) such drugs are only be distributed according to standing delegation orders or standing medical orders; if a quantity of the drug remains with the patient, a licensed nurse shall print on the label the following information:

- (i) patients name;
- (ii) date of administration; and
- (iii) practitioner's name;

(E) such drugs are stored under proper conditions as specified in the policy and procedure manual; and

(F) the patient is provided with written information about heparin or heparin flush kits; and

(G) records of distribution for administration are maintained according to §291.115 of this title (relating to Records).

(e) Policies and Procedures.

(1) Written policies and procedures shall be developed and updated annually by the pharmacist-in-charge in conjunction with appropriate agency staff and implemented by the pharmacist-in-charge.

(2) The policy and procedure manual shall include but not be limited to the following.

(A) a current list of the names and addresses of the pharmacist-in-charge, pharmacist(s), supportive personnel designated to distribute authorized dangerous drugs, and the supportive personnel designated to supervise the day-to-day pharmacy related operations of the agency in the absence of the pharmacist;

(B) functions of the pharmacist-in-charge, pharmacist(s) and supportive personnel;

(C) a copy of written agreement between the pharmacist-in-charge and the agency;

(D) date of last review/revision of policy and procedure manual; and

(E) policies and procedures for:

- (i) security;
- (ii) sanitation;
- (iii) licensing;
- (iv) storage of drugs;
- (v) distribution;
- (vi) patient information/training for heparin or heparin flush kits;
- (vii) supervision;
- (viii) drug destruction and returns;
- (ix) drug procuring;
- (x) receiving of drugs;
- (xi) delivery of authorized dangerous drugs;
- (xii) recordkeeping; and
- (xiii) inspection.

(f) Supervision.

(1) The pharmacist-in-charge or other designated pharmacist shall be in contact with the agency on at least a monthly basis, either through written memos, documented telephonic conferences or on-site visits of the Class F Pharmacy.

(2) The pharmacist-in-charge or other designated pharmacist shall personally visit the agency at least every six months to ensure that the agency is following set policies and procedures.

§291.115. Records.

(a) On-site visits. A record of on-site visits of the Class F Pharmacy by the pharmacist-in-charge or other designated pharmacist shall be maintained and include the following information:

- (1) date of the visit;
- (2) pharmacist's evaluation of findings;
- (3) signature of the appropriate agency personnel receiving the pharmacist's evaluation of findings; and
- (4) signature of the visiting pharmacist.

(b) Invoices or records of receipt.

(1) Each Class F Pharmacy shall maintain invoices and/or records of procurement in accordance with the requirements of the Texas Dangerous Drug Act and Rules and the Texas Pharmacy Act and Rules.

(2) Invoices and records of receipt may be kept at a location other than the pharmacy. Any such records not kept at the pharmacy shall be available for inspection, upon request, within two business days.

(c) Distribution for Emergency Administration. Records of authorized dangerous drugs distributed to licensed nurses of the agency for emergency administration to patients of the agency shall be maintained as follows.

(1) Sign-out record of distribution to licensed nurse. The record of distribution of an authorized dangerous drug to a licensed nurse shall include the following:

(A) name of licensed nurse;

(B) name of the person who distributed the authorized dangerous drug if different from the person listed in subparagraph (A) of this paragraph;

(C) date distributed; and

(D) the name of the authorized drug or device and quantity distributed.

(2) Record of emergency administration to an agency patient. At the time of administration, the licensed nurse shall record the following information:

(A) patient name;

(B) name of the practitioner who ordered the drug;

(C) name of the drug and strength;

(D) date of administration and quantity administered;

(E) signature of the individual administering the drug; and

(F) quantity left at the patient's residence.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt

Issued in Austin, Texas, on March 18, 1994.

TRD-9437876

Fred S Brinkley
Executive
Director/Secretary
Texas State Board of
Pharmacy

Proposed date of adoption: May 4, 1994

Chapter 309. Generic Substitution

• 22 TAC §309.3, §309.5

The Texas State Board of Pharmacy proposes amendments to §309.3 and §309.5, concerning Prescription Drug Orders and Labeling Requirements. These amendments, if adopted, make changes to the rules necessary to be consistent with changes made to the Texas Pharmacy Act, as amended by Senate Bill 472 passed by the 73rd Legislature

Fred S Brinkley, Jr., R Ph, M B A, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections Mr Brinkley also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the increased accessibility to pharmaceutical services allowed by changes to the Texas Pharmacy Act There is no cost for businesses to comply with the rule There is no anticipated economic cost to persons who are required to comply with the rule as proposed

Comments on the proposal may be submitted to Gay Dodson, Director of Compliance, 8505 Cross Park Drive, Suite 110, Austin, Texas 78754.

The amendments are proposed under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes), §16(a), which gives Texas State Board of Pharmacy the authority to adopt rules for the proper administration and enforcement of the Act

The amendments implement Texas Civil Statutes, Article 4542a-1

§309.3 Prescription Drug Orders

(a) Written prescription drug orders

(1) (No change)

(2) Authorization for substitution

(A) Generic substitution.

(i) A pharmacist may dispense a generically equivalent drug product if:

(I) the generic product cost the patient less than the prescribed drug product;

(II) the patient does not refuse the substitution; and

(III) the prescribing practitioner authorizes the substitution of a generically equivalent product; or

(IV) the practitioner or practitioner's agent does not clearly indicate that the verbal or FAX prescription drug order shall be dispensed as ordered.

(ii) Practitioners shall indicate their dispensing instructions by signing on either the "Dispense as Written" or "Product Selection Permitted" line on the prescription drug order. If the practitioner's signature does not clearly indicate the prescription drug order shall be dispensed as written, the pharmacist may substitute a generically equivalent drug product.

(iii) A pharmacist may not substitute on prescription drug orders identified in paragraph (1)(B) of this subsection unless the practitioner has authorized substitution on the prescription drug order

(iv)(B) If the practitioner has not authorized substitution on the written prescription drug order, a pharmacist shall not substitute a generically equivalent drug product unless

(I)(i) the pharmacist obtains verbal or written authorization from the practitioner (such authorization shall be noted on the original prescription drug order), or

(II)(ii) the pharmacist obtains written documentation regarding substitution requirements from the State Board of Pharmacy in the state, other than Texas, in which the prescription drug order was issued The following is applicable concerning this documentation

(-a)-(I) The documentation shall state that a pharmacist may substitute on a prescription drug order issued in such other state unless the practitioner prohibits substitution on the original prescription drug order

(-b)-(II) The pharmacist shall note on the original prescription drug order the fact that documentation from such other state board of pharmacy is on file

(-c)-(III) Such documentation shall be updated yearly

(B) Substitution of dosage form. A pharmacist may dispense, with the patient's consent and notification to the practitioner, a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or

liquid instead of tablets, provided the dosage form so dispensed:

(i) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(ii) is not an enteric-coated or time-release product; and

(iii) does not alter desired clinical outcomes.

(b)-(d) (No change.)

§309.5 Labeling Requirements. At the time of delivery of the drug, the dispensing container shall bear a label with at least the following information:

(1)-(10) (No change.)

(11) if the pharmacist has selected a generically equivalent drug pursuant to the provisions of the Act, §40, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed;

(12) (No change.)

(13) unless otherwise directed by the prescribing practitioner, the name and strength of the actual drug product dispensed

(A) The name shall be either.

(i) (No change.)

(ii) if no brand name, then the generic name and name of the manufacturer or distributor of such generic drug (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor For combination drug products or non-sterile compounded drug products having no brand name, the principal active ingredients shall be indicated on the label)

(B) Except as provided in paragraph (11) of this subsection, the brand name of the prescribed drug shall not appear on the prescription container unless it is the drug product actually dispensed

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt

Issued in Austin, Texas, on March 18, 1994.

TRD-9437875 Fred S Brnkley Executive Director/Secretary Texas State Board of Pharmacy

Proposed date of adoption May 3, 1994

For further information, please call: (512) 832-0661

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Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Requirements for Licensure

• **22 TAC §535.51**

The Texas Real Estate Commission proposes an amendment to §535.51, concerning general requirements for real estate licensure. The amendment adopts by reference a series of forms which a person may use to apply for a real estate broker or real estate salesman license or for a determination of moral character.

The forms have been revised to clarify that providing a social security account number is voluntary, to eliminate a business activity survey that is no longer necessary, and to make nonsubstantive language changes to make the forms easier to use. One new application form, TREC Form BSL-1, could be used by a currently licensed real estate broker to obtain a real estate salesman license if the applicant does not wish to remain licensed as a broker.

Mark A. Moseley, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be a uniform and orderly process for obtaining a real estate license. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

§535.51. General Requirements

(a)-(c) (No change.)

(d) The commission adopts by reference the following forms approved by the commission which are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Application for Real Estate Broker License, TREC Form BL-2 [B1-1];

(2) Application for a Real Estate Broker License by a Corporation, TREC Form BLC-2 [BLC-1];

(3) Application for Late Renewal of Real Estate Broker License Privileges, TREC Form BLR-2 [BLR-1];

(4) Application for Late Renewal of Real Estate Broker License Privileges by a Corporation, TREC Form BLRC-2 [BLRC-1];

(5) Application for a Real Estate Salesman License, TREC Form SL-2 [SL-1];

(6) Application for Late Renewal of Real Estate Salesman License Privileges, TREC Form SLR-2 [SLR-1];

(7) Application for Moral Character Determination, TREC Form MCD-2 [MCD-1]; and

(8) Application for Real Estate Broker License by a Limited Liability Company, TREC Form BLLLC-2 [BLLLC-1]; and

(9) Application of Currently Licensed Real Estate Broker for Salesman License, TREC Form BSL-1.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437949

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Earliest possible date of adoption: April 29, 1994

For further information, please call: (512) 465-3900

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Licenses

• **22 TAC §535.91**

The Texas Real Estate Commission proposes an amendment to §535.91, concerning license renewal applications. The amendment would adopt by reference a revised renewal application form. The form has been revised to eliminate a business activity survey and questions relating to the date of birth, level of education, sex and ethnicity of the applicant.

Mark A. Moseley, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There is no anticipated impact on state or local employment as a result of implementing the section.

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be the simplification of the li-

cence renewal process for real estate brokers and salesmen. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

§535.91. Renewal Applications.

(a) (No change.)

(b) The Texas Real Estate Commission adopts by reference Renewal Application Form I-1 [1], approved by the commission in 1994 [1991]. This form is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437948

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Earliest possible date of adoption: April 29, 1994

For further information, please call (512) 465-3900

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Chapter 539. Provisions of the Residential Service Company Act

Subchapter G. Application for License

• **22 TAC §539.61**

The Texas Real Estate Commission proposes an amendment to §539.61, concerning applications for a residential service company license. Residential service companies are licensed under Texas Civil Statutes, Article 6573b, to offer contracts under which the companies maintain, repair, or replace all or any part of the structural components, appliances, or the electrical, plumbing, heating, cooling, or air-conditioning systems in residential property. Service contracts are usually offered in connection with the listing or sale of the property through the services of a real estate broker.

The proposed amendment adopts by reference an application form which would be used by a person to obtain a residential service company license. In addition to nonsubstantive changes in the wording of questions and placement of questions on the

form, a request has been added for a copy of any management agreement between the company and another organization to provide services to the applicant. The amendment also would obligate the Texas Real Estate Commission to assign a license number to each residential service company which obtains a license

Brian E. Francis, assistant administrator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Francis also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be ensured that there is an orderly process in the licensing of residential service companies. There will be no effect on small businesses.

There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Brian E. Francis, Assistant Administrator, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573b, §5, which authorize the Texas Real Estate Commission to adopt, promulgate, and enforce rules and regulations necessary to effectuate the intent and provisions of The Residential Service Company Act.

§539.61. Application and Licensing [Form RSC 1-0].

(a) The Texas Real Estate Commission adopts by reference Application Form RSC 1-1 [1-0] approved by the commission in 1994 [September 1979]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(b) The commission shall assign a license number to each residential service company licensed by the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 21, 1994

TRD-9437944 Mark A. Moseley
 General Counsel
 Texas Real Estate
 Commission

Earliest possible date of adoption April 29, 1994

For further information, please call (512) 465-3900



Subchapter I. Funded Reserves

• 22 TAC §539.81

The Texas Real Estate Commission proposes an amendment to §539.81, concerning funded reserves held by residential service companies. The amendment requires a residential service company to maintain a level of liquidity equal to or greater than the amount of the company's funded reserves which are held to ensure the performance of the company's service contracts with homeowners. The amendment would require the funded reserves to be held in liquid assets, clarifying that any securities held as funded reserves must be rated BBB and above by a nationally recognized securities rating organization. Service companies would, however, be permitted to hold their funded reserves in a money market mutual fund if the fund invests in securities permitted by the section.

Brian E. Francis, assistant administrator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Francis also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be ensuring that residential service companies hold funded reserves which are sufficient to meet their obligations to the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Brian E. Francis, Assistant Administrator, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188

The amendment is proposed under Texas Civil Statutes, Article 6573b, §5, which authorize the Texas Real Estate Commission to adopt, promulgate, and enforce rules and regulations necessary to effectuate the intent and provisions of The Residential Service Company Act

§539.81. Funded Reserves

(a) Each residential service company licensed by the commission shall maintain funded reserves in the amount required by the Residential Service Company Act (Act), §9. Accounts containing funded reserves must be identified as such and may not be encumbered or commingled with funds which are not reserves. Separate funded reserves are required for service contracts written in Texas unless the company's combined funded reserves meet the minimum reserve requirements of the Act, §9, calculated on the basis of all outstanding contracts. Each company shall maintain a level of liquidity equal to or greater than the amount of its funded reserve. Funded reserves may be main-

tained in the following liquid assets [forms] only:

(1) (No change.)

(2) in investment grade notes, bonds, bills, or other evidences of indebtedness or obligations of the United States of America or of a state or unit of local government or in a money market mutual fund which invests in the securities listed in this paragraph. For the purposes of this section, the term "investment grade" shall mean a security rated BBB and above by a nationally recognized securities rating organization such as Standard & Poor's.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437947 Mark A. Moseley
 General Counsel
 Texas Real Estate
 Commission

Earliest possible date of adoption: April 29, 1994

For further information, please call: (512) 465-3900



Subchapter N. Hazardous Financial Condition

• 22 TAC §539.137

The Texas Real Estate Commission proposes an amendment to §539.137, concerning semiannual reports filed by licensed residential service companies. The amendment adopts by reference a revised report form which would be filed twice a year by each licensed residential service company. Together with the annual report filed by the companies, a semiannual reporting should provide adequate information to the Texas Real Estate Commission to determine the financial condition of its licensees. The existing section requires the report to be filed on a quarterly basis. The report form has been revised to delete questions about accounts payable 30 days or less past due, focusing instead on accounts payable more than 31 days past due, to determine the total potential monetary exposure of active lawsuits against the company, to show the amount of funded reserves recalculated for the five months preceding the reporting period, and to obtain a statement of stockholder's equity and statement of cash flow. Other nonsubstantive changes have been made to simplify completion of the report or clarify the information requested.

Brian E. Francis, assistant administrator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There is no anticipated impact on local

or state employment as a result of implementing the section.

Mr. Francis also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient reporting system for licensed residential service companies. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Brian E. Francis, Assistant Administrator, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573b, §5, which authorize the Texas Real Estate Commission to adopt, promulgate, and enforce rules and regulations necessary to effectuate the intent and provisions of The Residential Service Company Act

§539.137 *Semiannual [Quarterly] Report [Form RSC 7-1].* The Texas Real Estate Commission adopts by reference [attached] Semi-annual [Quarterly] Report Form RSC 7-2 [7-1] approved by the commission in 1994 [October 1989]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt

Issued in Austin, Texas, on March 21, 1994.

TRD-9437946 Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Earliest possible date of adoption April 29, 1994

For further information, please call (512) 465-3900



Fees

• 22 TAC §539.231

The Texas Real Estate Commission proposes an amendment to §539.231, concerning filing fees charged by the agency for license applications, annual reports, evidences of coverage, and schedules of charges used by residential service companies. The amendment restates existing fees which were previously set by the agency in connection with each of the filings for which a fee may be charged

Brian E. Francis, assistant administrator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state government as a result of enforcing or administering the section. The fees involved were previously set by the

agency, and the amendment will neither increase or decrease the amount of revenue collected by the agency. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Francis also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to clarify the fees paid by residential service companies. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section

Comments on the proposal may be submitted to Brian E. Francis, Assistant Administrator, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188

The amendment is proposed under Texas Civil Statutes, Article 6573b, §5, which authorize the Texas Real Estate Commission to adopt, promulgate, and enforce rules and regulations necessary to effectuate the intent and provisions of The Residential Service Company Act

§539.231. *Fees. The commission shall charge and collect the following fees:*

- (1) a fee of \$3,500 for filing an application for a license;
- (2) a fee of \$3,500 for filing an annual report;
- (3) a fee of \$500 for filing an evidence of coverage; and
- (4) a fee of \$500 for filing a schedule of charges [All fees shall be established, subject to the limitations contained in §24, at such times as the commission deems appropriate].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt

Issued in Austin, Texas, on March 21, 1994

TRD-9437945 Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Earliest possible date of adoption. April 29, 1994

For further information, please call (512) 465-3900



TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter I. Certification of Community Residential Programs—Mental Retardation

• 25 TAC §§401.551-401.565

(Editor's note. The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes the repeal of §§401.551-401.565, concerning certification of community residential programs—mental retardation. The repeal of the subchapter is proposed contemporaneously with the proposal of the subchapter that would replace it, also known as Chapter 401, Subchapter I

The purpose of the proposed repeal is to allow for the adoption of a new subchapter which reflects the current procedure for obtaining certification for community residential programs for persons with mental retardation. The new subchapter also updates terminology and references.

Leilani Rose, director, Office of Financial Services, has determined that there will be no significant fiscal implications for state or local government as a result of the repeals. There is no anticipated cost to small businesses as a result of complying with the rules as proposed. There is no anticipated local economic impact. There is no anticipated cost to person's required to comply with the proposed new sections.

Dr. William Reid, TXMHMR medical director, has determined that the public benefit is the repeals of outdated rules to enable the adoption of rules that correctly reflect the process of obtaining certification for community residential programs serving persons with mental retardation.

Comments on the proposal may be submitted to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication

The repeals are proposed under the Texas Health and Safety Code, §532.015 (Texas Civil Statutes, Article 5547-202, §2.11), which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers

§401.551 Purpose

§401.552. Application.

§401.553. Definitions.

§401.554. General Provisions Governing Certification of Community Residential Programs.

§401.555. Requirements for Certification.

§401.556. Application Process and Provisional Certification.

§401.557. Certification Decision and Notification.

§401.558. Deemed Certification Status.

§401.559. Certification Renewal.

§401.560. Change in Certification.

§401.561. Denial, Suspension, and Revocation of Certification.

§401.562. Inspection Authority and Reporting Responsibilities.

§401.563. Exhibits.

§401.564. References.

§401.565. Distribution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 20, 1994.

TRD-9437927

Ann K. Utley
Chairman
Texas Department of
Health and Mental
Retardation

Earliest possible date of adoption. April 29, 1994

For further information, please call: (512) 206-4516



The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§401.551-401.565, concerning certification of community residential programs—mental retardation. The repeal of existing §§401.551-401.565, also concerning certification of community residential programs—mental retardation, is contemporaneously proposed in this edition of the *Texas Register*. The proposed subchapter affects the Texas Health and Safety Code, §591.011.

When originally adopted in 1988, the subchapter established a new certification process for community residential programs. As a result, a number of provisions dealt with programs which were in operation prior to the effective date of the subchapter; others included specific target dates for compliance. The proposed new subchapter deletes those "grandfather" provisions and target dates and updates the process

Leilani Rose, director, Office of Financial Services, has determined that there will be no significant fiscal implications for state or local government or small businesses as a result of administering the sections as proposed. Local economic impact is anticipated to be insignificant. There is no anticipated cost to persons required to comply with the proposed new sections.

Dr. William Reid, MD., M.P.H., medical director, has determined that the public benefit is the adoption of rules which correctly reflect the process for obtaining certification for community residential programs for mental retardation services.

Comments on the proposal may be submitted to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The new sections are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers

§401.551. Purpose. The purpose of this subchapter is to provide the procedures by which community residential programs serving individuals with mental retardation are certified by the Texas Department of Mental Health and Mental Retardation. Additionally, this subchapter shall apply to supported living locations meeting the criteria outlined in §401.553 of this title (relating to Definitions).

§401.552. Application. This subchapter applies to all community residential programs which receive funding directly or through contracts for service with the Texas Department of Mental Health and Mental Retardation for the provision of residential services to individuals with mental retardation.

§401.553. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Alternate certification status—The certification status which is accorded community residential programs operating under auspices of a TXMHMR facility or CMHMRC which are certified, licensed, or accredited as designated in §401.588 of this title (relating to Alternate Certification Status).

Applicant—A person or organization that completes the application and application packet for certification.

Assistant deputy commissioner—The assistant deputy commissioner for mental retardation services assigned to the mental retardation authority.

Certification officer—The staff person designated by the mental retardation authority to assist the department in the certification of community residential programs in the local service area.

Certification section—The section within the Office of Standards and Quality Assurance, Texas Department of Mental Health and Mental Retardation, which is designated as the authority on the certification of community residential programs for individuals with mental retardation, and which reviews programs, determines compliance with certification requirements, and approves, denies, suspends, or revokes certification.

Community center—A community mental health and mental retardation center as established in the Texas Health and Safety Code, §534.001, et seq (formerly the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-203).

Community residential program—Any residence in the community providing supervision and habilitation services for one to 15 individuals with mental retardation and which is funded by the Texas Department of Mental Health and Mental Retardation. The term excludes boarding homes

Department—The Texas Department of Mental Health and Mental Retardation.

Designee—The entity or entities designated by the department to perform the monitoring and evaluation requirements of this subchapter, which may be staff of the mental retardation authority serving the local service area.

Exceptions process—The process whereby the timeframe in completing the plan of improvement is extended.

Extension process—The process whereby the anniversary date is extended for a period of time, up to two months.

Facility—Any state school or state center providing mental retardation services under the jurisdiction of the Texas Department of Mental Health and Mental Retardation.

Mental retardation authority (MRA)—The entity designated by the department to plan, facilitate, coordinate, and provide such services to individuals with mental retardation as are required to be performed at the local level by state law and by the department.

Operator—The agency, organization, or individual directly responsible for the overall management of the facility.

Service provider—A person who provides direct services to individuals in a residential setting.

Substantial compliance-90% compliance with each standard.

Supported living-A situation which optimizes an individual participant's independence in maintaining his or her "own home" by providing a variety of support services. Such services may include, but are not limited to, assistance with activities of daily living (bathing, grooming, eating), shopping, rent subsidies, homemaker services, transportation, budgeting, appropriate use of leisure time, attendant services, recreation, senior services, meal planning and preparation, mobility, etc. Participants should have completed training in management of emergency situations, or the MRA should have an assessment demonstrating the individual's competency in managing emergency situations (such as, but not limited to, evacuation of premises, calling for an ambulance). Supported living situations may be required to be certified when:

(A) there are overnight staff on the premises; or

(B) the individuals served are not able to manage emergency situations independent of staff.

§401.554. General Provisions Governing Certification of Community Residential Programs.

(a) To be eligible to receive funds from the Texas Department of Mental Health and Mental Retardation for the provision of residential services to individuals with mental retardation, each community residential program, including those operated by state schools and state centers, must obtain and maintain certification as described in this subchapter. Consistent with the terms of the contract under which services are delivered and departmental policy, the department shall terminate the expenditure of state funds in programs that do not obtain and maintain certification status

(b) A separate certification must be obtained for each service location when the applicant operates programs at more than one site.

(c) Certification issued by the department is neither transferable nor assignable.

(d) Certification remains in effect, pending annual renewal, until suspended or revoked by the department or surrendered by the community residential program

(e) Programs that are not directly operated by an MRA or designated provider must execute a contract with an MRA or designated provider that meets the requirements of the departmental contract for services, including specific requirements for ensuring, monitoring, and evaluating pro-

vider compliance with §401.555 of this title (relating to Requirements for Certification).

§401.555. Requirements for Certification. To be certified to provide community mental retardation residential services, the applicant must submit an application, referred to in §401.563 of this title (relating to Exhibits) as Exhibit A, and must be able to meet the basic requirements in the application packet referred to in §401.563 of this title (relating to Exhibits) as Exhibit B, and must demonstrate compliance with the following standards and rules:

(1) applicable provisions of the TXMHMR Community Standards for Mental Retardation Services, as amended, or certification, licensure, or accreditation as listed in §401.558(a)(1) of this title, concerning Alternate Certification Status;

(2) Chapter 402, Subchapter I of this title (relating to Movement of Individuals with Mental Retardation from Department Facilities);

(3) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information);

(4) Chapter 710, Subchapter B, Title 40, (relating to Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers), or Chapter 710, Subchapter A, Title 40, (relating to Abuse and Neglect of Persons Served by TXMHMR Facilities), as appropriate;

(5) Chapter 405, Subchapter K of this title (relating to Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers);

(6) Chapter 405, Subchapter Y of this title (relating to Rights of Clients-Mental Retardation Services);

(7) applicable provisions of the National Fire Protection Association's Life Safety Code; and

(8) Texas Health and Safety Code, §591.001, et seq (formerly the Mentally Retarded Person's Act of 1977, Texas Civil Statutes, Article 5547-300).

§401.556. Initial Application Process and Provisional Certification. Initial application process All correspondence with reference to certification to operate a community residential program for individuals with mental retardation should be directed to the CMRS/Certification Section, Office of Standards and Quality Assurance, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(1) All applicants for new community residential programs shall make ap-

plication for certification using the forms referred to in §401.563 of this title (relating to Exhibits) as Exhibits A and B. Application should be made at the earliest time feasible, but in no case later than seven days prior to the date on which the program begins serving individuals with mental retardation. Upon completing the requirements described on the provisional checklist, the applicant shall submit the fully completed application and provisional checklist materials to the certification officer of the MRA serving the local service area, who shall forward a copy of the materials to the Certification Section. Training for new providers regarding the certification process will be provided by the local MRA.

(2) If the certification officer finds that the premises are suitable and the applicant is qualified to operate a community residential program in accordance with the requirements of this subchapter, the certification officer shall recommend provisional certification. A recommendation by the certification officer must include the signature endorsement of the director of quality assurance of the MRA that the program meets provisional certification requirements. The application, supplementary materials, and endorsements shall be forwarded to the Certification Section.

(3) The application and supplementary materials shall be reviewed by the Certification Section. If provisional certification is granted, it shall issue to the applicant a letter granting provisional certification for a period not to exceed nine months. A copy of the letter shall be sent to the certification officer, the assistant deputy commissioner, and the MRA director of quality assurance.

(4) If provisional certification is not granted, the Certification Section shall send the applicant a letter stating the reason(s) that the application has been denied. A copy of the letter shall be sent to the certification officer of the MRA, the assistant deputy commissioner, and the MRA director of quality assurance.

(5) During the nine month period of provisional certification, the Certification Section shall make on-site visit(s) to the premises to determine whether full certification should be granted.

§401.557. Certification Decision and Notification. Following receipt of the fully completed application for certification and on-site certification program review, the Certification Section shall take the following action.

(1) The Certification Section will determine whether the community residential program complies with the requirements for certification (substantial compliance with each requisite standard and

compliance with at least 75% of the program standards). If it is determined that the program complies with the requirements, the Certification Section shall certify the program and issue a certificate and letter to the applicant, and copies to the certification officer of the MRA, the assistant deputy commissioner, and the MRA director of quality assurance, which stipulate certification as follows:

- (A) the name and location of the community residential program;
 - (B) the name of the owner;
 - (C) the name of the operator;
 - (D) the maximum capacity;
- and
- (E) any special restrictions on the operation of the program.

(2) If the Certification Section determines that the community residential program does not substantially comply with requirements for certification, it shall notify the applicant by letter of the reason(s) why certification has been denied. A copy of the letter shall be sent to the certification officer of the MRA, the assistant deputy commissioner, and the MRA director of quality assurance in order for these parties to determine a course of action.

(3) Each period of certification after the certification on-site review is for a maximum of 12 months.

§401.588. Alternate Certification Status.

(a) Community residential programs under auspices of the TXMHMR facility or CMHMRC which are certified, licensed, or accredited by other agencies do not require additional certification by the department if the certification, licensure, or accreditation is:

- (1) licensure by the Department of Human Services as a foster family home for children;
 - (2) certification by the Texas Department of Human Services as an ICF/MR program;
 - (3) certification by the Texas Department of Mental Health and Mental Retardation as a Home and Community-Based Services 1915(c) waiver program, or
 - (4) accreditation by the Accreditation Council on Services for People with Disabilities.
- (b) The community residential program provider must notify the certification officer within two working days of any

change in the certification, licensure, or accreditation on which the alternate certification status is based. Upon notification of the change, the certification officer shall be responsible for reporting the change to the department within two working days. If the program provider desires to receive or continue receiving funds from TXMHMR, a prompt plan of improvement or an application for certification must be made to initiate the certification process.

§401.559. Certification Renewal.

(a) Following initial certification, the applicant must apply for renewal of certification annually at least 60 days prior to the anniversary date of certification

(b) To renew certification, each applicant shall submit a current application, referred to in §401.563 of this title (relating to Exhibits) as Exhibit A, and the items as described on the "Renewal Checklist," referred to in §401.563 of this title (relating to Exhibits) as Exhibit C. The renewal application must include the signature endorsement of the certification officer and the quality assurance director of the MRA.

(c) Following receipt of updated information, the Certification Section will make an on-site visit in order to determine whether certification shall be renewed.

(1) If the Certification Section determines that the community residential program substantially complies with the requirements for certification, the Certification Section shall recertify the program for a period not to exceed one year. A letter of recertification and a new certificate shall be sent to the applicant, and copies to the certification officer, the assistant deputy commissioner, and the MRA director of quality assurance.

(2) If the Certification Section determines that the community residential program does not substantially comply with requirements for certification, the Certification Section shall notify the applicant by letter return receipt requested of the reasons that certification has not been renewed. A copy of the letter shall be sent to the certification officer of the MRA, the assistant deputy commissioner, and the MRA director of quality assurance, in order for these parties to determine a course of action.

(d) In exceptional cases, as defined by the Certification Section, the commissioner of TXMHMR or his/her designee may grant an extension to the previous certification, not to exceed two months after the anniversary date of certification.

(e) Also, in special cases, as defined by the Certification Section, the TXMHMR Commissioner or his/her designee may grant an exception to the current plan of improvement period, not to exceed

30 days. When an exception of time is requested, the Certification Section of Standards and Quality Assurance must approve final corrections and (re)certification. Any program that requests an exception and eventually becomes (re)certified, may receive an on-site follow-up visit on the plan of improvement within six months of the program's anniversary date, or if a new program, within six months of the first on-site visit.

(1) When warranted, additional exceptions of 30 days each may be requested

(2) Each additional exception must be submitted and approved separately.

§401.560. Change in Certification.

(a) An updated application for certification is required when:

- (1) the location of the community residential program is moved;
- (2) the floor plan of a program is modified, e.g., rooms are added, exit ways are altered;
- (3) the maximum capacity is to be increased; or
- (4) the program owner or operator changes.

(b) At least seven days prior to implementation of such a change in program, the applicant shall submit the items as described on the "Instructions for Certification Changes," referred to in §401.563 of this title (relating to Exhibits) as Exhibit D.

(c) An application for change in certification shall be processed to include a review of submitted information and on-site verification by the Certification Section or designee.

§401.561. Denial, Suspension, and Revocation of Certification.

(a) The department shall have the authority to immediately deny, suspend, or revoke the certification of a community residential program if the department finds that the program:

- (1) violates or continues to violate applicable laws, rules, or standards; or
- (2) operates the program in a way that is harmful to the health, safety, care, or rights of one or more individuals.

(b) When denial, suspension, or revocation of a certification occurs:

(1) because a program does not substantially comply with each of the requisite standards, a plan of improvement shall be submitted for approval to the Certification Section and deficiencies corrected within 30 days of the date on the letter

accompanying finalized deficiencies, unless an exception has been granted. Review by the Certification Section or designee, including on-site inspection, as appropriate, will occur in order to determine compliance with the plan of improvement; or

(2) because a program does not meet at least 75% of the program standards, a plan of improvement shall be submitted for approval to the Certification Section and shall be implemented within 60 days, as described above, unless an exception has been granted. Review by the Certification Section or designee, including on-site inspection, as appropriate, will occur in order to determine compliance with the plan of improvement.

(c) In the event that a program that has alternate certification loses the certification, licensure, or accreditation on which the alternate certification is based, an application for certification will be submitted unless a plan for re-attaining the conditions of the alternate certification is approved by the Certification Section.

(d) The denial, suspension, or revocation of a certification maintained pursuant to a contract for services may be appealed following the procedures described in Chapter 403, Subchapter O of this title (relating to Administrative Hearings of the Department in Contested Cases).

(e) The MRA shall notify parents/guardians of the individuals served if the program fails to obtain or maintain certification.

§401.562. Inspection Authority and Reporting Responsibilities.

(a) The Certification Section may make such investigations as it deems necessary and proper to obtain compliance with the provisions of this subchapter.

(b) Any department designee may at any time enter upon the premises of any community residential program to inspect the facilities and conditions, to observe the program for service and habilitation, to question service providers of the program, and to gain access for the purpose of examination and transcription to such records and documents as are relevant to the inspection.

(c) When a regional monitor visits a community residential program, any resulting documentation relating to compliance with the TXMHMR Community Standards for Mental Retardation Services will be provided to the Certification Section, which will take appropriate action based on the content of the report.

§401.563. Exhibits. Copies of the following exhibits are available from the Texas Department of Mental Health and Mental

Retardation, P. O. Box 12668, Austin, Texas 78711:

(1) Exhibit A—Application for Certification;

(2) Exhibit B—Provisional Checklist;

(3) Exhibit C—Renewal Checklist; and

(4) Exhibit D—Instructions for Certification Changes.

§401.564. References. The following laws, rules, and standards are referenced in this subchapter:

(1) applicable provisions of the TXMHMR Community Standards for Mental Retardation Services, as amended;

(2) Chapter 402, Subchapter I of this title (relating to Movement of Individuals with Mental Retardation from Department Facilities);

(3) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information);

(4) Chapter 403, Subchapter O of this title (relating to Practice and Procedure with Respect to Administrative Hearings of the Department in Contested Cases);

(5) Chapter 710, Subchapter B, Title 40, (relating to Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers);

(6) Chapter 710, Subchapter A, Title 40, (relating to Abuse and Neglect of Persons Served by TXMHMR Facilities);

(7) Chapter 405, Subchapter K of this title (relating to Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers);

(8) Chapter 405, Subchapter Y of this title (relating to Rights of Clients—Mental Retardation Services);

(9) applicable provisions of the National Fire Protection Association's Life Safety Code;

(10) Texas Health and Safety Code, §534.001, et seq (formerly the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 554-203); and

(11) Texas Health and Safety Code, §591.001, et seq (formerly the Mentally Retarded Persons' Act of 1977, Texas Civil Statutes, Article 5547-300).

§401.565. Distribution.

(a) This subchapter shall be distributed to the members of the Texas Board of Mental Health and Mental Retardation; the medical director, deputy commissioners, as-

sociate and assistant deputy commissioners, and directors of Central Office; superintendents/directors of all TXMHMR facilities; executive directors and chairpersons, boards of trustees, all community mental health and mental retardation centers.

(b) The superintendent/director or executive director is responsible for distributing this subchapter to community residential program providers required to meet certification in the local service area.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 20, 1994.

TRD-9437926

Ann K. Utley
Chairman
Texas Department of
Health and Mental
Retardation

Earliest possible date of adoption: April 29, 1994

For further information, please call. (512) 206-4516

TITLE 28. INSURANCE Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter M. Probation of Agents Based on Certain Disabilities

• 28 TAC §§1.1501-1.1506

The Texas Department of Insurance proposes new §§1.1501-1.1506, concerning probation of agents based on certain disabilities. These new sections are necessary to implement the provisions of the Insurance Code, Article 21.15-6 which provides that the Department may place an insurance agent on disability probation if the Department finds that the agent is suffering from a disability. Section 1.1501 contains general provisions and definitions. Section 1.1502 describes the manner in which an agent may raise the issue of disability at various stages of disciplinary proceedings. Section 1.1503 describes the procedures for placing an agent on probation. Section 1.1504 describes the contents of the order granting probation. Section 1.1505 provides procedures for an appeal to the District Court in Travis County of a commissioner's order denying probation and §1.1506 sets out the requirements for revocation of probation. Proposal of this new subchapter includes the adoption by reference of new forms for use in the probation of agents based on certain disabilities and includes the following forms GAP-Form 1, General Agent Probation Conditions, GAP-Form 2, Authorization for Release of Information and Medical Records; and GAP-Form 3, Support Group Attendance. The department

has filed a copy of the forms with the Secretary of State's Office, Texas Register section. Persons desiring copies of the forms can obtain copies from Legal Services, Agents Activities, Mail Code 110-1A, Texas Department of Insurance, William P. Hobby State Office Building, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104

Beverly McVey, director, licensing group, has determined that for the first five-year period the proposed sections will be in effect, there will be no fiscal implications for local government or small businesses as a result of enforcing or administering the sections, and there will be no effect on local employment or the local economy. There will be fiscal implications for state government as a result of enforcement of this subchapter and the statute under which this subchapter is promulgated. Agents placed on probation will be required to reimburse the state for the payment of costs related to the proceedings before the department, however, it is possible that not all costs will be reimbursed. The costs to the state will include the costs of hearings, pre-hearing and post-hearing procedures; the monitoring of the financial records of the agents who are on probation, as well as monitoring other aspects of the agent's business and treatment while on probation to ensure that the public is protected to the maximum extent possible. There will also be expenses incurred by the state government in providing education to agents and regulatory personnel to allow those persons to identify agents who may be in need of disability probation and treatment. The department estimates the expenses incurred on behalf of state government will be approximately \$50,000 per year.

Ms. McVey also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections is the ability to allow for rehabilitation of a disabled agent, and appropriate restitution to members of the public that the agent has impacted. The anticipated economic cost to persons who are required to comply with the proposed sections will vary with the types of counseling and/or treatment required as a condition of the probation. It is estimated that the costs of the hearing and other administrative costs related to the hearing will be from \$500 to \$1000 as a one time cost. The treatment costs, which will be ongoing during the term of the probation, may vary from \$50 to \$500,000, depending upon the type of treatment and whether it is provided by public or private providers. It is anticipated that the costs for monitoring probation will vary from \$160 to \$500 per monitoring visit, depending upon the complexity of the monitoring required and the distance the monitors must travel.

In order for a comment to be considered as officially filed with the Texas Department of Insurance, a copy must be submitted in writing, within thirty (30) days after publication of the proposed rule in the Texas Register, to Linda K. Von Quintus-Dorn, Chief Clerk, P O Box 149101, Mail Code 113-1A, Austin, Texas 78714-9104. An additional copy of the comment must be submitted to Theresa Scott, Compliance Specialist, Legal Services,

Mail Code 110-1A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing should be submitted separately to the Chief Clerk's office.

The new sections are proposed under the Insurance Code, Articles 21.15-6 and 1.03A, and the Government Code, §2001.004 et seq. Article 21.15-6 authorizes the Board to promulgate rules to carry out the provisions of this article; however, this authority is interpreted to be delegated to the Commissioner of Insurance under Article 1.02 of the Insurance Code, as amended by the 73rd Legislature in House Bill 1461. Article 1.02 provides that a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, consistent with the respective powers and duties of the Commissioner and the Department. Under §1.23 of House Bill 1461, as enacted by the 73rd Texas Legislature, effective September 1, 1993, the Commissioner of Insurance shall assume authority over any area of activity of the Texas Department of Insurance not subject to the authority of the State Board of Insurance. Section 1.23 provides also that on September 1, 1993, the Board shall relinquish authority over all areas of activity of the Texas Department of Insurance except for the promulgation and approval of rates, policy forms and endorsements, and hearings, proceedings, and rules related to these activities; such authority shall be exercised by the Board until no later than September 1, 1994. New Article 1.03A, as enacted in House Bill 1461, provides that the Commissioner may adopt rules and regulations, which must be for general and uniform application, and for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute. New Article 1.04C of the Insurance Code, as enacted in House Bill 1461, requires the Commissioner of Insurance to develop and implement policies that provide the public with a reasonable opportunity to appear before the Commissioner and to speak on any issue under the Commissioner's jurisdiction. The Government Code, §2001.004 et seq authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribe the procedures for adoption of rules by a state administrative agency.

Cross Reference To Statute The following statute is affected by these sections: Insurance Code, Article 21.15-6

§1.1501 General Provisions and Definitions

(a) **Statutory Basis and Purpose.** This subchapter implements the provisions of the Insurance Code, Article 21.15-6, which provides for disability probation for agents who are disabled by a mental, physical or emotional condition.

(b) **Severability** Where any terms or section of this subchapter is determined by a court of competent jurisdiction to be

inconsistent with any statute of this state or to be unconstitutional, the remaining terms and provisions of this subchapter shall remain in effect.

(c) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Agent**—Any individual licensed as an agent by the Texas Department of Insurance.

(2) **Commissioner**—The Commissioner of Insurance.

(3) **Department**—The Texas Department of Insurance.

(4) **Disability**—Any physical, mental or emotional condition that significantly impairs an agent's ability or results in an agent's inability to carry out the agent's professional responsibilities to insureds, the profession, or the public.

(5) **Independent evaluation**—An evaluation performed by a professional individual or organization licensed by the State of Texas to treat and/or diagnose physical, mental, or emotional conditions to determine if an agent suffers from a disability due to such conditions. The evaluation should include the extent of the disability and whether the disability may be successfully arrested and treated while the agent is engaged in the agent's professional business.

(6) **Staff**—Designated representatives of the staff of the Texas Department of Insurance for participation in the disciplinary proceedings related to the agent.

§1.1502 Request for Probation in Lieu of Suspension, Revocation, or Cancellation of License

(a) An agent may raise the issue of disability and request probation pursuant to the Insurance Code, Article 21.15-6 and this subchapter, prior to a hearing to suspend, revoke or cancel the agent's license.

(1) An agent may request probation prior to a contested case hearing after receipt of a notice of intention to institute disciplinary action from the staff of the department against the agent suggesting suspension, revocation or cancellation of an agent's license. The request for probation must be submitted prior to the hearing on such disability, and the agent must furnish the items specified in subparagraphs (A) and (B) of this paragraph.

(A) written stipulations in a format acceptable to the staff of the department, and

(B) evidence of the agent's disability.

(2) If the staff and the agent are in agreement as to the proposed stipulations relating to the violation, the evidence of the agent's disability, and the proposed conditions of probation, the staff of the department may recommend a consent order be signed by the commissioner that meets the requirements of §1.1504 of this title (relating to Contents of Order Granting Probation) and which has been drafted in accordance with stipulations and agreed conditions based, as applicable, on the contents of the forms "GAP-FORM 1-General Agent Probation Conditions, T.D.I. Legal Services & Compliance," "GAP-FORM 2-Authorization for release of Information and Medical Records," and "GAP-FORM 3-Support Group Attendance," which are adopted by reference as a part of this subchapter, and copies of which are on file with the Secretary of State and available from the Department.

(3) If the staff and the agent cannot reach agreement as to the underlying facts related to the alleged violation, the evidence of the agent's disability, and/or the proposed conditions of probation, a hearing shall be held on any or all of these contested matters in accordance with the Government Code, §2001.051, et seq, and Chapter 1, Subchapter A of this chapter (relating to Rules of Practice and Procedure). All matters necessary to a resolution of the allegations relating to the proposed suspension, revocation or cancellation of the license, the evidence of the disability and the conditions of any proposed probation, may be decided in the same hearing before the same hearing officer.

(b) An agent may raise the issue of probation for disability during the hearing relating to a suspension, revocation or cancellation of the agent's license.

(1) The agent must give written notice to the staff attorney representing the department in the contested case of the agent's intention to raise the issue of probation. The written notice must be received by the staff attorney at least five days prior to the scheduled hearing date. Upon receipt of such notification, the staff attorney may request a continuance of the hearing to acquire and present evidence and legal authority on the issue of the propriety of probation for any disability of the agent and/or to obtain an independent evaluation of the agent. The continuance shall be granted by the hearing officer for a reasonable period of time depending upon the circumstances

(2) If the agent does not give the written notice required in paragraph (1) of this subsection and seeks to raise the issue

of probation as a result of a disability at the hearing, the hearing officer shall not consider evidence of the disability of the agent unless the agent, by a preponderance of evidence, is able to establish good cause for failure to provide the written notification. If the agent is able to establish good cause, the hearing officer may hear evidence of the disability of the agent after having granted any continuance requested by the staff to acquire and present evidence and legal authority on the issue of the propriety of probation for any disability of the agent. The continuance must be for a reasonable period and be sufficient to allow for an independent evaluation of the agent at the staff's request.

§1.1503. Procedures for Placing an Agent On Probation. The procedures for placing an agent on probation are described in paragraphs (1) -(8) of this subsection.

(1) The Department may require the agent to undergo an independent evaluation at the agent's expense by a licensed professional competent to evaluate the agent's alleged disability.

(2) If the request for probation is not raised by the agent at a hearing already in progress, following the evaluation of the agent described in paragraph (1) of this subsection, and after such other investigation of pertinent facts as the department may choose to conduct, a notice of hearing on the question of whether probation of the agent should be granted will be sent to the agent. A hearing will be held on the request for probation unless the parties resolve all issues related to the request and a consent order is signed.

(3) Either the agent or the department may introduce into evidence at the hearing any material evidence relevant to the question of whether probation should be granted to the agent in lieu of suspension or revocation of the agent's license. The Department is specifically authorized to introduce into evidence a written recommendation of the departmental employee assigned to review the desirability or non-desirability of probation for the disabled agent. The departmental employee may be called to testify about the desirability or non-desirability of probation or any aspect of the written recommendation upon the request of either party, if the written recommendation is introduced into evidence.

(4) The hearing shall be held in accordance with the provisions of the Government Code, §2001.051, et seq, and Subchapter A of this chapter (relating to Rules of Practice and Procedure)

(5) The agent may not be placed on disability probation unless at the hearing the agent has proven, by a preponderance of

the evidence, that the agent suffers from a physical, mental or emotional condition that constitutes a disability under the Insurance Code, Article 21.15-6 and this subchapter.

(A) The agent must present credible and relevant evidence of the disability or disabilities from person(s), organization(s), or other entity(ies) with sufficient knowledge of such disability or disabilities to present reliable information concerning the disability or disabilities.

(B) The agent may present evidence concerning the disability or disabilities through testimony and/or records of a professional individual or organization licensed by the State of Texas to treat and/or diagnose such disability or disabilities.

(6) The agent may not be placed on disability probation unless, at the hearing, the agent has demonstrated:

(A) a disability that can be successfully arrested and treated while the agent is engaged in the agent's professional business;

(B) harm to the public resulting from the disability during the period of rehabilitation is not probable.

(7) If disability probation is ordered based upon the evidence at the hearing, the order shall set a specified period of probation for the agent. This period of probation may exceed the one year maximum term of suspension authorized under the Insurance Code, Article 1.10, §7(a)(1).

(8) The commissioner may take disciplinary action under the Insurance Code, Article 1 10 §7, or may stay all or any part of the disciplinary action during the period of probation.

§1.1504 Contents of Order Granting Probation

(a) The Commissioner's order placing the agent on disability probation shall state the conditions of the probation

(b) In determining the conditions of probation, the Commissioner shall consider, based upon the evidence at the hearing, the nature and circumstances of the conduct of the agent, the history, character, and condition of the agent; and the nature of the agent's disability. The Commissioner shall consider the recommendation of the employee assigned to make a recommendation as to the desirability or non-desirability of probation for the agent, if such report is introduced at the hearing by the staff either in written form or through testimony. The Commissioner is not required to follow the recommendation of such employee.

(c) In instances where the staff and the agent are in agreement with respect to material facts and the propriety of probation, the consent order granting probation may be entered in accordance with stipulations, agreements and agreed conditions contained in GAP-FORM 1, GAP-FORM 2, and GAP-FORM 3, as applicable. These forms are adopted by reference as a part of this subchapter, and copies of such forms are on file with the Secretary of State and available from the Department. In instances where the order to be entered is not a consent order, the Commissioner shall impose such conditions upon probation as are deemed appropriate, which may include, but are not limited to.

(1) periodic reports to the Texas Department of Insurance,

(2) satisfactory completion of any course of study required,

(3) psychological evaluation, counseling and treatment, the nature and duration of which shall be set forth in the order;

(4) full or partial payment of costs, including reasonable attorneys fees and other expenses related to the proceeding, by agent including all costs associated with the pre-hearing, hearing, and probationary process;

(5) abstinence from the abuse of alcohol and/or drugs,

(6) mandatory attendance at meetings of Alcoholics Anonymous, Narcotics Anonymous, or similar support groups;

(7) periodic field monitoring, at intervals deemed necessary by the Department, of the agent's activities, including, but not limited to, any accounting procedures, ledgers, or accounts in which funds of insurers or policyholders may be placed, any records relating to the insurance business of the agent, the way in which the agent conducts insurance business, and compliance with probationary conditions, and

(8) random urine testing to screen for drug and/or alcohol abuse, where drug and/or alcohol abuse is the underlying reason for the disability

(d) The order of probation shall indicate that the agent has made or will make full restitution to all insureds, and any other persons found to have been harmed by the agent's violation of the Insurance Code or other laws regulating the business of insurance, or by the agent's failure to comply with the agent's professional responsibilities.

(e) If restitution is not made prior to probation, the restitution requirement

shall be imposed as a condition of probation and must be made in full during the term of probation

(f) The order of probation shall name the office of the department responsible for the supervision of the agent placed on disability probation. The order shall recite that on a showing of a failure to comply with the conditions of the probation, the probation may be revoked, and any disciplinary action which has been stayed, in whole or in part, may be imposed

(g) The order of probation shall recite that upon a showing of a failure to comply with the conditions of probation, additional conditions may be imposed on the probation of the agent for protection of the public and the rehabilitation of the agent

§1505 Appeal From Commissioner's Order of Probation If the agent is dissatisfied with the Commissioner's order denying probation in lieu of suspension, revocation, or cancellation of the agent's license, the agent may appeal the order to the District Court in Travis County in a manner consistent with the Insurance Code, Article 104, after filing a motion for rehearing and following other appeal procedures required by the Government Code, §2001.051, et seq

§1506 Revocation of Probation If the Department determines that the conditions of probation have not been met by the agent, the agent will be notified of the reasons why the Department is seeking revocation or why additional conditions are to be imposed on the probation and the authority of such action. Following notice and a hearing held pursuant to the Government Code, §2001.051, et seq and Subchapter A of this chapter (relating to Rules of Practice and Procedure), the Department shall revoke the probation if the Department finds that the conditions of probation have not been complied with by the agent or the Department may impose such additional conditions as are necessary to protect the public or rehabilitate the agent

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt

Issued in Austin, Texas, on March 23, 1994

TRD-9437842

Linda K von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption April 29, 1994

For further information, please call (512) 463-6327

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

Eligibility

• 40 TAC §48.2904, §48.2924

The Texas Department of Human Services (DHS) proposes amendments to §48.2904 and §48.2924, concerning income exclusions and resource exclusions, in its Community Care for Aged and Disabled (CCAD) chapter. The purpose of the amendments is to exclude earned income tax credits from income and resources when determining eligibility for CCAD services

Burton F Railford, commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections

Mr Railford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that earned income tax credits will no longer be counted when determining eligibility for CCAD services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections

Questions about the content of the proposal may be directed to Armando Delgado at (512) 450-3217 in DHS's Community Care Section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-032, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs

The amendments implement the Human Resources Code, §§22.001-22.024

§48.2904 Income Exclusions The client's countable income excludes the following

(1)-(11) (No change.)

(12) any payment received under the Radiation Exposure Compensation Act (Public Law 101-246), [and]

(13)-(14) (No change)

(15) income of minor children who are supported by or dependent upon the client, and [.]

(16) refunds from the Internal Revenue Service for earned income tax credit (EITC).

§48.2924. *Resource Exclusions.* In determining eligibility for CCAD services, the department does not consider the following to be resources. They are considered to be excluded for eligibility purposes. Any item not listed as an exclusion is considered a resource.

(1)-(21) (No change)

(22) Earned income tax credit (EITC) refunds from the Internal Revenue Service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 22, 1994.

TRD-9437934

Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption June 1, 1994

For further information, please call (512) 450-3765

Part XV. Texas Veterans Commission

Chapter 451. Veterans County Service Officers Accreditation

• 40 TAC §451.1, §451.3

The Texas Veterans Commission proposes new §451.1 and §451.3, concerning accreditation for Veterans County Service Officers. The new section as proposed would provide that Veterans County Service Officers may attend commission conducted and sponsored training to receive accreditation and thus be allowed to present claims to the Department of Veterans Affairs on behalf of veterans and their dependents and survivors in the name of the Texas Veterans Commission.

Charles A. Buerschinger, deputy director, has determined the additional estimated cost of administering the section each year for the first five years that the rule will be in effect. The cost to the State of administering the rule will be approximately \$12,500 for fiscal year 1994 and \$7,500 per year for each year subsequent to Fiscal Year 1994. These additional costs to the State will be offset by decreases in related training costs of Veterans County Service Officers (VCSO). This would be a result of the increased level of competence of the accredited VCSO. Therefore, there would not be a net increase in cost to the State because of implementation of this rule during Fiscal Years 1994-1998. The rule would create an initial cost to each county for accreditation training of \$500 in the first year the VCSO applies for accreditation. There

should be no cost to the Counties during subsequent years after the initial year of accreditation training. Accreditation is voluntary. No VCSO would have to meet the requirements of this rule unless the VCSO and the county believed that it would be in the best interest of the county to pursue accreditation. During the first five years there will be no fiscal implications for any other unit of local government as a result of administering this section.

Mr. Buerschinger also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be additional monetary awards from the Department of Veterans Affairs to veterans and their families. There will be no effect on small businesses. The expected amount of increase is \$2,500,000 per year for each of the next five years.

Comments on the proposal may be submitted in writing to Billy G. Green, Deputy Administrator, Texas Veterans Commission, P.O. Box 12277, Austin, Texas 78711.

The new section is proposed under the Government Code, §434.010, which authorizes the Commission to adopt rules for administration.

Section 434.007(3)(5)(6) gives the Commission authority to assist veterans in presenting federal claims and allows the Commission to cooperate with all government bodies to secure services and benefits.

§451.1 *Definitions.* The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Accreditation—Recognition by the United States Department of Veterans Affairs of representatives, attorneys, and agents to represent claimants.

Accredited Representative of the Texas Veterans Commission—A representative of the Texas Veterans Commission approved by the Secretary for the preparation, presentation and prosecution of claims under laws administered by the Secretary.

Certified—Having met the requirements of §450.3 of this title (relating to General Provisions) for "certification."

Commission—The Texas Veterans Commission which is a "recognized organization" by the United States Department of Veterans Affairs.

Credit Hour—Unit of measuring credit earned for attending a number of classroom periods at a Commission training conference.

Initial training—Introductory training provided to newly appointed officers as defined in Chapter 450 of this title (relating to Certificate of Training).

Officer—Veterans County Service Officer or Assistant Veterans County Service Officer appointed by a County Commissioners Court.

Recognized organization—An organi-

zation certified by the United States Department of Veterans Affairs to represent claimants.

Representative—Person who has been recommended by a recognized organization and accredited by the United States Department of Veterans Affairs.

Secretary—The Secretary of the United States Department of Veterans Affairs.

Training conference—Classroom training sponsored and conducted by the Commission.

§451.3 *General Provisions.*

(a) All officers shall be provided a copy of information concerning accreditation by the Commission when information is received indicating an appointment has been made by a County Commissioners Court.

(b) Officers must meet the following minimum standards as set forth in §14.629 United States Code 38 for consideration to be an accredited representative of the Commission:

(1) is a paid employee of the county working for it not less than 1,000 hours annually;

(2) has successfully completed a course of training and an examination which have been approved by the VA District Counsel within the State; and

(3) will receive annual training to assure continued qualification as a representative in the claim process.

(c) Officer must be currently certified by the Commission under the provisions of §450.3 of this title (relating to General Provisions) and have attained at least 24 credit hours after completion of initial training.

(d) Officer must submit a formal written request for accreditation to the Commission, which will review the application for eligibility.

(e) Credit hours may not be earned by attending training sponsored or conducted by organizations other than the Commission.

(f) Examinations for accreditation and to maintain accreditation will be administered annually by the Commission at a location and time designated by the Commission.

(g) The officer must agree to follow procedures promulgated by the Commission.

(h) After all criteria have been met by the officer, the Commission will request accreditation from the United States Department of Veterans Affairs via VA Form 2-21.

(i) To maintain accreditation, an officer must successfully complete an annual proficiency exam.

(j) Inquiries concerning accreditation shall be directed to and answered by the chief of information and training of the Commission. Disputes shall be reviewed and a decision rendered by the chief of information and training. Disputes which remain unresolved shall be referred to the executive director of the Commission or the

executive director's designee(s). The decision of the executive director or the executive director's designee(s) shall be final.

(k) The executive director of the Commission or the executive director's designee(s) may revoke the accreditation upon termination of the officer from the office or as otherwise deemed appropriate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437929

Douglas K Brown
Executive Director
Texas Veterans
Commission

Earliest possible date of adoption: April 29, 1994

For further information, please call: (512) 463-5538





Name: [Name] Roll No: [Roll No]
Date: [Date] Page No: [Page No]

Department of Psychology, [Institution Name]

ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 13. CULTURAL RESOURCES

Part IV. Texas Antiquities Committee

Chapter 41. Practice and Procedure

- 13 TAC §§41.5, 41.7-41.9, 41.11, 41.17, 41.20, 41.21

The Texas Antiquities Committee (committee) adopts amendments to §§41.5, 41.7-41.9, 41.11, 41.17, 41.20, and 41.21. Section 41.5, concerning Definitions, is adopted with changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8062). Section 41.7, concerning Specific Criteria for Evaluating Archeological Sites, §41.8, concerning Specific Criteria for Evaluating Caches and Collections, §41.9, concerning Specific Criteria for Evaluating Shipwrecks, §41.11, concerning Discovery of Potential Landmark During Construction, §41.17, concerning Issuance of Permits, §41.20, concerning Archeological Permit Categories, and §41.21, concerning Application for Archeological Permits, are adopted without changes and will not be republished.

The changes to §41.5, concerning Definitions, include the addition of two terms, standardization of comprehensive field season time periods, modernization of all references to Native American ethnic groups, and removal of duplicated terms. A definition for the term "Society for Professional Archeologists" was inadvertently omitted from the proposed text, but is added to the final text. A definition for the term "public lands" is added to the final text for further clarification. The outdated phrase "American Indian" is replaced with the phrase "Native American" throughout the section. The meaning of comprehensive field season is clarified and standardized by adding a minimum time requirement. The definition for the phrase "project sponsor" is removed from the final text because the same definition is present in the proposed text for the term "sponsor".

The amendments are justified by the need to enumerate the responsibilities of project sponsors and permittees, as well as the qualifications of principal investigators. The amendments also provide for uniform designation of significant properties, as well as for

the improved management and protection of State Archeological Landmarks. Lastly, the amendments are necessary to eliminate obsolete and ambiguous sections.

The amendment to §41.5 removes terms related to obsolete sections or expired rules, adds new terms, clarifies qualifications, and relocates from repealed sections some essential terms. The amendments to §§41.7-41.9 clearly stipulate State Archeological Landmark eligibility requirements. The amendments to §§41.11, 41.20, and 41.21 clarify project review and discovery procedures. The amendment to §41.17 adds one condition relating to permit cancellation. The amendments to §41.20 and §41.21 standardize policy into formal rules and clarify ambiguities regarding permit categories and the level of work required under each. The amendment to §41.21 further clarifies the responsibilities of the permittee. Lastly, the amendments relocate research design criteria from §41.5 to §41.21.

One written comment was received from an individual in support of the proposed amendments with certain clarifications. The commenter suggested clarification of the meaning of the phrase "comprehensive field season" by the inclusion of a standardized time period and clarification for the usage of the term "public lands". The Committee agrees with the substance of the comment and adds a standard time period for comprehensive field seasons and a definition for the term "public lands".

One individual phoned in a comment that a definition for the phrase the "Society of Professional Archeologists" should be included in §41.5. Again, the Committee agrees with the substance of the comment and the definition is added to the final text. No comments were received from organizations or associations regarding the adoption of the rules.

The amendments are adopted under the Natural Resources Code, Title 9, Chapter 191 (revised by Senate Bill 231, 68th Legislature, 1983, and by House Bill 2056, 70th Legislature, 1987), §191.02, which provides the Texas Antiquities Committee with authority to promulgate rules and require contract or permit conditions to reasonably effect the purposes of Chapter 191.

§41.5 Definitions The following words and terms, when used in this chapter and the Antiquities Code of Texas, shall have

the following meanings, unless the context clearly indicates otherwise.

Archeological site—Any place containing evidence of human activity, including but not limited to the following:

(A) **Habitation sites.** Habitation sites are areas or structures where people live or have lived on a permanent or temporary basis. Standing structures may or may not be present. Habitation sites may also contain evidence of activities that are listed in the following as site types in the non habitation category.

(i) **Campsites**

(I) **Native American** open campsites were occupied on a temporary, seasonal, or intermittent basis. Evidence of structures may or may not be present. Native American campsites of both periods may have accumulations of shell or burned rock as well as hearths, hearth fields, bedrock mortars, burials, and/or scatters or accumulations of ceramics, stone debitage, flaked tools, and grinding stones. Campsites vary in size from a few square meters to several hectares. Additionally, Native American sites near missions, forts, and trading posts were present during the historic period. These sites, termed encampments, are of varying degrees or permanence, with the site generally being continuously occupied but not necessarily by the same group, tribe, or culture.

(II) **Native American** rock shelters, in general, are a special kind site of campsite. These sites are located in caves or under rock overhangs and have been occupied either temporarily, seasonally, or intermittently. Many articles of perishable materials such as clothing, basketry, sandals, and matting may be preserved if the shelter is located in an arid environment. Shelter sites include not only the shelter area itself, but also the area of debris accumulation located in the immediate vicinity that is the result of activity by those occupying the rock shelter. Associated hearths, burials, bedrock mortars, dumps,

etc., may be present. Rock shelters vary in size from an area large enough to accommodate only one person to areas of several hundred meters in the largest dimension

(III) Non-Native

American campsites are the cultural remains of activities by people who are not Native American. Examples are sites that represent the activities of railroad workers, military units, settlers, slaves and other groups as yet unidentified. These sites include the area and remains of temporary encampments such as Chinese railroad camps, wagon train campsites, shepherd shelters, line camps, buffalo hunter camps, calvary campgrounds, trail drive camps, camps at river fords, candelilla wax camps, and others.

(ii) Residence sites

(I) Residence sites are those where routine daily activities were carried out and which were intended for year-round use. A greater degree of permanence is implied in a residence site than a campsite, therefore, structural evidence in the form of post molds, foundations, and so forth is more likely to be present. Examples include remains of cabins, dugouts, farmhouses, ranch headquarters, plantation residences, slave quarters, and urban homes, as well as teepee rings, pueblos, and Caddoan houses constructed by Native Americans

(II) Residence sites resulting from Native American activities may include additional features and structures including hearths, retaining walls, enclosures, compounds, patios, burials, cemeteries, mounds, platforms, and borrow areas, as well as scatters and accumulations of stone debitage, ceramic debitage, burned rock, flaked tools, grinding tools, grinding stones, and bedrock mortars

(III) Non-Native

American sites may include, in addition to the main structure, out-buildings, water systems, trash dumps, garden areas, driveways, and other remains that were an integral part of the site when it was inhabited. Examples of structures or structural remains which might be present in addition to the residence include, but are not limited to, barns, silos, cisterns, corrals, wells, smokehouses, stables, gazebos, carriage houses, fences, walls, corn cribs, gins or mills, cellars, kitchens, and bunkhouses. Family cemeteries are often associated with early historic sites

(B) Non-habitation sites.

Non-habitation sites result from use during specialized activities and may include standing structures. Descriptions of each kind of site are given

(i) Rock art and graffiti sites consist of symbols or representations that have been painted, ground, carved, sculpted, scratched, or pecked on or into the surface of rocks, wood, or metal. Names, dates, symbols, and represents of likenesses of people, animals, plants, or objects are common elements in such sites

(ii) Mines, quarry areas, and lithic procurement sites are those from which raw materials such as flint, clay, coal, minerals, or other materials were collected or mined for future use. Sites where flint was obtained can be identified by the abundance of flint flakes, broken tools, and flint cobbles. Mines often have associated structures such as head frames, support timbers, and transportation facilities.

(iii) Game procurement and processing sites are areas where game was killed or butchered for food or hides. Remnants of structures such as game runs, hunting blinds, and fish weirs as well as stone, bone, and metal tools may be present in association with animal remains. Often the animal remains form a bonebed with cultural material dispersed sparsely among the bones.

(iv) Engineering structures such as aqueducts, irrigation canals and ditches, earthen mounds, ramps, platforms, terraces, dams, bordered and leveled fields, constructed trails, medicine wheels, bridges, tunnels, shafts, roads, rock fences, dams, lighthouses, and railroad, streetcar, and thoroughfare systems are the most common but not the only kinds of engineering structures

(v) Cemeteries and burials, marked and unmarked, are special locales set aside for burial purposes. Cemeteries contain the remains of more than one person placed in a regular or patterned order. Burials, in contrast, may contain the remains of one or more individuals located in a common grave in a locale not formerly or subsequently used as a cemetery. The site area encompasses the human remains present and also gravestones, markers, containers, coverings, garments, vessels, tools, and other goods which may be present

(vi) Fortifications, battlefields, and skirmish sites include fortifications of the historic period and the central areas of encounters between opposing forces, whether major battlegrounds or areas of small skirmishes. Trenches, mounds, walls, bastions, and other fortifications may be present. Trash dumps will also be considered a part of the site. Included here are battlefields of the Civil War, the Texas War for Independence, the Mexican War, and skirmish sites between non-Native American and Native American forces. Standing structures may or may not be present.

(vii) Public service and ceremonial sites include, but are not limited to, kivas, temple mounds, shrines, missions, churches, libraries, museums, educational institutions, courthouses, fire stations, and hospitals. Standing structures may or may not be present

(viii) Commercial business structures and industrial structures and sites where products or services are produced, stored, distributed, or sold include, but are not limited to, markets, stores, shops, banks, hostels, stables, inns, stage stops, breweries, bakeries, factories, kilns, mills, storage facilities, and railroad, bus and tramway depots. Trash or dump deposits, outbuildings, wells, cisterns, and other features associated with the principal structures are considered to be a part of these sites

(ix) Monuments and markers include structures erected to commemorate or designate the importance of an event, person, or place, and may or may not be located at the sites they commemorate. Included in this category are certain markers erected by the Texas Historical Commission and county historical commissions, and markers and statuary located on public grounds such as courthouse squares and the Capitol grounds. Examples of such sites constructed by Native Americans will be included in this category upon identification

(x) Shipwrecks by definition, Texas Natural Resource Code, Title 9, Chapter 191, §191.091, also include the wrecks of naval vessels, Spanish treasure ships, coastal trading schooners, sailing ships, steamships, and river steamships, among others

Committee-Members of the Texas Antiquities Committee and/or staff members of the Texas Historical Commission, Department of Antiquities Protection, Division of Architecture, or the National Register Department as provided for in the Antiquities Code of Texas, §191.108(b)

Council of Texas Archeologists-A non-profit voluntary organization that promotes the goals of professional archeology in the State of Texas

Council of Texas Archeologists Guidelines-Professional and ethical standards which provide a code of self regulation for archeological professionals in Texas with regard to field methods, reporting, and curation

Data Recovery-An excavation mode of archeology and a form of mitigation. The evidence from a skillfully accomplished archeological excavation provides a detailed picture of the human activities at the site; emphasis is placed on evidence rather than artifacts. In data recovery, the archeological deposits are removed by digging and so destroyed. The destruction can be justified only if

(A) it is done with such care that appropriate samples of antiquities, cultural, and environmental data in the area excavated are discovered, and if possible, preserved, however faint the surviving trace may be;

(B) appropriate information has been accurately recorded, whether its importance is immediately recognized or not, to remain available after the site has disappeared; and

(C) the record and results of the investigations are rapidly made available through publication.

Department of Antiquities Protection—A department of the Texas Historical Commission charged with administering some of the archeological programs of the Antiquities Code of Texas and the National Historic Preservation Act of 1966, as amended

Discovery—The act of locating, recording, and reporting a cultural resource

Division of Architecture—A department of the Texas Historical Commission charged with administering the architectural programs of the National Historic Preservation Act of 1966, as amended and the Antiquities Code of Texas

Historic time period—For the purposes of State Archeological Landmark designation, this time period is defined as extending from A.D. 1500 to 50 years before the present

Investigative Firm—A company or scientific institution which has full-time experienced research personnel capable of handling archeological investigations and which employs a principal investigator. The company or institution must provide adequate field equipment and laboratory facilities for analysis, interpretation, and storage, and must have the technical capability to produce a finished report on any investigation. The company or institution holds equal responsibilities with the principal investigator to complete all requirements under an antiquities permit

Investigation—Archeological or architectural activity including, but not limited to, reconnaissance or intensive survey, testing, or data recovery, preservation of rock art; underwater archeological survey, test excavation, or data recovery excavations; monitoring; and measured drawings, or photographic documentation

Mitigation—The amelioration of losses of significant cultural resources, accomplished through preplanned data recovery actions to preserve or recover an appropriate amount of data by application of current professional techniques and procedures, as defined in the permits' scope of work. Following any mitigation or data re-

covery investigation, a clearance letter may be issued by the committee which authorizes destruction of all or part of a cultural resource without an antiquities permit.

Monitoring—The on-site presence of a professional archeologist or architect to observe construction activities that could or will alter cultural resources and to report findings and affects.

National Register Department—A department of the Texas Historical Commission which administers some of the architectural programs of the National Historic Preservation Act of 1966, as amended.

Prehistoric time period—For the purposes of State Archeological Landmark designation, a time period that encompasses a great length of time, beginning when humans first entered the new world and ending with the arrival of the Spanish Europeans, which has been approximated for purposes of these guidelines at A.D. 1500

Professional personnel—Appropriately trained specialists required to perform adequate archeological and architectural investigations. These personnel include the following

(A) **Principal investigator and co-principal investigator**—A professional archeologist with demonstrated competence in field archeology and laboratory analysis, as well as experience in administration, logistics, personnel deployment, report publication, and fiscal management. In addition to these criteria, the principal investigator or co-principal investigator shall:

(i) hold a graduate degree from an accredited institution of higher education; and/or be accredited by the Society of Professional Archeologists (SOPA) with emphasis in field research, historical archeology, or underwater archeology as appropriate; and/or have successfully completed investigations under an antiquities permit issued prior to June 1, 1993.

(ii) not hold one or more defaulted permits,

(iii) have at least three months of full-time experience in a supervisory role involving complete responsibility for a major portion of a project of comparable complexity to that which is to be undertaken under permit,

(iv) have demonstrated the ability to disseminate the results of an archeological investigation in published form conforming to current professional standards,

(v) remain on-site a minimum of 25% of the time required for the field investigation and whose names must appear on the project report;

(vi) provide a professional archeologist to supervise the field investigation in his or her absence; and

(vii) testify concerning report findings, in the event of controversy or court challenge.

(B) **Professional Archeologist**. One who has a degree in archeology or closely related field, conducts archeological investigations as a vocation, and whose primary source of income is from archeological work. Qualifications for specialized types of professional archeologists are listed below.

(i) **Prehistoric Archeologist**. One who is a professional archeologist, and in addition, meets the following conditions:

(I) has been trained in the field of prehistoric archeology;

(II) has a minimum experience of two comprehensive archeological field seasons of three to six months in length on archeological site(s) that contain prehistoric (pre-16th century) archeological deposits; and

(III) has published the results of those prehistoric archeological investigations in scholarly journals or publications.

(ii) **Historic archeologist**. One who is a professional archeologist and, in addition, meets the following conditions:

(I) has been trained in the field of historical archeology.

(II) has a minimum experience of two comprehensive archeological field seasons of three to six months in length on archeological site(s) that contain historic (post-16th century) archeological deposits, and

(III) has published the results of those historical archeological investigations in scholarly journals or publications.

(iii) **Underwater archeologist**. One who is a professional archeologist and, in addition, is a competent diver with a minimum of two full seasons in underwater archeological testing or excavation projects. Training and experience sufficient for safe and proficient use of the specialized underwater remote sensing survey, excavation and mapping techniques, and equipment are required

(iv) **Underwater archeological surveyor**. One who has training and experience sufficient for safe and proficient supervision of appropriate remote

sensing survey equipment operation, as well as for interpretation of survey data for anomalies and geomorphic features that may have some probability of association with submerged aboriginal sites and sunken vessels. This individual may represent the archeological interests on board the survey vessel in the absence of an underwater archeologist, as defined in subparagraph(D) of this definition.

(C) Project architect A professional architect who is a qualified historic architect and has had full-time experience in a supervisory role on at least one historic preservation project. The project architect must be involved, at a minimum, in 25% of the time required for an historic structures permit project and, when not involved with the project, must assign a qualified historic architect to supervise the preservation project.

(D) (No change)

Public agency—A state agency or political subdivision of the State of Texas

Public lands—Non-federal lands that are owned or controlled by the State of Texas or any of its political subdivisions, including the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas

Reconnaissance—A literature search and record review, plus an on-the-ground surface examination of selected portions of an area adequate to assess the general nature of the resource probably present. Shovel test excavations may be required to help identify some sites. This level of investigation is appropriate to preliminary planning decisions and will assist in determining viable project alternatives. A reconnaissance does not preclude a survey and cannot be used as a proper level of investigation for the purposes of achieving construction clearance

Research design—A theoretical approach taken prior to implementation of a field study and submitted with an archeological permit application form are essential to the success of scientific objectives, resource management decision-making, and project management

Significance—A trait attributable to sites, buildings, structures and objects of historical, architectural, archeological (cultural) value which are eligible for designation to State Archeological Landmark status and protection under the Antiquities Code of Texas. Similarly, a trait attributable to properties included in or determined eligible for inclusion in the *National Register of Historic Places*.

Site—A shortened term meaning any place containing evidence of human activity, a cultural resource or an archeological site.

Society of Professional Archeologists—A nonprofit voluntary, nationwide organization that accredits qualified professional archeologists and sets standards for archeological field research and ethical conduct related to archeological investigations.

Sponsor—An agency, individual, institution, investigative firm organization, corporation or company paying costs of archeological investigation or historic preservation activity or that sponsors, funds, or otherwise functions as a party under permit.

Survey—An intensive on-the-ground pedestrian survey to provide for the determination of the number and extent of the resources present and their scientific importance. Shovel testing may be required to locate sites when the ground surface is obscured or to determine the horizontal limit of buried archeological deposits. Following any survey investigation, a clearance letter may be issued by the committee which authorizes destruction of all or part of a cultural resource without an antiquities permit.

Testing—Application of current archeological techniques to the investigation and evaluation of one or more sites. Testing must be accomplished in such a way as to recover the maximum amount of archeological, historical, and scientific data through detailed examination of a representative sample of the site or sites. Testing may result in the recovery of data, specimens, and samples relating to the total cultural content of the site or sites. Results of testing will be utilized in preservation of the remaining portions of the resource. Following any testing investigation, a clearance letter which authorizes destruction of all or part of a cultural resource without an antiquities permit may be issued by the committee.

Texas Antiquities Committee—The nine-member board or its staff created by the Antiquities Code of Texas, Natural Resources Code, Title 9, Chapter 191, to determine the site of, designate, and remove from such designation (if determined to be of no further historical, archeological, educational, or scientific value) State Archeological Landmarks, to contract or otherwise provide for discovery and salvage operations; to consider the requests for and issue permits provided for, and to protect and preserve the cultural resources of Texas

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 18, 1994.

TRD-9437887

Mark H Denton
Staff Archeologist
Texas Antiquities
Committee

Effective date April 11, 1994

Proposal publication date: November 9, 1993

For further information, please call: (512) 463-6096

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• 13 TAC §§41.10, 41.14, 41.26, 41.29, 41.30

The Texas Antiquities Committee (committee) adopts the repeal of §41.10, concerning Guidelines for Recognizing State Archeological Landmarks; §41.14, concerning Management of State Archeological Landmarks; §41.26, concerning Techniques of Archeological Investigation; §41.29, concerning Disposition of Reported Items of Value; and §41.30, concerning Specific Criteria for Evaluation of Historic Significance of Reported Items of Value, without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8070).

The adoption of the repeals are justified to remove obsolete definitions, redundant sections, sections no longer applicable or in use, and sections for which the statutory authority has expired.

The repeal of §41.10 and §41.14 void guidelines that are dated and no longer applicable. The repeal of §41.26 eliminates a redundant section. The repeal of §41.29 and §41.30 deletes sections which are no longer authorized by the legislature

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Natural Resources Code, Title 9, Chapter 191 (revised by Senate Bill 231, 68th Legislature, 1983, and by House Bill 2056, 70th Legislature, 1987), §191.02, which provides the Texas Antiquities Committee with authority to promulgate rules and require contract or permit conditions to reasonably effect the purposes of Chapter 191.

Cross Reference—Title 9, Natural Resource Code

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 18, 1994

TRD-9437885

Mark H Denton
Staff Archeologist
Texas Antiquities
Committee

Effective date April 11, 1994

Proposal publication date: November 9, 1993

For further information, please call: (512) 463-6096

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Memoranda of Understanding

• 13 TAC §41.15

The Texas Antiquities Committee (committee) adopts an amendment to §41.15, concerning Memoranda of Understanding, without changes to the proposed text as published in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8839).

The adoption of the amendment is justified to ensure that fiscal implications are consistently addressed by permit-specific Memoranda of Understanding (MOU) agreements and to formally adopt a new MOU into the agency rules.

The amendment ensures that cost-effective methods are used during archeological data recovery excavation under the provisions of the Antiquities Code of Texas by providing for the adopting of MOU pertaining to the scope and estimated cost of data recovery excavations before such work commences. The amendment also adopts by rule an MOU between the committee and the Texas Water Development Board. Under the provisions of the MOU, one annual antiquities permit is issued by the committee for each calendar year that the agreement is in effect. The agreement allows multiple archeological surveys to be conducted under one antiquities permit per year for projects constructed with financial assistance from the Texas Water Development Board.

No comments were received regarding adoption of the amendment

The amendment is adopted under the Natural Resources Code, Title 9, Chapter 191 (revised by Senate Bill 231, 68th Legislature, 1983, and by House Bill 2056, 70th Legislature, 1987), §191.02, which provides the Texas Antiquities Committee with authority to promulgate rules and require contract or permit conditions to reasonably effect the purposes of Chapter 191.

Cross Reference—Title 9, Natural Resources Code.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 18, 1994

TRD-9437884

Mark H Denton
Staff Archeologist
Texas Antiquities
Committee

Effective date April 11, 1994

Proposal publication date December 3, 1993

For further information, please call (512) 463-6096

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**Part VII. State
Preservation Board
Chapter 111. Rules and
Regulations of the Board**

**• 13 TAC §§111.3-111.5, 111.13,
111.16-111.23, 111.25**

The State Preservation Board adopts amendments to §§111.3-111.5, 111.13, 111.16-111.23, 111.25, without changes to the proposed text as published in the October 5, 1993, issue of the *Texas Register* (18 TexReg 6782)

These sections will allow the State Preservation Board to perform its duties as required by the Texas Government Code, Chapter 443.007, to preserve, maintain, and restore

the Capitol, the General Land Office Building, their contents, and their grounds.

These sections establish general rules concerning use of the Capitol, Capitol extension, and Capitol grounds.

No comments were received regarding adoption of the amendments

The amendments are adopted under Texas Government Code, Chapter 443, which provides State Preservation Board with the authority to adopt rules concerning the buildings, their contents, and their grounds

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 18, 1994

TRD-9437943

Dealey Herndon
Executive Director
State Preservation Board

Effective date April 12, 1994

Proposal publication date October 5, 1993

For further information, please call (512) 463-5495

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• 13 TAC §111.15

The State Preservation Board adopts an amendment to §111.15, without changes to the proposed text as published in the October 5, 1993, issue of the *Texas Register* (18 TexReg 6791)

This section will allow the State Preservation Board to perform its duties as required by the Texas Government Code, Chapter 443.007, to preserve, maintain, and restore the Capitol, the General Land Office Building, their contents, and their grounds

This section will allow the State Preservation Board to charge a fee for the use of the Capitol, Capitol extension, and General Land Office Building for preservation of the buildings

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Government Code, Chapter 443, which provides the State Preservation Board with the authority to adopt rules concerning the buildings, their contents, and their grounds

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 18, 1994

TRD-9437941

Dealey Herndon
Executive Director
State Preservation Board

Effective date April 12, 1994

Proposal publication date October 5, 1993

For further information, please call (512) 463-5495

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• 13 TAC §111.27, §111.28

The State Preservation Board adopts new §111.27 and §111.28, without changes to the

proposed text as published in the October 5, 1993, issue of the *Texas Register* (18 TexReg 6791)

These sections will allow the State Preservation Board to perform its duties as required by the Texas Government Code, Chapter 443.007, to preserve, maintain, and restore the Capitol, the General Land Office Building, their contents, and their grounds.

These sections establish general rules concerning the use of the Capitol, Capitol extension, and Capitol grounds, and exhibitions and events in the new Capitol extension.

No comments were received regarding adoption of the new sections

The new sections are adopted under Texas Government Code, Chapter 443, which provides the State Preservation Board with the authority to adopt rules concerning the buildings, their contents, and their grounds.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 18, 1994.

TRD-9437942

Dealey Herndon
Executive Director
State Preservation Board

Effective date April 12, 1994

Proposal publication date October 5, 1993

For further information, please call (512) 463-5495

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**TITLE 19. EDUCATION
Part II. Texas Education
Agency**

Chapter 61. School Districts

Subchapter C. Pupil Relationship

• 19 TAC §61.49

The Texas Education Agency (TEA) adopts new §61.49, concerning the safe school checklist, without changes to the proposed text as published in the January 18, 1994, issue of the *Texas Register* (19 TexReg 320)

The new section is necessary to comply with Senate Bill 213, 73rd Legislature, requiring the State Board of Education (SBOE) to develop and disseminate a safe school checklist a school district may use to assess a school's safety strengths and weaknesses. Campuses and school districts may use the checklist as a tool or guide to determine the safety of campuses for students and staff

The following comments were received regarding adoption of the new rule

Comment Add to the checklist items regarding damage of personal property by teachers, school bus intimidation, and safety standards for vocational education

Agency response. The agency agrees with the recommendation and has added the items to the checklist.

Add to the checklist a category for assaults of administrators and paraprofessionals.

Agency response. The agency agrees with the recommendation and has added the category to the checklist

Add to the checklist an item regarding damage to teacher property.

Agency response. The agency agrees with the recommendation and has added the item to the checklist.

Comments were received from: Region X Education Service Center, the Association of Texas Professional Educators, and the Texas State Teachers' Association

The new section is adopted under the Texas Education Code, §21.938, which authorizes the State Board of Education to develop by rule a model safe school checklist a school district may use to assess a school's safety strengths and weaknesses.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 23, 1994

TRD-9437997
Criss Cloudt
Associate Commissioner,
Policy Planning and
Evaluation
Texas Education Agency

Effective date April 13, 1994

Proposal publication date January 18, 1994

For further information, please call: (512) 463-9701

Chapter 89. Adaptations for Special Populations

Subchapter A. State Plan for Educating Limited English Proficient Students

• 19 TAC §89.6

The Texas Education Agency (TEA) adopts an amendment to §89.6, concerning the state plan for educating limited English proficient students, without changes to the proposed text as published in the January 18, 1994, issue of the *Texas Register* (19 TexReg 321). The amendment is necessary to clarify and simplify procedures for testing and classifying students for bilingual education/English as a second language (ESL) programs

The rule will give districts flexibility in choosing from among a variety of options for student assessment and program evaluation. The rule also will facilitate district decisions to eliminate use of norm-referenced tests completely. Students completing the bilingual/ESL program will be held to a standard of passing a criterion-referenced assessment instrument rather than mastery of all objectives. Students will benefit from standardized criteria

The Texas Association of School Administrators Superintendents Council, the Valley Association of Practitioners in Evaluation and Research, and practitioners in Region V and Region VII Education Service Centers (ESC) commented in favor of the amendment. Regions I, V, and VII ESC and several individuals questioned whether scores on the Texas Assessment of Academic Skills (TAAS) representative tests administered for exit purposes as described in this rule may also be used for alternative assessments required in 19 TAC §101.3. The agency advised the commentators that this practice is encouraged to reduce interruptions to instructional time. The agency response was received favorably

The amendment is adopted under the Texas Education Code, §21.455, which authorizes the State Board of Education to adopt by rule standardized criteria for identifying, assessing, and classifying students of limited English proficiency who are eligible for entry into or exit from a bilingual/ESL program

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 23, 1994

TRD-9437996
Criss Cloudt
Associate Commissioner,
Policy Planning and
Evaluation
Texas Education Agency

Effective date April 13, 1994

Proposal publication date January 18, 1994

For further information, please call: (512) 463-9701

Subchapter G. Special Education

The Texas Education Agency (TEA) adopts amendments to §§89.203, 89.211, 89.213-89.218, 89.220-89.224, 89.226-89.229, 89.233, 89.235, 89.236, 89.238, 89.239, 89.242, 89.244, 89.250, and 89.252-89.254, and new §89.219 and §89.225, concerning special education Sections 89.211, 89.214, and 89.242 are adopted with changes to the proposed text as published in the January 18, 1994, issue of the *Texas Register* (19 TexReg 322) Sections 89.203, 89.213, 89.215-89.218, 89.220-89.224, 89.226-89.229, 89.233, 89.235, 89.236, 89.238, 89.239, 89.244, 89.250, and 89.252-89.254, and new §89.219 and §89.225 are adopted without changes and will not be republished

The amendments and new rules are necessary to comply with the Individuals with Disabilities Education Act (IDEA), the Texas State Plan for IDEA, legislation passed by the 73rd Legislature, and changes in State Board of Education (SBOE) policy concerning the use of nationally certified school psychologists. Also, the amendments and new rules will provide school districts flexibility in hiring personnel to provide psychological services

The change to §89.211(f) is editorial in nature and was made to reorganize and clarify the rule text. Due to public comment, the change

to §89.211(g) reverses the amendment to that subsection proposed in the January 18, 1994, issue of the *Texas Register*. The change to §89.214 corrects a structural error. Also due to public comment, the change to §89.242(c)(14) adds additional support services to the list of available instructional arrangements for students receiving special education services.

The following comments were received regarding adoption of the amendments and new rules.

Comment Support adoption of proposed changes to §89.211(g)(1).

Agency response Texas is one of the few states that does not currently allow nationally certified school psychologists to diagnose emotional disturbance. In November 1991, the SBOE amended 19 TAC §143.11 to allow a nationally certified school psychologist to serve as a school psychologist in Texas. The SBOE is adopting amendments to §89.211 in this submission to give flexibility to school districts where a doctorate-level school psychologist may not be available

Comment Modify the language of §89.211(g)(1) to provide that any professional delivering school psychological services be certified by TEA under current rules; and allow a three-year grandfathering period for licensed psychological associates with TEA certification to be granted parity with nationally certified school psychologists.

Agency response. Future amendments will be discussed at the May 1994 SBOE meeting pending response to a TEA request for clarification of federal regulations from the Office of Special Education Programs.

Comment. Modify the language of §89.211(g)(1) to clarify personnel who can assess for supervision, personnel who must be supervised to provide the assessment, and personnel who can provide the supervision

Agency response. Future amendments will be discussed at the May 1994 SBOE meeting pending response to a TEA request for clarification of federal regulations from the Office of Special Education Programs

Comment Modify the language of §89.211(g)(1) to allow all individuals with degrees in psychology who are willing to complete any additional studies required by TEA to become school psychologists

Agency response Future amendments will be discussed at the May 1994 SBOE meeting pending response to a TEA request for clarification of federal regulations from the Office of Special Education Programs

Comment Oppose changes to §89.211(g)(1)

Agency response. Staff contacted individuals and organizations and discussed possible solutions. This information will be considered in preparing for SBOE discussion of future amendments at the May board meeting.

Comment Add new §89.224(e) to ensure teacher involvement in the individual educational plan process

Agency response. One work session was held February 22, 1994, with the SBOE Committee on Students. Another work session with professional organizations and TEA staff will be held to finalize language before the May 1994 SBOE meeting at which future amendments will be discussed.

Comment. Support adoption of changes to §89.236(a) and §89.236(b).

Agency response. The agency recommended deleting the requirement that districts with 3,000 or fewer average daily attendance provide services through a cooperative. Many districts are requesting to drop out of co-ops and are requesting technical assistance in operating their own programs. The rule does not prevent small districts from joining a cooperative but leaves the option to the district.

Comments were received from Texas Council of Administrators of Special Education, Texas State Board of Examiners of Psychologists; Harris County Department of Education, Harris County Department of Education, Psychological Services Division, South Texas School Psychology Network, Texas Psychological Association, National Association of School Psychologists, University of Houston-Clear Lake, School Psychology Program, Texas Woman's University, Department of Psychology, Texas Woman's University, Student Executive Committee, American Psychological Association, University of Texas Medical Branch Hospitals, University of Texas-Pan American, Southwest Texas State University; Texas Association of School Boards; Texas Association of School Psychologists, Texas Association of Psychological Associates; Texas Classroom Teachers Association, and numerous individuals.

General Provisions

• 19 TAC §89.203

The amendment is adopted under the Texas Education Code, §21.501, which authorizes the State Board of Education to develop and modify as necessary a statewide design for delivering services to children with disabilities in Texas that includes rules for administering and funding the special education program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 23, 1994

TRD-9437995 Criss Cloudt
Associate Commissioner,
Policy Planning and
Evaluation
Texas Education Agency

Effective date April 13, 1994

Proposal publication date January 18, 1994

For further information, please call (512) 463-9701



Clarification of Provisions in Federal Regulations and State Law

• 19 TAC §§89.211, 89.213-89.229, 89.233, 89.235, 89.236, 89.238, 89.239, 89.242, 89.244

The amendments and new rules are adopted under the Texas Education Code, §21.501, which authorizes the State Board of Education to develop and modify as necessary a statewide design for delivering services to children with disabilities in Texas that includes rules for administering and funding the special education program.

§89.211 Eligibility Criteria

(a) Special education services. To be eligible to receive special education services, a student must have been determined to have one or more of the disabilities listed in federal regulations or in state law or both. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law. Students ages three through five who are evaluated as having mental retardation, emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.

(b) Physical disability. Physical disability shall include the following:

(1) orthopedic impairment—a student who has been determined by a licensed physician to have a severe orthopedic impairment,

(2) other health impairment—a student who has been determined by a licensed physician to have limited strength, vitality, or alertness, due to chronic or acute health problems.

(c) Auditory impairment. One who has been determined to have a serious hearing loss even after corrective medical treatment or use of amplification. This determination shall have been made by an otological examination performed by an otologist or a licensed medical doctor with documentation that an otologist is not reasonably available. An audiological evaluation by a certified audiologist shall also be conducted. This evaluation shall include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.

(d) Visual impairment

(1) A student who has a visual impairment is one who

(A) (No change.)

(B) has been determined by the following assessments to have a need for special services:

(i) a functional vision evaluation by a professional certified in the education of students with visual impairments or a certified orientation and mobility instructor. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation and an orientation and mobility evaluation; and

(ii) a learning media assessment by a professional certified in the education of students with visual impairments. The assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing assessment in this area.

(2) A student who has a visual impairment is functionally blind if, based on the preceding assessments, the student will use tactual media (which includes braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability.

(e) Deaf-blind. A student who has a combination of severe hearing and visual losses after best correction and is determined to be eligible as auditorially impaired and as visually impaired according to the specific eligibility criteria for each of these disabilities. If an eligible student with a visual impairment has a suspected hearing loss that cannot be demonstrated conclusively, and if a speech/language evaluation performed by a certified speech and hearing therapist, certified speech and language therapist, or licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected, the student may be eligible for services as deaf-blind.

(f) Mental retardation. A student who has been determined to be functioning two or more standard deviations below the mean on individually administered scales of verbal ability, and either performance or nonverbal ability, existing concurrently with deficits in adaptive behavior. The report of individual assessment must specify the degree of mental retardation. The assessments used to determine mental retardation shall be conducted by

(1) a psychologist licensed or certified by the Texas State Board of Examiners of Psychologists,

(2) a school psychologist,

(3) a nationally certified school psychologist,

(4) a psychological associate licensed or certified by the Texas State Board of Examiners of Psychologists,

(5) an associate school psychologist; or

(6) an educational diagnostician.

(g) Emotionally disturbed

(1) A student who is emotionally disturbed is one who has been evaluated by a licensed or certified psychologist, a psychiatrist, or a psychological associate under the direct supervision of a licensed or certified psychologist who determines that the student meets the criteria as defined in 34 Code of Federal Regulations, §300.5(b)(8), concerning handicapped children.

(2) The report of individual assessment from the evaluating professional must specify:

(A)-(B) (No change.)

(C) the degree to which in-school and out-of-school behavior reflects symptoms consistent with the diagnosis and identification of behavior considered to be a direct result of the emotional handicap, and

(D) (No change)

(h) Learning disability. Specific eligibility criteria for learning disabilities are defined in §89.234 of this title (relating to Learning Disabilities: Criteria for Determining the Existence of a Severe Discrepancy)

(i) Speech impairment A student who has been determined by a certified speech and hearing therapist, certified speech and language therapist, or licensed speech language pathologist to have a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment

(j) Autism. A student who evidences the criteria for autism as determined by a multidisciplinary team using the definition as stated in 34 CFR §300.7(b)(1) (relating to Children with Disabilities). Students with pervasive developmental disorders are included under this category

(1) The multidisciplinary team must include at least one individual from each of the following groups:

(A) a licensed physician, or psychiatrist, or school psychologist, or a nationally certified school psychologist, or a psychologist licensed or certified by the Texas State Board of Examiners of Psychologists with training in school psychology and experience or training in the diagnosis of autism;

(B)-(C) (No change.)

(2) (No change)

(k) Multiple disabilities.

(1) A student who has a combination of disabilities included in this section and who meets all of the following conditions:

(A) the student's disability is expected to continue indefinitely,

(B) (No change)

(2) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in paragraph (1) of this subsection shall not be classified or reported as having multiple disabilities

(1) Traumatic brain injury A student who has been determined by a licensed physician to have an injury to the brain caused by an external physical force resulting in total or partial functional disability and/or psychosocial impairment. Assessment to determine educational need is performed by district personnel qualified to assess those areas identified in 34 CFR §300.7(b)(12) (relating to Children with Disabilities), that are suspected to adversely affect the student's educational performance. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma

§89.214. Special Education Professional Support Personnel

(a) (No change)

(b) Services available Each special education teacher shall have available the services of a special education instructional supervisor and an educational diagnostician, school psychologist, associate school psychologist, or nationally certified school psychologist. The special education director may also serve as the special education instructional supervisor if appropriately certified.

(c) Special education director The special education director shall perform administrative and managerial duties as needed to fully implement a comprehensive special education program The director shall assume responsibility for coordinating all facets of the special education program, including referrals of students who receive special education services to and from other agencies, in order to allow a smooth transition from one service to another

(d) (No change)

(e) Special education counselor The special education counselor shall provide student and parent counseling, individually and in groups, concerning problems resulting from the student's disability. The

special education counselor shall serve as liaison between parent, school, and community agencies. The counselor may assist in the collection and analysis of appraisal data pertaining to sociological variables. The counselor shall coordinate special education counseling with the rest of the school guidance program.

(f) (No change.)

(g) School psychologist. The primary functions of the school psychologist include meeting the mental health needs of students with disabilities; conducting comprehensive assessments of students referred for special education services, participating in the development of individual educational plans; consulting with teachers, parents, and community agencies concerning prevention or intervention strategies relating to learning and behavioral problems of students; planning and managing a program of psychological services for students and parents, and counseling and skills development for staff with training in managing children with special needs and students with learning and behavioral difficulties

(h) Associate school psychologist The responsibilities of the associate school psychologist may include any of the activities described for the school psychologist in subsection (g) of this section, except when conducting comprehensive assessments of emotional/behavioral factors which may lead to the classification of emotional disturbance under §89.211 of this title (relating to Eligibility Criteria)

(i) (No change)

§89.242 Instructional Arrangements and Settings

(a) Each local school district or special education cooperative shall be able to provide services with special education personnel on an itinerant, helping teacher, resource, partially self-contained and self-contained basis to students with disabilities in order to meet the special needs of those students, in accordance with 34 Code of Federal Regulations, §300.551

(b) (No change)

(c) Paragraphs (1), (10), and (14) of this subsection will take effect beginning with the 1994-1995 school year Instructional arrangements for students receiving special education services will include the following

(1) Resource room/services. Beginning September 1, 1994, this instructional arrangement will be for providing special education instruction and related services in a setting other than regular education for less than 50% of the regular school day Such settings would include content mastery services that serve students

with and without disabilities. Refer to current attendance guidelines to determine whether resource or mainstream would be the appropriate instructional arrangement

(2) Self-contained, mild and moderate, regular campus This instructional arrangement is for providing special education instruction and related services to students with mild or moderate disabilities who are in a self-contained program for 50% or more of the regular school day on a regular school campus

(3) Self-contained, severe, regular campus This instructional arrangement is for providing special education instruction and related services to students with severe disabilities who are in a self-contained program for most of the regular school day on a regular school campus. Students may be capable of attending no more than two regular education classes (such as music, physical education, or art)

(4) Self-contained, separate campus This instructional arrangement is for providing special education instruction and related services to students in a self-contained program at a separate campus operated by the school district that provides only special education instruction. This arrangement includes services provided to students at an off-campus facility leased or arranged for by the school district for the purpose of providing special education services to district students

(5) (No change)

(6) Vocational adjustment class This instructional arrangement is for providing special education instruction to students who are placed on a job with regularly scheduled supervision by special education teachers. A student in part-time job training/employment receives a minimum of two hours daily of job related and academic instruction. A student in full-time job training/employment receives a minimum of one hour a week of job-related instruction. Students may participate in other occupational preparation programs (which do not generate special education funds) including regular vocational education, and vocational education for students with handicaps (VIII) classes

(7) Community class This instructional arrangement is for providing special education instruction and related services to students whose instruction is provided in a facility not operated by a school district. This instructional arrangement includes, but is not limited to, head start program, day care centers, sheltered workshops, and community colleges. A student participating in a sheltered workshop must receive at least one hour per day of special education instruction

(8) Homebound This instructional arrangement is for providing special education instruction to eligible students

who are served at home or hospital bedside. Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. Home instruction may be provided as an option for students with disabilities as a result of disciplinary action pursuant to §133.24 of this title (relating to Discipline of Students with Handicaps). Home instruction may also be used for prekindergarten students whose developmental levels are such that they are not capable of participating in special education classes for early childhood

(9) (No change)

(10) Speech therapy This instructional arrangement is for providing speech therapy services. Beginning September 1, 1994, students who are provided speech therapy services only are not eligible to be counted for any other instructional arrangement

(11) (No change.)

(12) State school for persons with mental retardation This instructional arrangement is for providing special education instruction to students who reside at a state school. The services are provided at a state school or on a school district campus

(13) Residential care and treatment facility (not school district resident) This instructional arrangement is for providing special education instruction to students with disabilities who reside in approved care and treatment facilities and whose parents do not reside within the boundaries of the school district providing educational services to the students. In order to be considered in this arrangement the services must be provided on a school district campus. If the instruction is provided at the facility rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement rather than this instructional arrangement. Placement of a student at the facility for care/treatment does not automatically make the student eligible for special education. Students must meet special education eligibility requirements to be considered in this instructional arrangement. Students served in this instructional arrangement are expected to reside in the facility a minimum of four consecutive weeks as documented by an appropriate authority

(14) Mainstream Beginning September 1, 1994, this instructional ar-

angement will be for providing special education instruction and related services according to individual educational plans to students whose instruction and related services are provided in regular education with special education support. This support is for teachers and students; examples include direct instruction, helping teacher, team teaching, co-teaching, interpreter, education aides, curricular or instructional modifications, special materials/equipment, consultation, staff development, monitoring a student's progress in regular education classes, reduction of ratio of students to instructional staff, or other direct or indirect services needed to implement the individual educational plans of students receiving special education services in this instructional arrangement. This support shall be designed to enrich education in order to enable success of all students.

(d) (No change)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 23, 1994

TRD-9437994

Crisis Cloudt
Associate Commissioner,
Policy Planning and
Evaluation
Texas Education Agency

Effective date April 13, 1994

Proposal publication date January 18, 1994

For further information, please call: (512) 463-9701

◆ ◆ ◆
• 19 TAC §89.219

The Texas Education Agency (TEA) adopts the repeal of §89.219, concerning the definition of special education, without changes to the proposed text as published in the January 18, 1994, issue of the *Texas Register* (19 TexReg 332)

The repeal is necessary so TEA may adopt a clearer, more precise definition of the term special education. As adopted in a separate submission, the definition is updated to include a reference to the definition of specially designed instruction in 34 Code of Federal Regulations §300.17(a)(1)

No comments were received regarding adoption of the repeal

The repeal is adopted under the Texas Education Code, §21.501, which authorizes the State Board of Education to develop and modify as necessary a statewide design for delivering services to children with disabilities in Texas that includes rules for administering and funding the special education program

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 23, 1994

TRD-9437993

Criss Cloudt
Associate Commissioner,
Policy Planning and
Evaluation
Texas Education Agency

Effective date: April 13, 1994

Proposal publication date January 18, 1994

For further information, please call (512)
463-9701

Special Education Funding

• 19 TAC §§89.250, 89.252-89.254

The amendments are adopted under the Texas Education Code, §21.501, which authorizes the State Board of Education to develop and modify as necessary a statewide design for delivering services to children with disabilities in Texas that includes rules for administering and funding the special education program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 23, 1994

TRD-9437992

Criss Cloudt
Associate Commissioner,
Policy Planning and
Evaluation
Texas Education Agency

Effective date April 13, 1994

Proposal publication date January 18, 1994

For further information, please call (512)
463-9701

TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

Chapter 3. Landscape Architects

Subchapter B. Registration

• 22 TAC §3.21, §3.25

The Texas Board of Architectural Examiners adopts amendments to §3.21 and §3.25, concerning registration. Section 3.25 is adopted with changes to the proposed text as published in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9813). Section 3.21 is adopted without changes and will not be republished.

These amendments are necessary to provide eligibility requirements and deadline dates for applicants applying for the Landscape Architect Registration Examination.

These amendments will provide applicants with notice of a action which may affect their eligibility as candidates for registration.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§3.25 Processing

(a) All applications and supporting documentation for the June L A R E must be postmarked no later than February 1, and August 15, for the December L A R E, or delivered to the Board office no later than 5:00 p.m. the deadline date, except where that date falls on a Saturday or Sunday or federal holiday, in which case the date shall be the following state or working day.

(b)-(d) (No change)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 22, 1994

TRD-9437980

LaVonne Garland
Interim Director
Texas Board of
Architectural Examiners

Effective date April 13, 1994

Proposal publication date December 21, 1993

For further information, please call (512)
458-1363

Subchapter C. Written Examinations

• 22 TAC §3.42, §3.43

The Texas Board of Architectural Examiners adopts amendments to §3.42 and §3.43, without changes to the proposed text as published in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9814).

The amendments inform applicants applying for the Landscape Architect Registration Examination of the date when notice for the December examination will be given.

The sections will inform applicants of an additional examination to be held in December of each year.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 22, 1994

TRD-9437981

LaVonne Garland
Interim Director
Texas Board of
Architectural Examiners

Effective date April 13, 1994

Proposal publication date December 21, 1993

For further information, please call (512)
458-1363

Subchapter D. Certification and Registration

• 22 TAC §3.69

The Texas Board of Architectural Examiners adopts an amendment to §3.69, without changes to the proposed text as published in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9814).

The amendment is necessary to clarify the board's requirements for reinstatement of registration.

The amendment will provide current and former registrants with notice of reinstatement requirements and procedures.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 22, 1994

TRD-9437983

LaVonne Garland
Interim Director
Texas Board of
Architectural Examiners

Effective date April 13, 1994

Proposal publication date December 21, 1993

For further information, please call (512)
458-1363

Subchapter E. Fees

• 22 TAC §3.87

The Texas Board of Architectural Examiners adopts an amendment to §3.87, without changes to the proposed text as published in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9814).

The amendment increases the fee for a replacement certificate of registration.

The section will inform the affected persons of the increased fee.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 22, 1994

TRD-9437982

LaVonne Garland
Interim Director
Texas Board of
Architectural Examiners

Effective date: April 13, 1994

Proposal publication date: December 21, 1993

For further information, please call: (512) 458-1363

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Part XI. Board of Nurse Examiners

Chapter 211. Bylaws

• **22 TAC §§211.1-211.10**

The Board of Nurse Examiners adopts the repeal of §§211.1-211.10, concerning bylaws, without changes to the proposed text as published in the January 25, 1994, issue of the *Texas Register* (19 TexReg 395)

The repeals are being adopted to allow for the adoption of new sections

The repeals will enable clarification by omission

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 18, 1994

TRD-9437882

Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Effective date: April 11, 1994

Proposal publication date: January 25, 1994

For further information, please call (512) 835 8650

◆ ◆ ◆
• **22 TAC §§211.1-211.12**

The Board of Nurse Examiners adopts new §§211.1-211.12, concerning bylaws, without changes to the proposed text as published in the January 25, 1994, issue of the *Texas Register* (19 TexReg 395)

The rules are being adopted to update the board's bylaws, due, in part, to recent changes in the Nursing Practice Act, and newly adopted practice and procedure rules. Texas Civil Statutes, Article 4513, §7, requires the development and implementation of policies that clearly define responsibilities of the board and the board's staff

The adoption of the new section will bring the board's bylaws into compliance with current rules and practices

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 18, 1994

TRD-9437883

Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Effective date: April 11, 1994

Proposal publication date: January 25, 1994

For further information, please call (512) 835-8650

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Part XXX. Texas State Board of Examiners of Professional Counselors

Chapter 681. Professional Counselors

The Texas State Board of Examiners of Professional Counselors (board) adopts the repeal of existing §§681 1-681 23, 681 31-681 42, 681 51, 681 52, 681 61-681 65, 681 81-681 84, 681 91-681 100, 681 111-681 114, 681 121, 681 128, 681 141-681 147, 681 161-681 164, 681 171-681 180, 681 191-681 197, and 681 211-681 220, and adopts new §§681 1-681 19, 681 26, 681 32-681 43, 681 51, 681 52, 681 61-681 64, 681 81-681 84, 681 91-681 96, 681 111-681 113, 681 121-681 127, 681 161-681 163, 681 171-681 179, 681 191-681 200, and 681 211-681 220 Sections 681 17, 681 25, 681 32, 681 33, 681 43, 681 51, 681 52, 681 63, 681 64, 681 81-681 84, 681 92, 681 94, 681 96, 681 112, 681 121, 681 123, 681 125, 681 173, 681 174, 681 177, 681 178, 681 195, 681 197, 681 198, 681 212-681 216, and 681 218-681 220 are adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7097) Sections 681 1, 681 3-681 16, 681 18, 681 19, 681 34-681 42, 681 61, 681 62, 681 91, 681 93, 681 95, 681 111, 681 113, 681 122, 681 124, 681 126, 681 127, 681 161-681 163, 681 171, 681 172, 681 175, 681 176, 681 179, 681 191-681 194, 681 196, 681 199, 681 200, 681 211, and 681 217 are adopted without changes and will not be republished

The existing sections are proposed for repeal to allow for the adoption of new sections concerning the regulation and licensing of professional counselors in the State of Texas. The new sections will update and clarify the existing rules, implement the provisions of

Acts 1993, 73rd legislature, Chapter 581 (House Bill 2741) and other 1993 Legislation concerning licensing agencies or mental health services providers, and better assist licensees in understanding and following the sections.

The board made the following changes to the proposed sections.

The term "counseling intern" is changed throughout the sections to "LPC intern" because another agency uses the term "counselor in training" and the board believes changing the term will cause less confusion.

The board has added "education counseling," "career development," and "expressive therapies" to the list of counseling methods and practices in §681 26 to better outline practices that licensed professional counselors are authorized to use.

Language is added to §681.43(2) and a new paragraph (4) is added to reflect other statutory reporting requirements.

Language concerning deadlines for the March 1994 examination is deleted in §681.51(c) and §681.92(b) because those deadlines are now passed. In addition, the postmark deadlines are changed in the remaining sections to reflect the earlier deadline date

Language is added to §681.63(d) and §681 64(b) to further clarify requirements effective September 1, 1996, and allow persons with a temporary license on September 1, 1996, to obtain a regular license. The temporary license application is considered the application for the regular license and changes are made to §681 81 to set out procedures for obtaining the regular license.

The board has changed the wording in §681 81(a), (b), (e), and (f) to better clarify the requirements for obtaining and maintaining a temporary license

Language is added to §681.84(b) to count the supervised experience hours obtained by persons who had submitted applications for temporary licenses prior to January 1, 1991, but did not receive a temporary license until later in January.

Changes are made to §681 195(d)-(f) to better clarify the procedures the board uses to process complaints and the role of the complaints committee

Effective January 1, 1994, the board is required to use the State Office of Administrative Hearings (SOAH) for any administrative hearings rather than the Texas Department of Health staff. The SOAH uses administrative law judges (ALJ) rather than hearing examiners and language has been changed throughout Subchapter M to reflect this difference

The following comments were received relating to the proposed sections.

One commenter requested the board to define "patient" in §681.2 as well as "client" because many licensed professional counselors (LPC) provide in-patient counseling services at psychiatric facilities. The board disagrees because the rules do not prohibit the use of the term and patient is a medical term. The term "client" includes anyone receiving counseling services.

One person commented in favor of the definition of "recognized religious practitioner" in §681 2.

Several persons commented that the definition of "recognized religious practitioner" in §681 2 should be changed to include ministries of established integrity. The board disagrees because the term is too general, however, the board has expanded the definition to include the terms denomination, church and sect, as well as religious organizations

Two commenters recommended referencing the Internal Revenue Code (federal law) in the definition of "recognized religious practitioner" in §681 2. The board agrees and has added this language to the definition

One commenter suggested language be changed in §681.9(f) to require committees to meet at least twice per year. The board disagrees because the committees currently meet more often.

One commenter recommended lowering the annual renewal fee to \$30 in §681 17(6). The board disagrees because the fees are currently set to cover the cost of administration

Staff commented that the license renewal penalty fee in §681.17(a)(8) should be \$80 in accordance with the legislative amendments in House Bill 2741. The board agrees and the language is changed

One commenter recommended raising the returned check fee to \$25 in §681 17(11). The board agrees and has raised the fee

Two persons commented in favor of §681 26 concerning authorized methods of counseling

One individual suggested adding language to §681 26 requiring special training for licensees who provide marriage and family therapy. The board disagrees because the legislature deleted legislative language concerning specialty licensing and because there is a separate license for marriage and family therapists

One commenter recommended changing language in §681 26(11) from "mental or emotional illness" to "mental/emotional disorder". The board disagrees because the current language is sufficient

One person commented in favor of the term hypnosis being cited as an authorized practice of counseling

Two persons commented in opposition to the board requiring that anyone who practices hypnotherapy be licensed. The board disagrees because the purpose of §681 26 is to list methods and practices that licensed counselors may use. The state law already requires anyone practicing any type of counseling to be licensed

One organization recommended changing the definition of biofeedback in proposed §681 26(12) for more clarity and accuracy. The board agrees and amends the language by deleting "to stress"

One commenter suggested that the board should specifically address what constitutes "appropriate training and supervision" in

§681 26(16) concerning assessing and praising. The board disagrees and will review each case on an individual basis if a complaint is received.

Many persons suggested adding language to §681.32 that would prohibit discrimination by licensees. The board disagrees and believes this type of prohibition would far exceed current legal protection

Several persons commented in favor of §681 32(g) and the proposed language concerning the use of electronic and telephonic media within a counseling practice

Two organizations and many individuals recommended changing the language in §681.32(g) to "electronic media, or telephonic media when that is the primary vehicle for maintaining the counseling relationship". The board agrees and adds this language

One commenter recommended changing language in §681 32(g) to allow telephonic counseling for clients who are unable or unwilling to accept office appointments or to clients in emergency situations. The board disagrees and does not incorporate this language, however, if telephonic emergency situations are not the primary method of counseling, the board's earlier revision to this subsection will allow emergency telephonic counseling

One commenter suggested deleting "for or from any health care professional" in §681 32(h). The board disagrees because the text used is statutory language

One person commented in opposition to §681 32(g), (j), (k), (n), and (t). The board disagrees because regulation of the areas covered by these subsections is appropriate

One person commented that §681 32(i) seems to seriously threaten §681 32(o) because disclosing business interests would permit unscrupulous licensees to encourage clients to participate in activities that actually meet the licensees personal needs. The board disagrees, however, proposed subsection (o) is moved to (i) for adoption and all symbology changed to reflect this move. The board believes this will help clarify the intent of both rules

One commenter believed §681 32(j) is unreasonable for ministers or persons of the clergy since most of their clients are members of their congregation. The board disagrees and does not believe that ministers should be exempted from the board requirements if they hold a license as a professional counselor. The subsection would only prohibit counseling to congregation members if they were all family members, personal friends, or business associates

One commenter recommended clarifying proposed §681 32(k). The board agrees and has added language

One commenter recommended adding language in §681 32(m) requiring the licensee to inform person(s) being threatened by a client with physical or emotional abuse. The board disagrees because the Texas Health and Safety Code, Chapter 611, does not allow the professional to disclose information to the person being threatened

Two commenters believed §681.32(p) is unreasonable because it could require records be kept for 20 years in some cases and that there should be some consideration for counselors who place their license on inactive status or retire. The board disagrees that the rule is unreasonable and believes that certain records should be kept for long periods of time. The board has added language to clarify that this rule only addresses records held by individual counselors.

One organization recommended reducing time limits in §681 32(p) from seven years to two years and two years past the age of 18. The board believes the requirement for holding records for seven years is reasonable and does not change the rule

Staff recommended adding a subsection (v) under §681 32 to prohibit licensees from aiding and abetting persons in the unlicensed practice of counseling. The board agrees and adds a new paragraph.

One person commented in opposition to §681 33. The board disagrees and will keep this section

One person commented in agreement with Subchapter C

One person commented that the language in §681 33(b)(3) would prohibit dating and sexual intimacy between a licensee holding academic rank in a university counseling department and a student in another department. The board agrees this is the effect of paragraph (3), but did not change the language

One person commented that §681 33(e) and (f) should be written in a much more straightforward manner. The board disagrees and believes the rules are clear

Two individuals commented that including "sexual orientation" in §681 33(g)(4) prohibits counseling concerning religions within which the practice of homosexuality is regarded as being against divine law. The board has amended the language in subsection (g) to clarify that the activities must be for certain sexual purposes

One commenter believed the language in §681 33(i)(3) would allow individuals to make ungrounded accusations and believes that documentation should be required for reporting rather than just a suspicion. The board disagrees because the reporting requirement is statutory language from the Civil Practice and Remedies Code, §81 006

One person commented that the language in §681 36(a)-(c) could create an untenable conflict for persons working for Family Court Services. The board does not recommend changing the language since those rules reference other statutory requirements

One commenter recommended changing the language in §681 39 to exempt persons who work in an exempt setting. The board disagrees since licensees must comply with confidentiality statutes (which usually contain exceptions allowing disclosure) regardless of the employment setting

One commenter requested the board reconsider the requirement of three references for

a temporary license applicant in §681.52(f) because most of these individuals will not know three licensed professionals at the time they apply for the temporary license and begin their post-graduate supervised experience. The board agrees and changes the language to require a reference from one instructor for temporary license applicants.

Several persons requested that some allowance be made in §681.81 for persons who either lack one course fulfilling the academic requirements or are within six months or one year of completion of these requirements on January 1, 1994, and allow those persons to be issued a temporary license while completing the requirements. The board disagrees because the statutory language sets out the requirements for a temporary license.

Two commenters disagreed with proposed §681.81(a)(4) and recommended allowing persons who have failed the exam twice to be eligible for a temporary license. The board disagrees and does not recommend changing the rule.

A staff member recommended adding a new paragraph (4) to §681.81(a) to set out the reference requirement in this section for clarification. The board agrees and has added a new paragraph (4).

One person recommended increasing the maximum on excess practicum hours in §681.82(h)(3) from 300 to 400. The board agrees and the language is changed to reflect the increase.

One group requested clarification of the requirements in §681.93(b)(2) concerning supervisory training and that the board establish a "grandfathering" period for the supervisors. The board disagrees because the rules requiring supervisor training were adopted in 1992 and do not go into effect until January 1, 1995. No further "grandfather period" is necessary.

Staff recommended clarifying the language concerning examination failures in §681.94 and §681.96 to better set out the board procedures. The board agrees and language has been added to these subsections. The language in §681.97 is incorporated into §681.96 and §681.97 is deleted. Additionally, the section title is changed for clarification.

One person recommended clarifying the language in §681.112(a)-(f) to explain "substantially equivalent" and (e)(2) where wording states a provisional licensee must meet Texas requirements to obtain a license in Texas. The board believes the text concerning the requirements is in accordance with the statutory requirement. The board is changing the language so that persons who obtain provisional licenses have to submit documentation that board requirements have been met within 180 days after receiving the provisional license.

One commenter recommended revising §681.112 to offer reciprocity to any mental health professional appropriately licensed and in good standing in another state. The board disagrees because the requirements for licensure through endorsement are established in statutory language.

One commenter recommended changing the renewal process in §681.121 from an annual renewal to a renewal that occurs every three years to be consistent with the three-year reporting period for continuing education. The board disagrees because the annual renewal is required by statute.

Staff recommended clarifying in §681.121(c) that late renewal penalty fees are not waived if a licensee does not receive the renewal notice. The board agrees and language is added to reflect this requirements.

One person recommended a grace period for processing renewals in §681.121. The board disagrees and believes that sufficient notice is given.

Staff recommended changing "certificate" to "card" in §681.123(d) since the certificate is considered the permanent license. The board agrees and the language is changed.

Staff recommended clarifying the language concerning reactivation of a license from inactive status in §681.125. The board agrees and has changed the language to allow persons on inactive status to obtain continuing education that can be applied once they return to active status.

Several individuals commented in agreement with the language in §681.173 concerning the reduction of continuing education hours from 75 hours every three years to 45 hours every three years. Several individuals and two organizations commented in opposition to reducing the hours from 75 to 45 hours in §681.173. Several persons commented in agreement with reducing the continuing education hours, but suggested reducing to 60 hours every three years rather than 45. One commenter recommended increasing the continuing education hour requirement in §681.173 from 75 to 100 hours every three years. The board agrees that 60 hours is the most reasonable requirement and disagrees with the other comments.

One person commented in favor of reducing the continuing education hour requirement in §681.173, but recommended the board consider a core curriculum and allow a certain number of hours for electives. The board disagrees and believes that the requirements currently considered are appropriate.

One person suggested that the three hours of ethics training in §681.173 be raised to six hours every three years. The board agrees and has added language to raise this requirement for persons whose three year reporting period ends after June 1, 1995.

One person recommended stipulating in §681.174(a)(2) that licensed presenters must hold a license in a profession where the minimum requirement for licensing is a master's degree. The board agrees and language is changed and added to §681.174(a)(2) and (b) to reflect this requirement.

One person commented that excess continuing education hours obtained during a three year reporting period should be carried over into the next reporting period. The board disagrees and the language is not changed.

One organization commented that the five-hour maximum in §681.177(5) on home study

hours may be too restrictive and recommended a higher maximum or no maximum at all. The board agrees and has raised the maximum to 12 hours per three year reporting cycle.

One person recommended adding internet programs "which are part of one part of §681.179(3) and (4). The board does not believe that these type of programs are consistent with the requirements set out in §681.171 and disagrees with the recommendation.

Staff recommended the section title be changed for §681.195 and §681.197 for clarification. The board agrees and the titles are changed to more appropriately reflect the content of the sections.

One person commented that the board should not take anonymous complaints as set out in proposed §681.195(b). The board disagrees and believes that anyone should be allowed to file a complaint whether they want to submit their name or not.

One commenter requested consideration of a statute of limitations for complaints in §681.195. The board agrees and a new subsection (b) is added. The following symbology is changed as appropriate.

One person commented that the word "able" in §681.196(d)(8) should be "unable". The board agrees and the word is changed.

Staff commented that language should be added to §681.197 concerning the temporary suspension of a license. The board agrees and adds new subsection (d).

One person commented that the word "execute" in §681.198(q) should be "execute". The board agrees and the word is changed.

Staff recommended that the Complaints Committee was the appropriate committee to review all complaints, whether the complaint was filed against a licensee or an applicant. The board agrees and has specified that committee in §681.213.

Minor editorial changes were made throughout the rules for clarification purposes.

The following groups and associations commented in favor of the proposed sections: Permian Basin Counselors Association and Biofeedback Society of Texas, Inc. The following groups and associations commented in opposition to certain proposed sections: Permian Basin Counselors Association, American Counseling Association, Texas Counseling Association, and Texas Counseling Association Ethics Committee.

Subchapter A. The Board

• 22 TAC §§681.1-681.23

The repeals are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules that are necessary to administer the Licensed Professional Counselor Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994

TRD-9437904

James O. Mathis, Ed D
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date. April 11, 1994

Proposal publication date. October 15, 1993

For further information, please call (512)
834-6658

◆ ◆ ◆
• 22 TAC §§681.1-681.19

The new sections are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act

§681.2 Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act—The Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, as amended

Accredited universities—Universities as reported by the American Association of Collegiate Registrars and Admission Officers.

APA—The Administrative Procedure Act, Government Code, Chapter 2001.

Authorized representative—An individual authorized to act on behalf of a licensee as evidenced by a written power of attorney or the licensee's spouse.

Board—The Texas State Board of Examiners of Professional Counselors.

Client—A person who seeks or receives services from a licensee.

LPC intern—A person who holds a temporary license to practice counseling.

Department—The Texas Department of Health.

Health care professional—A licensee or any other person licensed, certified, or registered by the State in a health related profession.

License—A regular, provisional, or temporary license issued by the board unless the content of the rule indicates otherwise

Licensee—A person who holds a regular, provisional, or temporary license.

Recognized religious practitioner—A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, §501(c)(3) and other individuals participating with them in pastoral counseling if:

(A) the counseling activities are within the scope of the performance of

their regular or specialized ministerial duties and are performed under the auspices of sponsorship of the legally recognized denomination, church, sect, religious organization or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, §1 6033-2(g)(5)(i) (1982).

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

(C) the person does not use the title of or hold himself or herself out as a professional counselor

Supervisor—A person approved by the board as meeting the requirements set out in §681.83 of this title (relating to Supervisor Requirements), to supervise an LPC intern

§681.17. Fees

(a) Fees are as follows

(1) application and temporary license fee—\$60;

(2) application and provisional license fee—\$60,

(3) application fee for a regular license—\$30;

(4) license examination fee—\$80,

(5) regular license fee—\$36,

(6) annual renewal fee—\$40,

(7) late renewal fee (when renewed after expiration date but on or within 90 days of expiration)—\$80;

(8) license renewal penalty fee (must be paid along with renewal fee when license is renewed more than 90 days but within one year of the expiration date)—\$80,

(9) inactive status fee—\$75,

(10) license certificate or renewal card duplication or replacement fee—\$10;

(11) returned check fee—\$25;

(12) application materials fee—\$5; and

(13) examination review fee—\$25

(b) Fees paid to the Texas State Board of Examiners of Professional Counselors (board) by applicants are not refundable except in accordance with §681.18 of this title (relating to Processing Procedures).

(c) Remittances submitted to the board in payment of fees may be in the form of a personal check, cashier's check,

or money order; however, a returned check fee must be in the form of a cashier's check or money order.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 21, 1994

TRD-9437903

James O Mathis, Ed D
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date April 11, 1994

Proposal publication date October 15, 1993

For further information, please call (512)
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Subchapter B. Authorized
Counseling Methods and
Practices

• 22 TAC §681.26

The new section is adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act

§681.26 Counseling Methods and Practices Authorized counseling methods and practices may include but are not restricted to the following:

(1) individual counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psycho-dynamic, and affective methods and strategies to achieve mental, emotional, physical, social, moral, and spiritual development and adjustment through the life span;

(2) group counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psycho-dynamic, and affective methods and strategies to achieve mental, emotional, physical, social, moral, educational, spiritual, and career development and adjustment through the life span,

(3) marriage counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psycho-dynamic, affective and family systems methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples,

(4) family counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psycho-dynamic, affective and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the life span;

(5) chemical dependency counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psycho-dynamic, affective methods and strategies, and 12-step methods to achieve abstinence from the addictive substances and behaviors by the client,

(6) rehabilitation counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psycho-dynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society,

(7) education counseling which utilizes formal and informal counseling methods and assessments and appraisal instruments for the purpose of determining strength, weakness, mental condition, emotional stability, intellectual ability, interest, skill, aptitude, achievement, and other personal characteristics of individuals for the selection of and placement in educational settings, preschool through postdoctoral study;

(8) career development counseling which utilizes formal and informal counseling methods and appraisal instruments for the purpose of determining intellectual ability, interest, skill, aptitude, achievement, mental condition, emotional fitness, and other personal characteristics for occupational, vocational, and career selection and placement throughout the life span;

(9) sexual issues counseling which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psycho-dynamic, and affective methods and strategies in the resolution of sexual disorders,

(10) referral counseling which utilizes the processes of evaluating and identifying needs of clients to determine the advisability of referral to other specialists, informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources;

(11) psychotherapy which utilizes interpersonal, cognitive, cognitive-behavioral, behavioral, psycho-dynamic, and affective methods and strategies to assist clients in their efforts to recover from mental or emotional illness;

(12) play therapy which utilizes play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors as a part of the therapist's role in helping children overcome their social, emotional, and mental problems;

(13) hypnotherapy which utilizes the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional disorders and addictions;

(14) expressive therapies which utilizes therapeutic modalities in the treatment of interpersonal, emotional or mental health issues, chemical dependency, or human developmental issues shall be considered a part of the practice of counseling and shall be administered, directed, or supervised by a licensed counselor. These modalities may include music therapy, art therapy, dance or movement therapy, hippotherapy, or the use of other techniques employing animals in providing therapy as described previously,

(15) biofeedback which utilizes electronic equipment to monitor and provide feedback regarding an individual's physiological responses. The counselor who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the counselor's academic program or the substantial equivalent provided through approved continuing education,

(16) assessing and appraising which utilizes formal and informal instruments and procedures, for which the counselor has received appropriate training and supervision, in individual and group settings for the purposes of determining the clients' strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental problems, and

(17) consulting which utilizes the application of specific principles and procedures in counseling to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437902 James O Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date April 11, 1994

Proposal publication date October 15, 1993

For further information, please call: (512) 834-6658

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**Subchapter B. The Practice of
Counseling**

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• 22 TAC §§681.31-681.42

The repeals are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise

rules that are necessary to administer the Licensed Professional Counselor Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 21, 1994.

TRD-9437902 James O Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date April 11, 1994

Proposal publication date October 15, 1993

For further information, please call: (512) 834-6658

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Subchapter C. Code of Ethics

• 22 TAC §§681.32-681.43

The new sections are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act

§681.32. General Ethical Requirements.

(a) A licensee shall not knowingly make any misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including:

- (1) the effectiveness of services;
- (2) the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; or
- (3) the practice or field of counseling

(b) A licensee shall not make any misleading, deceptive, fraudulent or exaggerated claim or statement about the services of a mental health services organization or agency, including the effectiveness of services, qualifications, or products.

(c) A licensee shall discourage a client from holding exaggerated or false ideas about the licensee's professional services, including effectiveness of the services, practice, qualifications, associations, or activities. If a licensee learns of exaggerated or false ideas held by a client or other person, the licensee shall take immediate and reasonable action to correct the ideas held.

(d) A licensee shall make reasonable efforts to prevent others whom the licensee does not control, from making misrepresentations; exaggerated or false claims; or false, deceptive, or fraudulent statements about the licensee's practice, services, qualifications, associations, or activities. If a

licensee learns of a misrepresentation; exaggerated or false claim, or false, deceptive, or fraudulent statement made by another, the licensee shall take immediate and reasonable action to correct the statement.

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

(1) fees and arrangements for payment,

(2) counseling purposes, goals, and techniques,

(3) any restrictions placed on the license by the Texas State Board of Examiners of Professional Counselors (board),

(4) the limits on confidentiality,

(5) any intent of the licensee to use another individual to provide counseling services to the client, and

(6) supervision of the licensee by another licensed health care professional including the name and qualifications of the supervisor

(f) A licensee shall inform the client of any changes to the items in subsection (e) of this section prior to initiating the change

(g) A licensee shall provide counseling services only in the context of a professional relationship, and shall not provide counseling services by means of newspaper or magazine articles, radio or television programs, mail or means of a similar nature, electronic media, or telephonic media when that is the primary vehicle for maintaining the counseling relationship

(h) A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting patients or patronage for or from any health care professional.

(1) The provisions of the Health and Safety Code, §161.091, relating to the prohibition of illegal remuneration apply to licensees

(2) A licensee employed or under contract with a chemical dependency facility or a mental health facility shall comply with the requirements in the Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Practices Act, Health and Safety Code, Chapter 164, shall not be considered as a violation of the state law relating to illegal remuneration.

(i) A licensee shall not engage in activities that seek to meet the licensee's personal needs at the expense of a client

(j) A licensee shall not promote the licensee's personal or business activities to a client unless the licensee informs the client of the licensee's personal or business interest in the activity

(k) A licensee shall not provide counseling services to the licensee's current or previous family members, personal friends, or business associates

(l) A licensee shall not knowingly offer or provide counseling services to an individual concurrently receiving counseling services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy the licensee shall take immediate and reasonable action to inform the other mental health services provider

(m) A licensee shall take reasonable action to inform medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(n) A licensee to whom a school district refers a student for counseling services shall comply with the rules adopted by the Texas Education Agency relating to the relationship between the district and the licensee. This requirement only applies to an outside counselor, not a licensee who is a school district employee.

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

(p) For each client, a licensee shall keep accurate records of the dates of counseling services, types of counseling services, progress or case notes, and billing information. Records held by a licensee shall be kept for seven years for adult clients and seven 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

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

(1) Supervisory relationships between a licensee and any other person used by the licensee to provide services to a client shall be so reflected on billing documents.

(2) On the written request of a client, a client's guardian, or a client's parent (managing or possessory conservator) if

the client is a minor, a licensee shall provide, in plain language, a written explanation of the charges for counseling 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 counseling services that the licensee knows were not provided or knows were improper, unreasonable, or medically or clinically unnecessary

(r) A licensee shall terminate a counseling relationship when it is reasonably clear that the client is not benefiting from the relationship. When counseling is still indicated, the licensee shall take reasonable steps to facilitate the transfer to an appropriate referral or source.

(s) A licensee shall not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the evaluation that the licensee has not personally interviewed the individual

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

(u) A licensee shall be subject to disciplinary action if the licensee is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Crime Victims Compensation Act, Texas Civil Statutes, Article 8309-1.

(v) A licensee shall not aid and abet the unlicensed practice of counseling by a person required to be licensed under the Act.

§681.33. Sexual Misconduct.

(a) For the purpose of this section the following terms shall have the following meanings

(1) Mental health services—Assessment, diagnosis, treatment, or counseling in a professional relationship to assist an individual or group in:

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

(B) understanding conscious or subconscious motivations;

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

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

(2) Mental health services provider A licensee or any other licensed or unlicensed individual who performs or purports to perform counseling or mental health services, including a licensed social worker, a chemical dependency counselor, a licensed marriage and family therapist, a physician, a psychologist, or a member of the clergy

(3) Sexual contact-

(A) deviate sexual intercourse as defined by the Penal Code, §21 01.

(B) sexual contact as defined by the Penal Code, §21 01.

(C) sexual intercourse as defined by the Penal Code, §21 01, or

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

(4) Sexual exploitation-A pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a client's sexual history within standard accepted practice while treating a sexual or marital dysfunction.

(5) Therapeutic deception-A representation by a licensee that sexual contact with, or sexual exploitation by, the licensee is consistent with, or a part of, a client's or former client's counseling.

(b) A licensee shall not engage in sexual contact with a person who is.

(1) a client or former client,

(2) an LPC intern supervised by the licensee, or

(3) a student at an educational institution at which the licensee provides professional or educational services

(c) A licensee shall not engage in sexual exploitation of a person who is.

(1) a client or former client,

(2) an LPC intern supervised by the licensee; or

(3) a student at an educational institution at which the licensee provides professional or educational services.

(d) A licensee shall not practice therapeutic deception of a person who is a client or former client

(e) It is a defense to a disciplinary action under subsections (b)-(d) of this section, if the person was no longer emotionally dependent on the licensee when the sexual exploitation began, the sexual contact occurred, or the therapeutic deception occurred, and the licensee terminated counseling with the person more than two years before the date the sexual exploitation began, the sexual contact occurred or the therapeutic deception occurred

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

(1) with the consent of the person,

(2) outside the counseling sessions of the person, or

(3) off the premises regularly used by the licensee for the counseling sessions of the person

(g) The following may constitute sexual exploitation if done for the purpose of sexual arousal or gratification or sexual abuse of any person.

(1) sexual harassment, sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, and

(A) is offensive or creates a hostile environment, and the licensee knows or is told this; or

(B) is sufficiently severe or intense to be abusive to a reasonable person in the context;

(2) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual;

(3) inappropriate sexual comments about or to a person, including making sexual comments about a person's body;

(4) making sexually demeaning comments to or about an individual's sexual orientation,

(5) making comments about potential sexual performance except when the comment is pertinent to the issue of sexual function or dysfunction in counseling;

(6) requesting details of sexual history or sexual likes and dislikes when not necessary for counseling of the individual,

(7) initiating conversation regarding the sexual problems, preferences, or fantasies of the licensee;

(8) kissing or fondling of a sexual nature,

(9) making a request to date,

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

(11) any bodily exposure of genitals, anus or breasts,

(12) encouraging another to masturbate in the presence of the licensee, or

(13) masturbation by the licensee when another is present

(h) Examples of sexual contact are

(1) genital and genital contact,

(2) genital and anal contact,

(3) genital and oral contact,

(4) genital and any object contact,

(5) anal and any object contact,

(6) touching breasts,

(7) touching genitals, and

(8) touching anus

(i) A licensee shall report sexual misconduct as follows

(1) If a licensee has reasonable cause to suspect that a client has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider during counseling or any other course of treatment, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider during counseling or any other course of treatment, the licensee shall report the alleged conduct not later than the 30th day after the date the licensee became aware of the conduct or the allegations to

(A) the prosecuting attorney in the county in which the alleged sexual exploitation, sexual contact or therapeutic deception occurred; and

(B) the board if the conduct involves a licensee and any other state licensing agency which licenses the mental health services provider

(2) Before making a report under this subsection, the reporter shall inform the alleged victim of the reporter's duty to report and shall determine if the alleged victim wants to remain anonymous

(3) A report under this subsection need contain only the information needed to:

(A) identify the reporter,

(B) identify the alleged victim, unless the alleged victim has requested anonymity,

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

(D) provide the name of the alleged perpetrator

§681.43 Required Reporting A licensee shall report if required by any of the following laws

(1) the Family Code, Chapter 34, concerning abuse or neglect of minors,

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

(3) the Health and Safety Code, Chapter 161, Subchapter K, §161.131 et seq. concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an in-patient mental health facility, a chemical dependency treatment facility or a hospital providing comprehensive medical rehabilitation services, and

(4) the Civil Practice and Remedies Code, §81.006, concerning sexual exploitation by a mental health services provider

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 21, 1994

TRD-9437899

James O Mathis, Ed D
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date April 11, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 834-6658

Subchapter C. Application Procedures

• 22 TAC §§681.51-681.53

The repeals are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 21, 1994

TRD-9437900

James O Mathis, Ed D
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date April 11, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 834-6658

Subchapter D. Application Procedures

• 22 TAC §681.51, §681.52

The new sections are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act

§681.51 General

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official Texas State Board of Examiners of Professional Counselors (board) forms

(b) The application form and application fee must be postmarked at least 60 days prior to the date the applicant wishes to take the examination.

(c) Submission of all other required application materials must be postmarked at least 45 days prior to the date the applicant wishes to take the examination

(d) The board will send a notice to an applicant with an incomplete application. An application not completed within 30 days after the date of the board's notice may be voided, however, an applicant may request in writing that the application be kept active for an additional year. Following each additional year another annual notice will be sent to the applicant and the applicant may again request that the application be kept active for an additional one year. After an application is voided, an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§681.52 Required Application Materials

(a) General application form An application form shall contain.

(1) specific information regarding personal data, employment and type of practice, other state licenses and certifications held, felony or misdemeanor convictions, educational background including practicum experience, information concerning supervised experience, and references, if applying for a regular license;

(2) a statement that the applicant has read the Act and Texas State Board of Examiners of Professional Counselors (board) rules, and agrees to abide by them.

(3) the applicant's permission to the board to seek any information or references it deems fit to determine the applicant's qualifications,

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

(5) a statement that the applicant understands that fees submitted in the licensing process are non-refundable,

(6) the applicant's signature, dated and notarized, and

(7) a recent full-face wallet size photograph of the applicant with the imprint of the notary seal on the edge of the photograph

(b) Practicum documentation form if applying for a temporary or regular license The practicum documentation form shall contain

(1) the applicant's name,

(2) the name and address of the agency or organization where the practicum was done,

(3) the name, address, degree, position, and licensure status of the supervisor of the practicum,

(4) inclusive dates of the practicum, the number of clock-hours of practice, the number of academic semester hours awarded, and the name of the school at which the practicum was taken,

(5) the type of setting, the kinds of clients seen, and the counseling methods employed;

(6) any evaluation of the counseling skills of the applicant, and

(7) the signature of the supervisor or agency or school official who can formally attest to the applicant's practicum experience.

(c) Supervised experience documentation form if applying for a regular license. The supervised experience documentation form must be completed by the applicant's supervisor and contain.

(1) the name of the applicant;

(2) the name, address, degree, licensure status, and credentials of the applicant's supervisor,

(3) the name and address of the agency or organization where the experience was gained;

(4) the inclusive dates of the supervised experience and the total number of hours of practice;

(5) the number of hours of weekly face-to-face supervision given to the applicant, the total number of supervisory hours received by the applicant in the experience, and the types of supervision used,

(6) the applicant's employment status during supervised experience,

(7) the types of clients seen and counseling methods used,

(8) the supervisor's evaluation of the applicant's counseling skills and competence for independent or private practice,

(9) the supervisor's notarized signature, and

(10) a statement that the supervised experience complies with the rules set out in Subchapter F of this title (relating to Experience Requirements for Examination and Licensure)

(d) Supervisory contract if applying for a temporary license. An applicant for a temporary license must submit a copy of the board's supervisory contract signed by both the supervisor and applicant

(e) Graduate transcripts. An applicant must have the official transcript(s) showing all relevant graduate work sent directly to the board from the school(s) where the applicant obtained the course work

(f) References

(1) An applicant for a regular license must have board reference forms submitted by three persons who can attest to the applicant's character, counseling skills and professional standards of practice.

(A) The references shall be persons who are not named elsewhere in the applicant's application and are not current members of the board

(B) References must include at least one licensed professional counselor. All references must be from persons licensed or certified in the counseling profession or appropriately related professions

(C) Applicants for a license shall not use current members of the board as references.

(2) An applicant for a temporary license must have a board reference form submitted by one faculty member who can attest to the applicant character, counseling skills, and professional standards of practice

(g) Provisional license based on endorsement. Applicants for a provisional license based on endorsement must submit

(1) a general application form as set out in subsection (a) of this section and the provisional license fee,

(2) official documentation of licensure in another state or territory,

(3) official documentation that the applicant has passed a national examination relating to counseling or an exam offered by another state or territory for licensure as a counselor, and

(4) a letter of sponsorship from a person who holds a regular license in Texas to practice counseling

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 21, 1994

TRD-9437897

James O Mathis, Ed D
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date April 11, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 834-6658

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Subchapter D. Academic Requirements for Examination and Licensure

• 22 TAC §§681.61-681.65

The repeals are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994

TRD-9437898

James O Mathis, Ed D
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date. October 15, 1993

For further information, please call. (512) 834-6658

◆ ◆ ◆
Subchapter E. Academic Requirements for Examination and Licensure

• 22 TAC §§681.61-681.64

The new sections are adopted under Texas Civil Statutes, Article 4512g, which provide

the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act

§681.63 Academic Requirements

(a) Persons applying for examinations and licensure must have

(1) a graduate degree on at least the master's level, and

(2) a planned graduate program in counseling or its substantial equivalent of at least 45 semester hours

(b) The 45 semester hours must be designed to train a person to provide direct services to assist individuals or groups in a counseling relationship using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life

(1) The 45 semester hours may be course work that was part of the required graduate degree, or may be in addition to course work taken for the degree, or a combination of both

(2) The 45 hours must cover the course content described in §681.64 of this title (relating to Academic Course Content)

(c) Applicants must also have a supervised practicum experience that is primarily counseling in nature of at least 300 clock-hours which were a part of the required planned graduate program

(1) At least 100 hours of direct client counseling contact must be shown

(2) Academic credit or other acknowledgement of the practicum must appear on the applicant's official graduate transcript

(3) No practicum course intended primarily for practice in the administration and grading of appraisal or assessment instruments shall count toward the 300 clock-hour requirement

(d) For persons applying for a temporary or a regular license, on or after September 1, 1996 a person must have a master's or doctorate degree in counseling or a related field and a 48 semester hour planned graduate program. A person who holds a temporary license on September 1, 1996, may obtain a regular license after September 1, 1996, without having a master's or doctorate degree in counseling or a related field and a 48 semester hour planned graduate program but must meet the applicant qualifications for a regular license in effect when the person applied for the temporary license.

§681.64 Academic Course Content

(a) An applicant must have course work in each of the following specific areas

(1) normal human growth and development any course which deals with the process and stages of human intellectual, physical, social, and emotional development from prenatal origins through old age.

(2) abnormal human behavior any course which offers study in the principles of understanding dysfunction in human behavior or social disorganization.

(3) appraisal or assessment techniques any course which deals with the principles, concepts, and procedures of systematic appraisal or assessment of an individual's attitudes, aptitudes, achievements, interests, and personal characteristics, which may include the use of both non-testing approaches and test instruments.

(4) counseling theories-any course which surveys the major theories of counseling.

(5) counseling methods or techniques-any three courses in methods or techniques used to provide counseling services including

(A) one course in counseling individuals, and

(B) one course dealing with the theory and types of groups, including dynamics and the methods of practice with groups.

(6) research-any course in the methods of research which may include the study of statistics or a thesis project in an area relevant to the practice of counseling.

(7) life style and career development-any course which deals primarily with areas such as theories of vocational choice, career choice and life style, sources of occupational and educational information, and career decision-making processes.

(8) social, cultural and family issues-any course which deals primarily in areas such as studies of change, ethnic groups, gender studies, family systems, urban and rural societies, population patterns, cultural patterns, and differing life styles; and

(9) professional orientation-any course which deals primarily with the objectives of professional organizations, codes of ethics, legal aspects of practice, standards of preparation, and the role identity of persons providing direct counseling services

(b) The remaining courses needed to meet the 45 graduate-hour requirement shall be in areas directly supporting the development of an applicant's counseling skills such as practicum or internship credit and other courses related primarily to counseling. Persons who apply on or after September 1, 1996, will be required to obtain 48 graduate semester hours and to have two courses in social, cultural and family issues, unless the person holds a temporary license on September 1, 1996

(c) If an applicant completes a titled course which does not meet the entire content requirements of a course(s) named in subsections (a) and (b) of this section, the applicant may submit evidence to the Texas State Board of Examiners of Professional Counselors (board) that the required content was covered in portions of more than one course

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 21, 1994

TRD-9437895 James O Mathis, Ed D
Chair
Texas State Board of Examiners of Professional Counselors

Effective date April 11, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 834-6658

Subchapter E. Experience Requirements for Examination and Licensure

• 22 TAC §§681.81-681.84

The repeals are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on March 21, 1994

TRD-9437896 James O Mathis, Ed D
Chair
Texas State Board of Examiners of Professional Counselors

Effective date April 11, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 834-6658

Subchapter F. Experience Requirements for Examination and Licensure

• 22 TAC §§681.81-681.84

The new sections are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act

§681.81 Temporary License

(a) The Texas State Board of Examiners of Professional Counselors (board) will issue a temporary license to an applicant who

(1) has filed an application form and temporary license fee,

(2) has met all of the academic requirements for licensure,

(3) has entered into a supervisory agreement with a supervisor meeting the requirements of §681.83 of this title (relating to Supervisor Requirements),

(4) has submitted references in accordance with §681.52(f) of this title (relating to Required Application Materials), and

(5) has not failed any two successive board examinations

(b) In Texas, a person must obtain a temporary license before the person begins an internship. Hours obtained after January 1, 1994, by an unlicensed person in any setting shall not count toward the supervised experience requirements

(c) A temporary licensee may practice only as part of his or her internship.

(d) An LPC intern must maintain a temporary license during his or her supervised experience

(e) A temporary license is valid for 30 months or until the LPC intern fails the examination twice, whichever occurs first

(f) An LPC intern who does not obtain a regular license during the 30 months and does not fail the exam twice may apply for a second temporary license. No more than two temporary licenses will be issued, which will be valid for 30 months or until the LPC intern fails the examination twice, whichever occurs first

(g) An LPC intern who holds a temporary license may obtain a regular license by.

(1) submitting board forms updating the intern's file with regard to personal data, employment information, and felony or misdemeanor convictions, and which include statements set out in §681.52(a)(2)-(6) of this title (relating to Required Application Materials),

(2) submitting a supervised experience documentation form documenting successful completion of 2,000 hours of supervised experience in accordance with §681.52(c) of this title (relating to Required Application Materials);

(3) submitting three current references in accordance with §681.52(f) of this title (relating to Required Application Materials);

(4) submitting an examination fee in accordance with §681.17 of this title (relating to Fees); and

(5) successfully completing an examination for licensure in accordance with Subchapter G of this title (relating to Licensure Examinations).

§681.82. Experience Requirements (Internship).

(a) Applicants for examination must have completed 24 months or 2,000 clock-hours of supervised counseling experience acceptable to the Texas State Board of Examiners of Professional Counselors (board).

(b) A person beginning an internship on or after January 2, 1992, must complete the required 2,000 clock-hours of supervised experience in a time period of no fewer than 12 months; or if applying under the 24-month requirement, the person must average at least 20 clock-hours per week of practice. These months shall not include excess practicum hours used as supervised experience hours.

(c) The internship must have been:

(1) after the completion of a graduate degree in counseling or a related field; or

(2) after the completion of a graduate degree in any area and a planned graduate program in counseling or its substantial equivalent of at least 45 semester hours.

(d) The applicant who began to accumulate supervised experience on or after September 1, 1992, must have completed at least 45 graduate semester hours in counseling or a related field before beginning the supervised experience in addition to the requirements in subsection (c) of the section.

(e) The experience must have consisted primarily of the provision of direct counseling services within a professional relationship to individuals or groups by using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life. For internships beginning on or

after June 30, 1990, 1,000 hours of direct client counseling contact must be shown.

(f) The applicant must have received direct supervision consisting of at least one hour a week of face-to-face supervision in individual or group settings with no more than one half of the total hours of supervision having been received in group supervision.

(g) The experience must have been under the direct supervision of a supervisor acceptable to the board.

(h) On a case-by-case basis, the board may count hours toward the experience requirements of this subchapter if:

(1) the hours were part of the applicant's academic practicum or internship accumulated after the commencement of the applicant's planned graduate program,

(2) the hours are in excess of the 300-hour practicum required by §681.64(c) of this title (relating to Academic Course Content);

(3) the hours to be counted are not more than 400 hours; and

(4) the applicant requests this consideration in writing.

§681.83. Supervisor Requirements.

(a) A supervisor acceptable to the Texas State Board of Examiners of Professional Counselors (board) must be one of the following.

(1) a person who holds a regular license issued by this board or a person licensed as a counselor in another state;

(2) a person licensed or certified by this state or any other state in a profession that provides counseling with the academic training and experience to supervise the counseling services offered by the intern. In Texas this person must be a licensed psychologist, a licensed physician with board certification as a psychiatrist, or a licensed master social worker with a clinical social work specialty, or a licensed marriage and family therapist. The person may be required to submit to the board proof of licensure and certification, official graduate transcripts, and other appropriate documentation; or

(3) a person in a state, territory, county, or jurisdiction where no appropriate licensure or state certification is available who submits to the board relevant official graduate transcripts, documentation of practicum and experience and any professional certifications which demonstrate that the person is qualified to supervise the type of counseling practice performed by the intern

(b) A supervisor under subsection (a)(1) or (2) of this section must have met the following requirements.

(1) The supervisor must have held an active state license or certification in good standing for at least 24 months from the date of issuance. Completion of a doctoral degree in counseling or a related field at an accredited university may be substituted for 12 months of the 24-month requirement

(2) A person who begins the supervision of an LPC intern on or after January 1, 1995, shall meet the requirements stated in paragraph (1) of this subsection and must have completed one of the following:

(A) a successful completion of an examination offered for certification as a counselor supervisor or current certification as a counselor supervisor by a nationally recognized counseling association acceptable to the board;

(B) 40 clock-hours of training in the supervision of counseling or mental health services through one or a combination of the following:

(i) a graduate course taken for credit at an accredited college or university;

(ii) continuing education programs meeting the requirements of §681.174 of this title (relating to Types of Acceptable Continuing Education); or

(iii) clinical supervision of the proposed supervisor by a person:

(I) licensed by the board or as a counselor in another state, or

(II) licensed or certified by this state or another state as a mental health professional that would be acceptable under subsection (a)(2) of this section;

(C) a doctoral degree in counseling or a related field which was designed to train the person to provide direct services to individuals or groups in a counseling relationship in the resolution of personal-social, educational, or occupational problems. The degree must have been awarded before January 1, 1995, by a university described in the academic requirements for examination and licensure in §681.62(a) or (b) of this title (relating to General); or

(D) provided at least three years of clinical supervision in counseling of another person(s) through a university described in §681.62(a) or (b) of this title or a mental health facility licensed, accredited,

or otherwise credentialed by the federal, state, or local government or a nationally recognized organization in the field of mental health. The three years must have been completed before January 1, 1995.

(3) The 40 clock-hours shall include at least the following:

(A) defining and conceptualizing supervision and models or supervision for at least three clock-hours;

(B) supervisory relationship and counselor development for at least three clock-hours,

(C) supervision methods and techniques for at least 12 clock-hours, covering roles (teacher, counselor, and consultant), focus (process, conceptualization, and personalization), group supervision, multicultural supervision (racial and ethnic issues and gender issues), and evaluation methods;

(D) ethical, legal, and professional issues for at least 12 clock-hours, covering roles for supervision and standards of practice ((Subchapter B of this chapter (relating to Authorized Counseling Methods and Practices)); §681.82 of this title ((relating to Experience Requirements (Internship)); and this section should be included)), other codes of ethics, and ethical and legal dilemmas, and

(E) executive and administrative tasks for at least three clock-hours covering supervision plan and contract, and time for supervision, record keeping and reporting

(4) At the time of application for a license, a person must submit required documentation showing that the person's supervisor meets the requirements of this section

§681.84. Other Conditions for Supervised Experience

(a) A person who has commenced and is in the process of completing the 24 months or 2,000 hours of supervised experience may not practice within his or her own private independent practice of counseling as part of such months or hours and may not count the months or hours spent in the person's private independent practice of counseling as part of the supervised experience, however, the person may be employed in his or her supervisor's private practice of counseling as part of such months or hours.

(b) After January 1, 1994, an LPC intern must hold a temporary license. No hours will be counted toward the supervised

experience except those accumulated during the time the LPC intern is licensed. If the applicant applied prior to January 1, 1994, for a temporary license, the hours from January 1, 1994, shall be counted.

(c) A supervisor may not be in the employ of the LPC intern.

(d) A supervisor may not be related within the second degree by affinity or within the third degree by consanguinity to his or her LPC intern. This subsection shall be effective for internships beginning on or after June 30, 1990.

(e) An LPC intern may be employed on a salary basis or be a consultant or volunteer. All supervisory settings must be structured with clearly defined job descriptions and lines of responsibility.

(f) The full professional responsibility for the counseling activities of an LPC intern shall rest with the intern's official supervisor.

(g) All supervised experience must have been on a formal basis by contract or other specific arrangement prior to the period of supervision. Supervision arrangements must include all specific conditions agreed to by the supervisor and LPC intern.

(h) If an LPC intern enters into contracts with both a supervisor and an organization with which the supervisor is employed or affiliated, the contract between the organization and intern will clearly indicate where counseling services will be performed, that no payment for services will be made directly by a client to the intern, clients records are not the property of the counseling intern, that the full responsibility for the counseling activities of an intern shall rest with the intern's official supervisor, that there are no financial arrangements with the intern that have been made that extend beyond the period of supervision, and all supervised experience shall be in accordance with this chapter.

(i) A supervisor may not supervise more than eight LPC interns at one time.

(j) An LPC intern may have no more than two supervisors unless approval is received for further supervisors. The intern must submit a notarized statement explaining the reasons for the change of supervisor.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437893 James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 834-6658

Subchapter F. Licensure Examinations

• 22 TAC §§681.91-681.100

The repeals are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437894 James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 834-6658

Subchapter G. Licensure Examinations

• 22 TAC §§681.91-681.96

The new sections are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

§681.92. Applying for Examination.

(a) Before taking an examination, a person must apply for licensure in accordance with §681.51 of this title (relating to General) and §681.52 of this title (relating to Required Application Materials). The Texas State Board of Examiners of Professional Counselors (board) shall notify an applicant whose application has been approved in writing or by telephone and forward an examination registration form to each approved applicant as soon as the application has been approved.

(b) An applicant who wishes to take a scheduled examination must complete an examination registration form and return it to the board with the required fee postmarked at least 30 days prior to the date of the examination. In cases where the date of approval of an application necessitates that the applicant be notified by telephone, the applicant must forward the required fee with a postmark of at least 30 days prior to

the date of the examination; however, the registration form can be submitted following the 30-day deadline.

§681.94. Failures.

(a) An applicant who fails the licensure examination may reapply for examination and take either of the next two scheduled examinations. If, without documented medical or other reasons acceptable to the Texas State Board of Examiners of Professional Counselors (board), the applicant does not take either of the next two examinations, his or her approval to take the examination will be voided and the applicant will be required to submit another application for licensure.

(b) The application of a person who fails any two examinations will be voided.

(c) An applicant who fails any two successive examinations may not apply for a regular license until two years have elapsed from the date of the last examination or until the applicant has completed nine graduate semester-hours in the applicant's weakest portions of the examination. An application must be submitted in accordance with Subchapter D of this title (relating to Application Procedures).

(d) Each applicant who fails the examination may request, in writing, within 21 days from the date of the notification of failure, an examination review. An examination review fee is required in accordance with §681.17 of this title (relating to Fees) and must be submitted with the written request.

(1) All reviews are subject to Texas Department of Health (department) security requirements.

(2) Textbooks and other references may not be used and persons other than the applicant and department representatives may not be present during the review.

(3) The department will set a date and hour within a reasonable time when the examination will be available for review. The appointment will be scheduled in the board office during regular business hours.

§681.96. Failure to Take Examination.

(a) If an applicant fails to appear for a scheduled examination because of illness, he or she must submit medical documentation within 30 days following the scheduled examination and the applicant will be rescheduled for the next examination.

(b) If an applicant fails to appear for a scheduled examination for reasons other than documented illness or other

cause beyond the applicant's control after having agreed to do so by applying to take a particular examination, the applicant must reapply and pay another examination fee before being admitted to a subsequent examination.

(c) The application of a person who fails to select and take one of the first two examinations scheduled after the applicant has been notified in writing of his approval for examination shall be voided and the applicant shall be so notified.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437891 James O. Mathis, Ed D
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 834-6658

◆ ◆ ◆
Subchapter G. Licensing

• 22 TAC §§681.111-681.114

The repeals are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437892 James O. Mathis, Ed D
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 834-6658

◆ ◆ ◆
Subchapter H. Licensing

• 22 TAC §§681.111-681.113

The new sections are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

§681.112. Endorsement.

(a) The Texas State Board of Examiners of Professional Counselors (board) may grant a provisional license to a person

who holds, at the time of application, a license or certificate as a counselor issued by another state or territory that is acceptable to the board. An applicant for a provisional license must:

(1) submit an application and provisional license fee;

(2) be licensed in good standing as a counselor in another state or territory that has licensing requirements that are substantially equivalent to the regular licensing requirements of the Licensed Professional Counselor Act (Act),

(3) have passed a national examination relating to counseling or an exam offered by another state or territory for licensure as a counselor; and

(4) be sponsored by a person who holds a regular license issued by the board with whom the provisional licensee may practice.

(b) An applicant for a provisional license may be excused from the requirement of subsection (a)(4) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) The board must complete the processing of a provisional licensee's application for a license not later than the 180th day after the date the provisional license is issued or at the time licenses are issued following the successful completion of the examination, whichever is later. The person holding a provisional license must file all evidence of his or her academic and experience requirements within this time period. The board office shall evaluate the information received and may issue a deficiency letter during this period. If the documentation received during this period does not show that the person meets the academic and experience requirements set out in this chapter, the application shall be proposed for denial.

(d) A provisional license is valid until the date the board issues a license or denies the provisional licensee's application for a license.

(e) The board shall issue a regular license to the holder of a provisional license if:

(1) the provisional licensee passes the examination required by §12 of the Act; and

(2) the board verifies that the provisional licensee has the academic and experience requirements for a regular license.

(f) The board shall consider only states and territories of the United States as acceptable for the purposes of licensure by endorsement.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437889

James O Mathis, Ed.D
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date. October 15, 1993

For further information, please call: (512) 834-6658

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**Subchapter H. License and
Specialty Renewal and Inac-
tive Status**

• 22 TAC §§681.121-681.128

The repeals are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994

TRD-9437890

James O Mathis, Ed.D
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date. October 15, 1993

For further information, please call: (512) 834-6658

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**Subchapter I. Regular License
Renewal and Inactive and
Retirement Status**

• 22 TAC §§681.121-681.127

The new sections are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act

§681.121. General.

(a) A regular license must be renewed annually.

(b) A person who holds a regular license must have fulfilled any continuing education requirements prescribed by Texas State Board of Examiners of Professional Counselors (board) rule in order to renew a license

(c) Each person who holds a regular license is responsible for renewing the license and shall not be excused from paying late renewal fees or renewal penalty fees. Failure to receive notice from the board does not waive payment of late penalty fees.

(d) The board shall deny the renewal of the license of a licensee who is in violation of the Licensed Professional Counselor Act (Act) or this chapter at the time of application for renewal.

(e) A person whose license has expired shall return his or her license certificate to the board.

(f) A person whose license has expired shall not practice counseling or advertise counseling services.

(g) The deadlines established for renewals, late renewals, and license renewal penalty fees in this subchapter are based on the postmarked date of the documentation submitted by the licensee.

(h) The board shall deny renewal if required by the Education Code, §57491, relating to defaults on guaranteed student loans.

§681.123. License Renewal.

(a) At least 45 days prior to the expiration of a regular license, the Texas State Board of Examiners of Professional Counselors (board) will send notice to a licensee that includes the expiration date of the license, a schedule of the renewal and late fees, and the number of hours needed to complete any continuing education requirements

(b) A license renewal form shall be furnished to licensees eligible for renewal. The form shall require the licensee to provide current addresses, telephone numbers, and such information as continuing education completed, and type of practice.

(c) The board shall not renew a license until it receives the completed license renewal form and the renewal fee, and the licensee has complied with applicable continuing education requirements

(d) The board shall issue a renewal card to a licensee who has met all requirements for renewal. The licensee must display the renewal card in association with the license.

(e) The license of a person who made a timely and sufficient request for renewal of his or her license does not expire until the application for renewal is finally determined by the board, or in case the application is denied or the terms of the new license limited, until the last day for seeking review of the board's order or a later date fixed by order of a reviewing court.

(f) The board shall deny the renewal of a license if the licensee is a party to a formal disciplinary action. A formal action commences when the notice described in §681.192(c) of this title (relating to Disciplinary Action; Notices) is mailed by the board.

(1) A license that is not revoked or suspended as a result of formal proceedings shall be renewed provided that all other requirements are met.

(2) In the case of delay in the license renewal process because of formal disciplinary action, late and penalty fees shall not apply.

§681.125. Inactive Status.

(a) A licensee may place his or her license on inactive status by submitting a written request prior to the expiration of the license along with the inactive fee. Inactive status periods shall not be granted to persons whose licenses are not current and in good standing. Inactive status periods shall not exceed three years; however, consecutive inactive status periods may be approved by the board. An inactive status fee is required for each three-year period of inactive status.

(b) An inactive status period shall begin on the first day of the month following payment of an inactive status fee.

(c) All fees are not applicable during the inactive status period. A person may not act as a counselor, represent himself or herself as a counselor, or provide counseling services during the inactive status period.

(d) Continuing education credit may be earned while on inactive status.

(e) A person is subject to investigation and action under Subchapter L of this chapter (relating to Complaints and Violations) during the period of inactive status.

(f) A person must notify the board in writing to return to active status. Active status shall begin on the first day of the month following payment of applicable fees. The license fee shall be prorated to the next renewal date in accordance with §681.123 of this title (relating to License Renewal).

(g) If continuing education requirements were not met prior to the time that a licensee went on inactive status or during the time the licensee is on inactive status, upon return to active status the hours that were remaining to complete the three-year continuing education requirement described in §681.172 of this title (relating to Deadlines) must be completed in a time period equal to the time that was remaining in the counselor's three-year cycle at the time that

the person went into inactive status. Section §681.124(e) of this title (relating to Late Renewal) will be applicable at the end of this additional time period.

(h) Upon return to active status, the person's next three-year continuing education cycle will begin on the first day of the month following the person's birth month; however, if subsection (g) of this section applies, the start date for the next three-year cycle will begin following the additional time period described in subsection (g) of this section.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-8437913 James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 834-6658

Subchapter I. Counseling Specialties

• 22 TAC §§681.141-681.147

The repeals are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437888 James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 834-6658

Subchapter J. Criteria for Determining Fitness of Applicants for Examination and Licensure

• 22 TAC §§681.161-681.164

The repeals are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise

rules that are necessary to administer the Licensed Professional Counselor Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-8437912 James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 834-6658

• 22 TAC §§681.161-681.163

The new sections are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-8437911 James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 834-6658

Subchapter K. Continuing Education Requirements

• 22 TAC §§681.171-681.180

The repeals are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437910 James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 834-6658

• 22 TAC §§681.171-681.179

The new sections are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

§681.173. *Hour Requirements for Continuing Education.* A licensee must complete 60 clock-hours of continuing education acceptable to the Texas State Board of Examiners of Professional Counselors (board) during each three-year period as described in §681.172 of this title (relating to Deadlines). Three hours of the 60 hours must be directly related to counselor ethics. Licensees whose three-year reporting cycle ends after June 1, 1995, are required to obtain six hours of counselor ethics.

(1) A clock-hour shall be 60 minutes of attendance and participation in an acceptable continuing education experience.

(2) Continuing education experiences acceptable to the board shall be those set forth in §681.174 of this title (relating to Types of Acceptable Continuing Education).

§681.174. *Types of Acceptable Continuing Education.*

(a) Continuing education undertaken by a licensee shall be acceptable if the experience falls in one or more of the following categories:

(1) participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which employ didactic and experiential methods to increase skill and competence in counseling taught by persons who hold licensure granted by the Texas State Board of Examiners of Professional Counselors (board) or an equivalent counselor licensure board in another state;

(2) participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which are designed to increase professional knowledge related to the practice of counseling and which are conducted by persons who:

(A) are other state-licensed, state-certified, or state-registered professionals whose licensure, certification, or registry law or rules requires a minimum of a master's degree as a prerequisite for the license, certificate, or registration;

(B) are registered nurses holding at least a baccalaureate degree; or

(C) in states outside of Texas where state licensure, state certification, or a state registry does not exist, have completed a graduate degree in counseling or a related field and hold certification or registry by their respective professional associations if such certification or registry exists;

(3) teaching or consultation in graduate level programs such as institutes, seminars, workshops, and conferences which are designed to increase professional knowledge related to the practice of counseling provided that such teaching and consultation is not part of, or required as a part of, one's employment;

(4) completion of graduate academic courses in areas supporting development of skill and competence in counseling at an accredited institution;

(5) participation in case supervision, management, or consultation provided that it:

(A) is not required as a part of a licensee's employment;

(B) is conducted according to stated training or didactic goals such as expertise in specific techniques including supervision techniques or certification in specialty areas of counseling;

(C) is conducted by an appropriately state-licensed, state-certified, or state-registered mental health professional who meets board requirements for supervisors, demonstrates training and expertise in the specific area for which supervision is provided, and has received prior approval by the board for the program; and

(D) does not exceed six months in length;

(6) participation or teaching in programs directly related to counseling (e.g., institutes, seminars, workshops, or conferences) which are approved or offered by an accredited college or university or by a nationally recognized professional organization in the mental health field or its state or local equivalent organization. The board shall maintain and make available on request a listing of acceptable professional organizations; or

(7) completion of an independent study program directly related to counseling and approved or offered by a nationally recognized professional organization in the mental health field or its state equivalent or approved or offered by an accredited college or university.

(b) The requirements set out in subsection (a)(2) of this section apply to programs which occur after April 1, 1994, and

were not approved by the board office prior to that date. Programs which occur before April 1, 1994, or which were approved by the board office prior to that date, will be processed in accordance with the rules in effect prior to April 1, 1994.

§681.177. Determination of Clock-hour Credits. The Texas State Board of Examiners of Professional Counselors (board) shall credit continuing education experiences as follows.

(1) Parts of programs which meet the criteria of §681.173 of this title (relating to Hour Requirements for Continuing Education) and §681.176 of this title (relating to Criteria for Approval of Continuing Education Activities) shall be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education activity.

(2) Teaching in programs which meet the board's criteria as set out in §681.174 of this title (relating to Types of Acceptable Continuing Education) shall be credited on the basis of one clock-hour of credit for one clock-hour taught plus two clock-hours credit for preparation for each hour actually taught. No more than two-thirds of the three-year continuing education requirements can be credited under this option, and credit may be granted for the same presentation or program not more than twice during any three-year cycle. The remaining one-third of the continuing education requirement in each three-year cycle must be obtained under another of the available options in accordance with paragraphs (1) or (3) of this subsection.

(3) Completion of academic work at an institution which meets the accreditation standards acceptable to the board shall be credited on the basis of 15 clock-hours of credit for each semester hour, ten clock-hours of credit for each quarter hour completed and for which a grade of "B" or above was received as evidenced on an official graduate transcript.

(4) Effective September 1, 1993, no more than 20 clock-hours of the 60 clock-hours three-year continuing education requirement, can be obtained through case supervision, management, and consultation programs set out in §681.174(5) of this title.

(5) No more than 12 clock-hours of the 60 clock-hours required can be obtained through independent study.

§681.178. Reporting of Continuing Education. The requirements for reporting continuing education shall be as follows.

(1) A licensee's continuing education documentation shall be filed with a form provided by the Texas State Board of

Examiners of Professional Counselors (board) which the licensee shall complete or sign.

(2) A licensee shall submit the required report only at the time of renewal the first or second year of the three-year continuing education cycle. A licensee may submit the required report at any time during the third year of the three-year continuing education cycle provided, however, continuing education must be reported and approved prior to renewal at the end of the three-year cycle or §681.124(e) of this title (relating to Late Renewal) will apply. Each licensee is responsible for ensuring that the board receives timely notice of the licensee's completion of any continuing education activity.

(3) Each report must be accompanied by appropriate documentation of the continuing education claimed on the report as follows:

(A) for a program attended, signed certification by a program leader or instructor of the licensee's participation in the program by certificate, letter or letterhead of the sponsoring agency, or official continuing education validation form of the sponsoring agency;

(B) for teaching or consultation in approved programs, a letter on the sponsoring agency's letterhead giving name of program, location, dates, and subjects taught and giving total clock-hours of teaching or consultation;

(C) for completion of academic work from accredited schools, an official graduate transcript showing course credit with at least a "B" or pass grade; or

(D) for official auditing of a graduate level course at a regionally accredited academic institution, a letter from the academic institution or professor which includes the actual number of clock-hours attended.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437909 James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 834-6658

Subchapter L. Complaints and Violations

• 22 TAC §§681.191-681.197

The repeals are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437908

James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 834-6658

• 22 TAC §§681.191-681.200

The new sections are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

§681.195. Complaint Procedures.

(a) A person wishing to report an alleged violation of the Licensed Professional Counselor Act (Act) or the rules by a licensee or other person shall notify the executive secretary. The initial notification may be in writing, by telephone, or by personal visit to the Texas State Board of Examiners of Professional Counselors (board) office.

(b) A complaint shall not be accepted by the board office if the official form is not filed within five years of the date of termination of the counselor-client relationship which gave rise to the alleged violations. If the client was a minor at the time of the alleged violation, this time limitation does not begin to run until the client reaches the age of 18 years. A complainant shall be notified of the nonacceptance of untimely complaints. This time limitation shall not apply to complaints involving violations of §681.33 of this title (relating to Sexual Misconduct) or the board's previous rules relating to sexual activities.

(c) Upon receipt of a complaint, the executive secretary shall send an acknowledgement letter to the complainant and an official form which the complainant must complete and return to the board before further action can be taken. The execu-

tive secretary may accept an anonymous complaint if there is sufficient information for the investigation.

(d) A complaints committee shall be appointed to work with the executive secretary to:

(1) review each complaint and determine whether the complaint fits within the category of a serious complaint affecting the health and safety of clients or other persons;

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

(3) ensure that a person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(4) resolve the issues of the complaint which arise under the Act of this chapter.

(e) Prior to or during an investigation, the executive secretary shall request a notarized response from the licensee or person against whom an alleged violation has been filed and gather information required by the complaints committee of the board.

(f) If it is determined that there are sufficient grounds to support the complaint, the matters in question shall be investigated. The executive secretary or the committee may initiate the investigation.

(g) If the committee determines that there are insufficient grounds to support the complaint, the committee shall dismiss the complaint and give written notice of the dismissal to the licensee or person against whom the complaint has been filed and the complainant.

(h) If the committee determines that a violation exists and that the violation is not a serious complaint affecting 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.

(i) The board shall use a private investigator only if the Texas Department of Health's investigators available to the board have a conflict of interest.

(j) Within each 90 days, the board shall notify a complainant of the status of his or her complaint unless the notice would jeopardize an undercover investigation until the complaint is finally resolved or closed.

(k) If after due investigation a complaint or allegation is not resolved by the committee of the board, the committee may recommend that the license be revoked, suspended, or denied or that other appropriate actions as authorized by law be taken.

(l) The board shall dispose of all complaints in a timely manner. After review of each complaint, the executive secretary shall establish a schedule for conducting each phase of the complaint not later than the 30th day after the date the complaint is received. 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.

(m) The executive secretary shall notify the complaints committee of a complaint that extends beyond the time prescribed for resolving the complaint.

§681.197. Suspension, Temporary Suspension, Revocation, or Denial.

(a) If the Texas State Board of Examiners of Professional Counselors (board) suspends a license, 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) If a suspension overlaps a license renewal date, the suspended counselor shall comply with the renewal procedures in this chapter, however, the suspension shall remain in effect pursuant to subsection (a) of this section.

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

(d) The board or the complaints committee of the board may temporarily suspend a license.

(1) The license may be suspended without prior notice to the licensee and without a prior hearing.

(2) In order to temporarily suspend a license, the board or committee must determine that by continuation in practice a licensee would constitute a continuing and imminent threat to the public welfare.

(3) This determination shall be made from the evidence or information presented to the board or committee.

(4) The board or committee shall issue an order temporarily suspending the license. The order shall be effective upon delivery to the licensee or at a later date specified in the order.

(5) Proceedings for a formal hearing under Subchapter M of this chapter must be initiated prior to, or simultaneously on, the effective date of the temporary suspension.

(A) The Administrative Procedure Act, Government Code, Chapter 2001, shall apply to a hearing under this subsection.

(B) If there is a conflict between the requirement of the Administrative Procedure Act and the requirements of §16A of the Licensed Professional Counselor Act, §16A of the Act shall govern. If there is a conflict between Subchapter M of this chapter and this subsection, this subsection shall govern.

(6) A preliminary hearing shall be held not later than the 14th day after the effective date of the temporary suspension to determine if probable cause exists to find that a continuing and imminent threat to the public welfare still exists. The State office of Administrative Hearings is hereby authorized to determine if probable cause exists.

(7) A final hearing shall be held not later than the 61st day after the effective date of the temporary suspension.

(A) The purpose of the hearing shall be to determine whether the continuation of practice of the licensee would constitute a continuing and imminent threat to the public welfare.

(B) In determining whether there is a continuing and imminent threat to the public welfare, the board shall consider whether a violation of state law or this chapter exists.

(C) If such a threat exists, the board shall enter an order suspending the license of the licensee.

(D) A suspension shall remain in effect in accordance with subsection (a) of this section.

(8) The time periods for holding a preliminary hearing or a final hearing shall be tolled during the period of time which the licensee requests for the purpose of obtaining discovery. The time periods may also be waived by mutual agreement of the licensee and the authorized representative of the board. If a preliminary hearing or final hearing is not held in accordance with the time periods stated in this subsection (unless tolled or waived), the temporary suspension shall become null and void upon the date on which the hearing was required to be held under §16A of the Act.

§681.198. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be

made through an informal settlement conference held to determine whether an agreed settlement order may be approved.

(b) If the executive secretary or the complaints committee of the Texas State Board of Examiners of Professional Counselors (board) determines that the public interest might be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing, the provisions of this section shall apply. A licensee or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the executive secretary or the complaints committee.

(c) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(d) The executive secretary shall decide upon the time, date and place of the settlement conference, and provide written notice to the licensee or applicant of the same. Notice shall be provided no less than ten days prior to the date of the conference by certified mail, return receipt requested to the last known address of the licensee or applicant or by personal delivery. The ten days shall begin on the date of mailing or delivery. The licensee or applicant may waive the ten-day notice requirement.

(e) The notice shall inform the licensee or applicant of the nature of the alleged violation, that the licensee may be represented by legal counsel, that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate, that committee members may be present, that the board's legal counsel or a representative of the Office of the Attorney General will be present, that the licensee's or applicant's attendance and participation is voluntary, that the complainant and any client involved in the alleged violations may be present, and that the settlement conference shall be canceled if the licensee or applicant notifies the executive secretary that he or she or his or her legal counsel will not attend. A copy of the board's rules concerning informal disposition shall be enclosed with the notice of the settlement conference.

(f) The notice of the settlement conference shall be sent by certified mail, return receipt requested, to the complainant at his or her last known address or personally delivered to the complainant. The complainant shall be informed that he or she may appear and testify or may submit a written statement for consideration at the settlement conference. The complainant shall be notified if the conference is canceled.

(g) Members of the complaints committee may be present at a settlement conference.

(h) The settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(i) The licensee, the licensee's attorney, committee members, and the board may question witnesses, make relevant statement, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(j) The board's legal counsel or an attorney from the Office of the Attorney General shall attend each settlement conference. The committee members or executive secretary may call upon the attorney at any time for assistance in the settlement conference.

(k) The licensee shall be afforded the opportunity to make statements that are material and relevant.

(l) Access to the board's investigative file may be prohibited or limited in accordance with the Open Records Act, Government Code, Chapter 552 and the Administration Procedure Act (APA).

(m) At the discretion of the executive secretary or the committee members, a tape recording may be made of none or all of the settlement conference.

(n) The committee members or the executive secretary shall exclude from the settlement conference all persons except witnesses during their testimony, the licensee, the licensee's attorney, and board staff.

(o) The complainant shall not be considered a party in the settlement conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(p) At the conclusion of the settlement conference, the committee members or executive secretary may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Licensed Professional Counselor Act (Act). The committee members may also conclude that the board lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, order that the investigation be closed, or refer the matter for further investigation.

(q) The licensee or applicant may either accept or reject at the conference the settlement recommendations. If the recommendations are accepted, an agreed settlement 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. The licensee or applicant shall execute the order and return the signed order to the board office within ten days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

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

(s) 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.

(t) The identity of the licensee or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee or applicant chooses to attend the board meeting. 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.

(u) 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.

(v) 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 secretary for other appropriate action.

(w) 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.

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

(1) If the executive secretary or complaints committee determines that an informal conference shall not be held, the executive secretary shall give written notice to the licensee or applicant of the facts or conduct alleged to warrant the intended disciplinary action and the licensee or applicant shall be given the opportunity to show, in writing and as described in the notice, compliance with all requirement of the Act and this chapter.

(2) The complainant shall be sent a copy of the written notice. The complainant shall be informed that he or she

may also submit a written statement to the board office.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437907

James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 834-6658

Subchapter M. Formal Hearings

• 22 TAC §§681.211-681.220

The repeals are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437906

James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 834-6658

The new sections are adopted under Texas Civil Statutes, Article 4512g, which provide the Texas State Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

§681.212. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Administrative Law Judge—A person within the State Office of Administrative Hearings who conducts hearings under this subchapter on behalf of the board.

Contested case—A proceeding in accordance with Administrative Procedures Act (APA) and this chapter, including but not restricted to rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by

the board after an opportunity for an adjudicative hearing.

Formal hearing—A hearing or proceeding in accordance with this subchapter and includes a contested case as defined in this section to address the issues of a contested case.

Licensee—Any person licensed by the board.

Pleading—Any written allegation filed by a party concerning its claim or position.

§681.213. General.

(a) The Texas State Board of Examiners of Professional Counselors (board) or complaints committee on its own motion or on request from a licensee or applicant may initiate a formal hearing. A formal hearing and all related proceedings shall be conducted in accordance with the provision of Administrative Procedures Act (APA), applicable state and federal statutes, and this chapter.

(b) A formal hearing shall be held in Travis County, Texas, unless otherwise determined by the administrative law judge (ALJ) or upon agreement of the parties.

(c) The complaints committee may determine whether a hearing will be held before an ALJ of the board. If an ALJ is not utilized, the board shall conduct the formal hearing and contested case proceedings, and all references in this subchapter to the ALJ shall be references to the board.

§681.214. Notice.

(a) The administrative law judge (ALJ) shall ensure that notice of the formal hearing in accordance with the notice requirements of Administrative Procedures Act (APA) is given.

(b) If a party fails to appear or be represented at a hearing or proceeding after receiving notice:

(1) the ALJ may proceed with the hearing or proceeding or take whatever action is fair and appropriate under the circumstances; and

(2) the applicant or licensee is deemed to be in agreement with the allegations and proposed action and to have waived the right to a hearing. Appropriate disciplinary action may be taken by the board.

§681.215. Parties to the Hearing.

(a) The parties to a hearing shall be the applicant or licensee and the complaints committee of the Texas State Board of Examiners of Professional Counselors (board).

(b) A party has the privilege to participate fully in any pre-hearing and for-

mal hearing, to appeal as provided by law, and to perform any and all duties and privileges provided by Administrative Procedures Act (APA) and other applicable laws.

(c) A party may appear personally or be represented by counsel.

§681.216. Subpoenas.

(a) On the written request of any party to the hearing, the executive secretary of the Texas State Board of Examiners of Professional Counselors (board) shall issue a subpoena to require the attendance of witnesses or the production of documents. The administrative law judge (ALJ) may also issue any necessary subpoenas. A subpoena may be served by any person authorized to serve subpoenas under the Civil Practice and Remedies Code.

(b) All procedures relating to subpoenas shall be in accordance with Administrative Procedure Act (APA).

(c) A party or witness may seek to quash the subpoena or move for a protective order as provided in the Texas Rules of Civil Procedure.

(d) Documents include books, papers, accounts, and similar materials or objects.

(e) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled shall be paid for mileage, transportation, meals, and lodging expenses and a fee of \$10 per day in accordance with the APA.

§681.218. Pre-hearing Conferences.

(a) In a contested case, the administrative law judge (ALJ), on his or her own motion or the motion of a party, may direct the parties, their attorneys, or representatives to appear at a specified time and place for a conference prior to the hearing for the purpose of:

(1) the formulation and simplification of issues;

(2) the necessity or desirability of amending the pleadings;

(3) the possibility of making admissions or stipulations;

(4) the procedure at the hearing;

(5) specifying the number of witnesses;

(6) the mutual exchange of prepared testimony and exhibits;

(7) designation of parties; and

(8) other matters which may expedite the hearing.

(b) The ALJ shall conduct the pre-hearing conference in such manner and with

the necessary authority to expedite the conference while reaching a fair, just, and equitable determination of any matters or issues being considered.

(c) The ALJ shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering the said matters or issues.

(d) Any action taken at the pre-hearing conference shall be reduced to writing, signed by the ALJ and the parties, and made a part of the record.

§681.219. Hearing Procedure.

(a) The administrative law judge's (ALJ) duties. The ALJ shall preside over and conduct the hearing. On the day and time designated for the hearing, the ALJ shall:

(1) convene and call the hearing to order;

(2) state the purpose of and the legal authority for the hearing;

(3) announce that a record of the hearing will be made;

(4) outline the procedure and order of presentation that will be followed;

(5) administer oaths to those who intend to testify; and

(6) take any and all other actions as authorized by applicable law and this subchapter to provide for a fair, just, and proper hearing.

(b) Order of presentation.

(1) After making the necessary introductory and explanatory remarks on the purpose of and other matters related to the hearing, the ALJ will begin receiving testimony and evidence from the witnesses.

(2) Each party may present evidence and testimony and cross-examine or ask clarifying questions of any witness who presents evidence or testimony.

(3) In the request for relief or action of any kind, the party seeking such relief or action has the burden of proving entitlement to the same; provided, however, that the order of proceeding may be altered or modified by the ALJ either upon agreement of the parties or upon his or her own motion when such action will expedite the hearing without prejudice to any party.

(4) When the party first proceeding finishes his or her case, the remaining party or parties will be allowed to present evidence and testimony in the same manner. Each witness is subject to cross-examination and clarifying questions by other parties and the ALJ.

(5) The ALJ may limit the number of witnesses whose testimony will be repetitious, and the ALJ may also establish

time limits for testimony so long as all viewpoints are given a reasonable opportunity to be expressed.

(6) The ALJ, at his or her discretion, may allow final arguments or take the case under advisement, and shall note the time and close the hearing. For sufficient cause, the ALJ may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

(c) Consolidation. The ALJ, upon his or her own motion or upon motion by any party, may consolidate for hearing two or more proceedings which involve substantially the same parties or issues. Proceedings before the agency shall not be consolidated without consent of all parties to such proceedings unless the ALJ finds that such consolidation will be conducive to a fair, just, and proper hearing and will not result in unwarranted expense or undue delay.

(d) Conduct and decorum during the hearing. Every party, witness, attorney, representative, or other person shall exhibit in all hearings proper dignity, courtesy, and respect for the ALJ and all other persons participating in or observing the hearing. The ALJ is authorized to take whatever action he or she deems necessary and appropriate to maintain the proper level of decorum and conduct, including, but not limited to, recessing the hearing to be reconvened at another time or place or excluding from the hearing any party, witness, attorney, representative, or other person for such period and upon such conditions as the ALJ deems fair and just.

(e) The hearing record. The hearing record will include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings of them;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the ALJ; and

(7) all staff memoranda or data submitted to or considered by the ALJ or members of the agency who are involved in making the decision.

(f) Recording the hearing. The ALJ will keep either a stenographic or other taped record of the hearing proceeding. In the event an independently contracted court reporter is utilized in the making of the record of the proceedings, the Texas State

Board of Examiners of Professional Counselors (board) shall bear the cost of the per diem or other appearance fee for such reporter. Any party desiring a written transcript of the proceedings shall contract directly with such court reporter and be responsible for payment of same pursuant to the authority of the Administrative Procedures Act (APA). In those cases when a tape recording of the formal hearing is made, the board shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to be duplicated. Upon appeal of any final order of the board necessitating the forwarding of the record to a court of law, the board may assess the cost of the transcript to the appealing party.

(g) Rules of evidence. The ALJ will apply the rules of evidence under the APA and also the following rules.

(1) Consolidation. The ALJ may consolidate the testimony of parties or persons if the evidence can be effectively consolidated into one document or the testimony of one witness. The standard by which the ALJ should judge this consolidation is whether each party or person can offer unique or new evidence that has not been previously introduced. Any party, under oath, may make an offer of proof of the testimony or evidence excluded through consolidation by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing.

(2) Documentary evidence. Documentary evidence should be presented in its original form but if the original is not readily available, documentary evidence may be received in the form of copies or excerpts. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the ALJ may limit those admitted to a number which is typical and representative, and may, at his or her discretion, require the abstracting of the relevant data from the documents and presentation of the abstracts in the form of exhibits; provided, however, that before making such requirement, the ALJ shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made. Any party may make an offer of proof of the documents which are excluded by a ALJ's decision to remove only typical or representative documents.

(3) Exhibits.

(A) Form. Exhibits of documentary character shall be limited to facts material and relevant to the issues involved in a particular proceeding, and the parties shall make a reasonable effort to introduce

exhibits which will not unduly encumber the files and records of the board.

(B) Tender and service. The original of each exhibit offered shall be tendered to the ALJ or a designee for identification and shall be offered to the parties for their inspection prior to offering or receiving the same into evidence.

(C) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, it shall be given an exhibit number for purposes of identification and shall be included in the record under seal.

(D) After hearing. Unless specifically directed by the ALJ, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing except in a reopened hearing or a rehearing.

(4) Admissibility of prepared testimony and exhibits. When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same as a true and accurate record of what his/or her testimony would be if he or she were to testify orally. The witness shall be subject to clarifying questions and to cross-examination and his or her prepared testimony shall be subject to a motion to strike either in whole or in part.

(5) Offer of proof. When testimony is excluded by the ALJ, the party offering such evidence shall be permitted to make an offer of proof by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the board. The ALJ may ask such questions of the witness as he or she deems necessary to satisfy himself or herself that the witness would testify as represented in the offer of proof. An alleged error in sustaining any objections to questions asked on cross-examination may be preserved without making an offer of proof.

(6) Official notice. Official notice by the ALJ of the board shall be governed by the APA. Official notice may be taken of any statute, ordinance, or duly promulgated and adopted rules or regulations of any governmental agency. The ALJ shall indicate during the course of a hearing that information of which he or she will take official notice. When an ALJ's findings are based upon official notice of a material fact not appearing in the evidence

of record, the examiner shall set forth in his or her proposal for decision those items with sufficient particularity so as to advise the parties of the matters which have been officially noticed. The parties shall have the opportunity to show to the contrary through the filing of exceptions to the ALJ's proposal for decision.

§681.220. Action After the Hearing.

(a) Reopening of hearing for new evidence.

(1) The Texas State Board of Examiners of Professional Counselors (board) may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing.

(2) The board will reopen a hearing to include such new evidence as part of the record if the board deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(3) Notice and procedural requirements will be the same as for the original hearing.

(b) Proposal for decision.

(1) The administrative law judge (ALJ) shall prepare the proposal and provide copies of the same to all parties.

(2) Each party having the right and desire to file exceptions and briefs shall file them with the ALJ within the time designated by the ALJ.

(3) Parties desiring to do so shall file written replies to these exceptions and briefs as soon as possible after receiving same and within the time designated by the ALJ.

(4) All exceptions and replies to them shall be succinctly stated.

(c) Pleading after close. At any time after the record has been closed in a contested case, and prior to the board's decision becoming final in such case, all briefs, exceptions, written objections, motions (including motion for rehearing), replies to the foregoing, and all other written documents shall be filed with the ALJ. The party filing such instrument shall provide copies of the same to all other parties of record by first-class United States mail or personal service and certify, in writing thereon, the names and addresses of the parties to whom copies have been furnished, as well as the date and manner of service.

(d) Final orders or decisions.

(1) The final order or decision will be rendered by the board. The board may deny, suspend, probate, or revoke a

license as it deems appropriate and lawful. A decision of the board may include any requirement to be imposed upon the licensee or applicant which is related to the individual's practice as a licensee and is deemed by the board to be appropriate and lawful

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law

(3) All final orders shall be signed by the chairperson of the board; however, interim orders may be issued by the ALJ.

(4) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(e) Motion for rehearing. A motion for rehearing shall be governed by the Administrative Procedure Act (APA) or other pertinent statute and shall be addressed to the board and filed with the executive secretary.

(f) Appeals. All appeals from final board orders or decisions shall be governed by the APA or other pertinent statute and communications regarding any appeal shall be to the executive secretary of the board.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437905 James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: April 11, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 834-6658



Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note. As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code Board action taken under these articles is not subject to the Administrative Procedure Act

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the Department of Insurance, 333 Guadalupe, Austin)

The Commissioner of Insurance of the Texas Department of Insurance, at a meeting held at 8:30 a.m., March 21, 1994, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by the Texas Automobile Insurance Service Office (TAISO) to the Texas Automobile Rules and Rating Manual (the Manual), Rules 55, 57, and Endorsement TE 04 09C (to be redesignated as TE 04 09D) TAISO's petition (Reference Number A-0294-03) was published in the February 11, 1994, issue of the *Texas Register* (19 TexReg 1033)

One amendment will add a new paragraph 12 to Subsection D of Manual Rule 57 to provide that liability coverage extends to a trailer used with, or pulled by, a covered private passenger auto or utility vehicle if the trailer is not

customarily used for business purposes with another type auto. This coverage is available without charge, and without describing the trailer in the policy. This amendment is needed in order to clarify when coverage extends to trailers. The Business Auto Coverage Form was previously amended to provide for this coverage.

Another amendment will delete a paragraph from Subsection G of Manual Rule 55. That paragraph currently provides that either a Certificate of Insurance Form E-1 (Involuntary) or a Form E-2 (Voluntary) is required to be filed with the Railroad Commission. This paragraph leads to unnecessary confusion in that it implies that voluntary insurers must always file a Form E-2, but this filing is not always required by law. Instead, the Railroad Commission requires a Form E-2 to be filed by a voluntary insurer only when multiple policies are written, or when the limit of insurance is less than \$500,000.

The remaining amendment is to endorsement TE 04 09C of the Manual and will redesignate it as TE 04 09D. This amendment is necessary in order to clarify that property damage means loss of "use of" a covered auto rather than "loss of" a covered auto. The words "use of" were inadvertently omitted from this endorsement when it originally was proposed in 1987.

The Commissioner solicited comments on TAISO's proposals, but no comments were received.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits which were filed with the Chief Clerk under Reference Number A-0294-03 and are incorporated by reference into Commissioner's Order Number 94-0284.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.06, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Consistent with the Texas Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 23, 1994.

TRD-9437984 Linda K von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Effective date: May 31, 1994

For further information, please call: (512) 463-6328



OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Friday, April 1, 1994, 10:30 a.m.

700 North Congress Avenue, Room 924A
Austin

According to the agenda summary, the Texas Agricultural Finance Authority will call to order; discussion and action on: minutes of last meeting; adoption of amendment to rules for loan guaranty program; applications to loan guaranty program; approved application for Wright Fibers, Inc.; discussion on: demand survey; discussion and action on: Young Farmer Loan Guarantee credit policy and procedures; revenue bond program; farm and ranch program; discussion on: credit policy and procedure for Texas Agricultural Finance Authority Loan Guaranty program; and discussion of other business.

Contact: Robert Kennedy, P.O. Box 12847,
Austin, Texas 78711, (512) 463-7639.

Filed: March 24, 1994, 9:48 a.m.

TRD-9438084

Friday, April 8, 1994, 10:30 a.m.

Board Room, 233 West Twohig
San Angelo

According to the agenda summary, the Texas Sheep and Goat Commodity Board will consider opening remarks; review and approval: minutes, fiscal affairs; reports of officers and directors; discussion and ac-

tion: new business—review of telephone messages and contacts with the office (Exotic Wildlife Association), unfinished business—review of proposals, report from Animal Damage Control, scheduling of next meeting; discussion: other business; and adjourn.

Contact: Minnie Savage, 233 West Twohig, San Angelo, Texas 76903, (915) 659-8777.

Filed: March 23, 1994, 10:01 a.m.

TRD-9438000

Texas Board of Architectural Examiners

Thursday, March 31, 1994, 11:30 a.m.

Dallas Love Field Airport, Conference Room A, Mezzanine Level, 8008 Cedar Spring
Dallas

According to the agenda summary, the Board will call to order; recognition of guests; roll call; chairman's opening remarks; executive session to discuss/consider legal advice in accordance with the Texas Open Meetings Act, §551.071, The Government Code; consider/act on hire of executive director; and adjournment.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested

to contact Carolyn Lewis at (512) 458-1363 two work (2) days prior to the meeting so that appropriate arrangements can be made.

Contact: LaVonne L. Garland, 8213 Shoal Creek Building #107, Austin, Texas 78757, (512) 458-1363.

Filed: March 23, 1994, 1:56 p.m.

TRD-9438017

Texas Board of Chiropractic Examiners

Thursday, March 31, 1994, 10:00 a.m.

333 Guadalupe, Tower I, Room 216
Austin

According to the complete agenda, the Board will consider, discuss and take any appropriate action on: minutes of the February 12, 1994 meeting; committee appointments; report of the president, report of the executive director; rules committee report; education committee report; enforcement committee report; peer review committee report; technical standards committee report; consideration of continuing education topic; and, executive session—the Board may meet from time to time in executive session with respect to matters authorized by Chapter 551 of the Government Code. The board may vote to publish proposed new rules, amended rule or repealed rules for public comment.

Contact: Patte B. Kent, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: March 23, 1994, 2:43 p.m.

TRD-9438024

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Texas State Board of Professional Counselors

Friday, April 1, 1994, 9:00 a.m.

The Exchange Building, Room S-400, 8407 Wall Street

Austin

According to the complete agenda, the Rules Committee will discuss and possibly act on: proposed amendments to 22 Texas Administrative Code (TAC), Chapter 681; response to Linda Bolin's letter relating to exemptions for non-profit organizations; and whether or not certain practices are the practice of counseling.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 22, 1994, 4:31 p.m.

TRD-9437960

Friday, April 1, 1994, 10:00 a.m.

The Exchange Building, Room S-400, 8407 Wall Street

Austin

According to the complete agenda, the Testing and Continuing Education Committee will discuss and possibly act on: a request for service from the Ohio Counselors Licensing Board for Ohio to use the Texas professional counselor exam; request by the American Association of State Counseling Boards (AASCB) to use the Texas examination.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 22, 1994, 4:31 p.m.

TRD-9437959

Friday, April 1, 1994, 11:00 a.m.

The Exchange Building, Room S-400, 8407 Wall Street

Austin

According to the complete agenda, the Public and Professional Relations Committee will discuss and possibly act on the next Examiner.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard

Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 22, 1994, 4:30 a.m.

TRD-9437958

Friday, April 1, 1994, 2:00 a.m.

The Exchange Building, Room S-400, 8407 Wall Street

Austin

According to the complete agenda, the Administration and Finance Committee will discuss and possibly act on: strategic planning and future expenditures; and financial report through February, 1994.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 22, 1994, 4:30 p.m.

TRD-9437957

Friday, April 1, 1994, 3:30 p.m.

The Exchange Building, Room S-400, 8407 Wall Street

Austin

According to the complete agenda, the Applications Committee will discuss and possibly act on pending applications of Maria Angela Montenegro, Michael J. Redden, Ted Carlton Sykes, Gerald Ray White, Lisa Erwin Whittle, Robert H. Stanley, and others.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 22, 1994, 4:30 p.m.

TRD-9437956

Friday, April 1, 1994, 4:30 p.m.

The Exchange Building, Suite S-400, 8407 Wall Street

Austin

According to the complete agenda, the Complaints Committee will discuss and possibly act on: agreed board orders concerning D. R., J. R., and T. P.; and pending complaints.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 22, 1994, 4:30 p.m.

TRD-9437955

Saturday, April 3, 1994, 9:00 a.m.

The Exchange Building, Room S-400, 8407 Wall Street

Austin

According to the agenda summary, the Texas State Board of Examiners of Professional Counselors will discuss and approve the minutes of January 29, 1994, and discuss and possibly act on: persons wishing to appear before board; publications by the Texas Christian Counselors Association, Inc. discussed at the January 29, 1994, meeting; executive session pursuant to the Open Meetings Act, §551.071, regarding pending litigation (G. Calwell, Texas Psychological Association and D. Rettberg); committee reports; application committee (action concerning applications); complaints committee (agreed board orders concerning D. R., J. R., and T. P.); rules committee (proposed amendments; response to letter relating to exemptions for non-profit organizations; and whether or not certain practices are the practice of counseling); testing and continuing education committee (request by the Ohio Counselors Licensing Board regarding examination; and American Association of State Counseling Boards (AASCB) proposal regarding using the Texas examination); administrative and finance committee (strategic and future expenditures; financial report); public and professional relations (Examiner); size of licensed professional counselors wall certificate; establishment of regularly scheduled quarterly meetings; and setting of the next meeting date.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 22, 1994, 4:31 p.m.

TRD-9437961

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General Land Office

Friday, April 8, 1994, 8:30 a.m.

Galveston Bay National Estuary Program, Bay Plaza One, Merrill Lynch Building, 711 Bay Area Boulevard, Suite 210

Webster

According to the complete agenda, the Oil Spill Division (Negotiated Rulemaking Group) will call to order; review of latest draft of Natural Resource Damage Assessment rules; review of statutory requirements of the Oil Spill Prevention and Response Act; relationship between state and federal natural resource trustees; cost recovery; restoration plans; and adjournment.

Contact: Ingrid K. Hansen, 1700 North Congress Avenue, Room 740, Austin, Texas 78701, (512) 463-5091.

Filed: March 23, 1994, 9:51 a.m.

TRD-9437989

Saturday, April 9, 1994, 8:30 a.m.

Galveston Bay National Estuary Program, Bay Plaza One, Merrill Lynch Building, 711 Bay Area Boulevard, Suite 210

Webster

According to the complete agenda, the Oil Spill Division (Negotiated Rulemaking Group) will call to order; review of latest draft of Natural Resource Damage Assessment rules; review of statutory requirements of the Oil Spill Prevention and Response Act; relationship between state and federal natural resource trustees; cost recovery; restoration plans; and adjournment.

Contact: Ingrid K. Hansen, 1700 North Congress Avenue, Room 740, Austin, Texas 78701, (512) 463-5091.

Filed: March 23, 1994, 9:48 a.m.

TRD-9437988

Texas Guaranteed Student Loan Corporation

Friday, April 1, 1994, 10:30 a.m.

500 Jefferson Street, Suite 1400

Houston

According to the agenda summary, the Personnel Committee will discuss approval of minutes of January 14, 1994; pension plan modifications; modification to the corporation's compensation structure; grievance procedure guidelines; employee assistance guidelines; and adjourn.

Contact: Peggy Irby, 12015 Park 35 Circle Suite 300, Austin, Texas 78754, (512) 835-1900.

Filed: March 24, 1994, 8:43 a.m.

TRD-9438066

Texas Department of Health

Thursday, March 24, 1994, 10:00 a.m.

Public Hearing Room, Texas Department of Human Services, 701 West 51st Street

Austin

Emergency Meeting

According to the complete agenda, the County Indigent Health Care Program (CIHCP) Advisory Committee discussed approval of the minutes of November 18, 1993, and discussed and possibly acted on:

review of Senate Bill 383 requirements; upcoming Aid to Families with Dependent Children-Medicaid changes that affect CIHCP (income producing property; and outpatient psychiatric services); ambulatory surgical centers; new CIHCP maximum monthly income standards; coverage of undocumented aliens; report on Texas Eligibility Screening System (TESS); plans for 1994 regional workshops; report on county fraud disqualification procedures; formulation of legislative goals; advisory committee travel and use of American Express corporate cards; and schedule future meetings and suggested agenda items.

Reason for emergency: Unforeseeable circumstances.

Contact: Jane Jaggar, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6461. For ADA assistance, contact Richard Butler at (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 22, 1994, 4:31 p.m.

TRD-9437693

Texas Department of Human Services

Tuesday, April 5, 1994, 9:30 a.m.

701 West 51st Street, First Floor Conference Room, West Tower

Austin

According to the complete agenda, the Religious Community Advisory Committee will welcome everyone; make introductions; present committee business; select nominating committee for 1995 officers; introduce DPRS executive staff; discuss key issues for 1995 legislative session; discuss adult protective services issues; discuss concerns of members; make assignments of workgroups and have brief meeting of workgroups; wrap up; and adjourn.

Contact: Clif Martin, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3072.

Filed: March 23, 1994, 1:07 p.m.

TRD-9438016

Friday, April 8, 1994, 9:30 a.m.

701 West 51st Street, West Tower, Room 651W

Austin

According to the complete agenda, the Family Violence Advisory Committee will be called to order; have introductions; consider the January meeting minutes; make announcements on explanations of absences, travel, and partial per diem, and scheduling of agenda items; present reports from DHS staff, the family violence pro-

gram update, DHS board responses to advisory committee recommendations, and the Texas Council on Family Violence; discuss old business; discuss new business and adjourn.

Contact: Connie Berry, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4151.

Filed: March 22, 1994, 1:07 p.m.

TRD-9437939

Texas Board of Professional Land Surveying

Friday, April 1, 1994, 9:00 a.m.

7701 North Lamar Boulevard, Suite 400

Austin

Revised Agenda

According to the complete agenda, the Board will revise its original agenda to read as follows: the Board will meet to approve the minutes of the previous meeting; to hear a presentation from Ron Hall; and to consider and act upon Complaints #92-22 and 25, #93-28, and #94-21. (The original submission has a typographical error on the last complaint number listed. Originally read #94-24 and should now read #94-21.)

Contact: Randy Smith, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752, (512) 452-9427.

Filed: March 23, 1994, 9:18 a.m.

TRD-9437979

Texas Department of Licensing and Regulation

Tuesday, April 5, 1994, 9:00 a.m.

920 Colorado, E. O. Thompson Building, Third Floor

Austin

According to the complete agenda, the Inspections and Investigations, Manufactured Housing will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for David Davila for violation of the Texas Revised Civil Statutes, Article 5221f, §7(d), Article 9100, 16 TAC, §69.125(e)(1) and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: March 23, 1994, 4:15 p.m.

TRD-9438062

Tuesday, April 5, 1994, 10:30 a.m.

920 Colorado, E. O. Thompson Building, Third Floor

Austin

According to the complete agenda, the Inspections and Investigations, Manufactured Housing will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Chad Brown for violation of the Texas Revised Civil Statutes, Article 5221f, §7(d), Article 9100, 16 TAC, §69.125(e)(1) and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: March 23, 1994, 4:14 p.m.

TRD-9438060

Tuesday, April 26, 1994, 9:00 a.m.

920 Colorado, E. O. Thompson Building, Room 1012

Austin

According to the complete agenda, the Inspections and Investigations, Auctioneers will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Charles Dwight Crozier doing business as Rockwell Dealers Auto Auction for violation of the Texas Civil Statutes, Article 8700, §7(a)(4), Article 9100, 16 TAC, §67.101(4) and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: March 23, 1994, 4:14 p.m.

TRD-9438061

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**Texas Council on Offenders
with Mental Impairments**

Thursday, March 31, 1994, 9:30 a.m.

TDCJ-Board of Pardons and Paroles Building, 8610 Shoal Creek Boulevard

Austin

According to the complete agenda, the Program Committee will call to order; hear introductions; approve minutes of previous meeting; hear presentation by subcommittee chairs of recommendations for position paper on juvenile offenders with special needs; discussion and possible action on recommendations; and adjourn.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78756, (512) 406-5406.

Filed: March 22, 1994, 2:53 p.m.

TRD-9437951

Texas Natural Resource Conservation Commission

Tuesday, March 29, 1994, 10:00 a.m.

12118 North IH-35, Park 35 Office Complex Building C, Room 212W

Austin

According to the complete agenda, the Data Management Subgroup-Task Force 21 will meet to discuss the following topics: Introduction and purpose of new combined workgroup composed of Task Force 21 and FCAA IMS Air Briefing Council members, status of FCAA IMS, and overview of proposed RFP for a strategic plan for data management with the TNRCC Cluster.

Contact: Candy Kuenes, 12118 North IH-35, Park 35 Office Complex Building C, Room 212W, Austin, Texas 78711-3087, (512) 239-1182.

Filed: March 22, 1994, 4:13 p.m.

TRD-9437954

Tuesday, April 7, 1994, 10:00 a.m.

6300 Ocean Drive, Texas A&M University, Conrad Blucher Institute

Corpus Christi

According to the complete agenda, the Scientific/Technical Advisory Committee of the Corpus Christi Bay National Estuary Program will call to order/introduction/minutes, program update, review/approval of STAC Bylaws, discussion of FY 1995 technical projects, selection of subcommittees, project review policy, data and information management strategy, additional item and adjourn.

Contact: Richard Volk, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: March 24, 1994, 9:04 a.m.

TRD-9438075

Friday, April 8, 1994, 9:00 a.m.

6300 Ocean Drive, Texas A&M University, Conrad Blucher Institute

Corpus Christi

According to the complete agenda, the Citizens Advisory Committee of the Corpus Christi Bay National Estuary Program will call to order/introduction/minutes, program update, review/approval of CAC Bylaws, discussion of FY 1995 public participation projects, selection of subcommittees, discussion of public participation strategy, additional items and adjourn.

Contact: Richard Volk, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: March 24, 1994, 8:59 a.m.

TRD-9438074

Monday, April 11, 1994, 10:00 a.m.

Stephen F. Austin State Office Building-Room 1028A, 1700 North Congress Avenue

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a hearing on Application Number 5475 submitted by Galleria Holding, Limited, to request a permit to divert and use 32 acre-feet of water per annum from two existing reservoirs on Jernigan Creek, tributary of the Sabinal River, tributary of the Frio River, tributary of the Nueces River, Nueces River Basin.

Contact: Joseph W. O'Neal, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: March 23, 1994, 3:39 p.m.

TRD-9438054

Tuesday, April 26, 1994, 10:00 a.m.

12124 Park 35 Circle, Building C-Room 107W

Austin

According to the agenda summary, the Commission will hold a public hearing on Air Quality Permit Number 23268 by Haas-Anderson Construction, Inc., to construct and operate a hot mix asphalt plant to be located on Hopkins Road, 1.5 miles west of State Highway 44, near Corn Products Road, in Corpus Christi, Nueces County, Texas. This hearing will consider whether the permit should have been issued on January 28, 1994.

Contact: Dois Webb, P.O. Box 13087, Austin, Texas 78711, (512) 239-1575.

Filed: March 23, 1994, 3:40 p.m.

TRD-9438056

Thursday, April 28, 1994, 10:00 a.m.

12118 IH-35 North, Building D, Room 10013N

Austin

According to the agenda summary, the Commission will hold a public hearing on an application by Rich-Mix Corporation for Air Quality Permit Number 433 amending their permit to increase throughput at their concrete-mix bagging operation located at 304 North Nursery, Irving, Dallas County, Texas.

Contact: Dois Webb, P.O. Box 13087, Austin, Texas 78711, (512) 239-1575.

Filed: March 23, 1994, 3:40 p.m.

TRD-9438055

Tuesday, May 3, 1994, 10:00 a.m.

City of Palestine City Hall-Council Chambers, 504 North Queen

Palestine

According to the agenda summary, the Office of Hearings Examiner of the Texas Natural Resource Conservation Commission will hold a hearing on an application made by Daytop Village Foundation, Inc. for proposed Permit Number 13683-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 12,000 gallons per day. The proposed facility will serve a drug rehabilitation center and the facility is located approximately 2.5 miles east-southeast of the community of Bois D'Arc, approximately 14 miles north of the City of Palestine in Anderson County, Texas.

Contact: Mike Rogan, P.O. Box 13087, Austin, Texas 78711-3087; (512) 463-7875.

Filed: March 23, 1994, 3:41 p.m.

TRD-9438057

Wednesday, May 4, 1994, 9:00 a.m.

Stephen F. Austin State Office Building-Room 118, 1700 North Congress Avenue
Austin

Revised Agenda (Rescheduled from April 27, 1994)

According to the agenda summary, the Commission will hold a hearing on Harris County Water Control and Improvement District Number 70's application requesting authority to adopt and impose an operation and maintenance standby fee on undeveloped property within the District. The amount of the operation and maintenance standby fee requesting is \$238 per year per lot or reserved for year one, and \$150 per year per lot or reserved for years two and three, on all unimproved property in the District.

Commission staff is recommending an annual operation and maintenance standby fee, for a period not to exceed three years, of \$187.01 per lot or reserve per year for the first year, and \$149.61 per lot or reserve per year for the second and third years.

Contact: Gloria A. Vasquez, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.

Filed: March 23, 1994, 2:18 p.m.

TRD-9438019

Tuesday, May 17, 1994, 10:00 a.m.

Pine Trails Community Center, 6003 Wood Bend

Houston

According to the agenda summary, the Office of Hearings Examiners will hold a hearing on a water and sewer rate increase effective November 15, 1993 by Pine Trails Utility Company, Inc. for its service area located in Harris County, Texas; Docket Number 30226-R.

Contact: Carl Wood, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: March 23, 1994, 2:19 p.m.

TRD-9438021

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Texas Board of Pardons and Paroles

Monday-Wednesday, April 4-6, 1994, 1:30 p.m.

1550 East Palestine, Suite 100
Palestine

According to the agenda summary, the Parole Board Panel(s) composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: March 24, 1994, 8:45 a.m.

TRD-9438067

Thursday and Friday, April 7 and 8, 1994, 9:30 a.m.

1550 East Palestine, Suite 100
Palestine

According to the agenda summary, the Parole Board Panel(s) composed of three board member(s) will receive, review, and consider information and reports concerning prisoners inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: March 24, 1994, 8:46 a.m.

TRD-9438068

Monday-Friday, April 4-8, 1994, 1:30 p.m.

2503 Lake Road, Suite #2

Huntsville

According to the agenda summary, the Parole Board Panel(s) composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction

and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: March 24, 1994, 8:46 a.m.

TRD-9438069

Thursday, April 7, 1994

Hazel Kerper Courtroom, Beto Criminal Justice Center, Sam Houston State University

Huntsville

According to the agenda summary, the Parole Board will call to order; public hearing to receive comments from interested parties concerning the new rules relating to parole eligibility, 37 TAC (§§145.1, 145.2, and 145.3), proposed under Article 42.18, §8g, Code of Criminal Procedure; and adjourn.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: March 24, 1994, 8:47 a.m.

TRD-9438072

Thursday-Friday, April 7-8, 1994, 1:00 p.m. and 9:00 a.m. respectively

Route 5, Box 358-A

Gatesville

According to the agenda summary, the Parole Board Panel(s) composed of three member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: March 24, 1994, 8:46 a.m.

TRD-9438070

Monday-Friday, April 4-8, 1994, 9:30 a.m.

1212 North Velasco, Suite 201

Angleton

According to the agenda summary, the Parole Board Panel(s) composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appro-

appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: March 24, 1994, 8:46 a.m.

TRD-9438071

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Texas State Board of Licensure for Professional Medical Physicists

Wednesday, March 30, 1994, 10:15 a.m.

The Exchange Building, Room S-400, 8407 Wall Street

Austin

According to the complete agenda, the Texas State Board of Licensure for Professional Medical Physicists will discuss approval of the minutes of November 10, 1993, meeting; hear reports of the chairman, executive secretary, and attorney; and discuss and possibly act on: review of Hoffman Research Associates examination blueprint; review of examination for out-of-state applicants; amendment to rules pertaining to the licensure of professional medical physicists, 22 Texas Administrative Code, Chapter 601; review of the "Guidelines for Delineating the Practice of Medical Physics"; decision concerning denial of application of Rosaura Rodriguez Acosta; application for licensure of James Michael Mattern; ratification of applications approved by executive secretary; ratification of applications approved by the credentials committee; election of chair and vice-chair; other matters relating to the regulation of professional medical physicists not requiring board action; and setting of next meeting date.

Contact: Jeanette A. Hilsabeck, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6655. For ADA, call Richard Butler (512) 458-7695 or T. D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 22, 1994, 4:31 p.m.

TRD-9437962

◆ ◆ ◆
Public Utility Commission of Texas

Monday, April 11, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Rescheduled from April 6, 1994

According to the complete agenda, the Hearings Division will hold a rescheduled hearing on limited remand in Docket Number 11870-application of Brazos Electric Power Cooperative, Inc., to amend its Cer-

tificate of Convenience and Necessity for a proposed transmission line and substation in Cooke County, Texas.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 22, 1994, 8:40 a.m.

TRD-9437924

Thursday, April 21, 1994, 9:00 a.m.

Ramada Inn, 1005 Regal Row

Dallas

According to the complete agenda, the Public Utility Commission of Texas will attend a meeting of the Texas Utilities Electric Service Area Advisory Group.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 22, 1994, 10:06 a.m.

TRD-9437935

Monday, June 6, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 12783-application of Guadalupe-Blanco River Authority for a reconciliation of costs of the Canyon Hydroelectric Division for fiscal year 1993.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 22, 1994, 8:40 a.m.

TRD-9437923

Wednesday, June 8, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Numbers 12820, 12821, 12835, and 12596. Docket Number 12820-petition of the general counsel for an inquiry into the reasonableness of the rates and services of Central Power and Light Company. Docket Number 12821-petition of office of Public Utility Counsel for an inquiry into the reasonableness of the rates and services of Central Power and Light Company. Docket Number 12835-appeal and petition of Central Power and Light Company from the ratemaking decisions of the Cities of Pharr, Edinburg, Mission, Weslaco, McAllen and Alton, Texas. Docket Number 12596-complaint of James O. Bryant against Central Power and Light Company, Inc.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 24, 1994, 9:49 a.m.

TRD-9438085

◆ ◆ ◆
Texas Senate

Monday, April 4, 1994, 1:30 p.m.

1400 Congress Avenue, Capitol Extension, Room E2.010

Austin

According to the agenda summary, the Joint Select Committee on Historically Underutilized Businesses will review committee charge; briefing on the legal aspects of HUB programs; overview and update on the progress of the state's capacity/disparity study; briefing on the Governor's Executive Order; and briefing on the state's HUB program and review of the 1993 HUB report.

Contact: Anthony Haley, 4400 Louisiana, Suite 575, Houston, Texas 77002, (713) 236-0306.

Filed: March 23, 1994, 3:56 p.m.

TRD-9438059

Thursday, April 7, 1994, 10:00 a.m.

300 West 15th Street, Committee Room Five

Austin

According to the agenda summary, the Joint Interim Committee on Petroleum Storage Tanks will call to order; roll call and opening remarks; address committee charge; invited testimony; other business; and adjourn.

Contact: Joe Morris, P.O. Box 12068, Austin, Texas 78711, (512) 463-0390.

Filed: March 23, 1994, 9:51 a.m.

TRD-9437990

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Texas State Technical College System

Saturday, March 26, 1994, 10:30 a.m.

Hilton Hotel North Central Room, 113 South University Parks Drive

Waco

Revised Agenda

According to the agenda summary, the Board of Regents, will add an item to the executive session: discussion of Waco Industrial Development Corporation Resolution.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: March 23, 1994, 10:25 a.m.

TRD-9438002

◆ ◆ ◆
Texas Tech University

Thursday, March 31, 1994, 11:00 a.m.

Room 2B152, Health Sciences Center Building, Campus

Lubbock

According to the complete agenda, the Academic and Student Affairs Commission/Board of Regents will approve February 1, 1994, committee meeting minutes. Consider: granting of academic tenure; changes in academic rank; designation of Horn Professors; granting of emeritus status; and ratification of administrative actions related to academic and student affairs: Faculty Development leaves and leaves of absence and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 23, 1994, 10:50 a.m.

TRD-9438004

Thursday, March 31, 1994, 11:30 a.m.

Room 2B152, Health Sciences Center Building, Campus

Lubbock

According to the complete agenda, the Finance and Administration Commission/Board of Regents will approve February 1, 1994, committee meeting minutes. Consider: award of natural gas contract; award of natural gas transportation contract; holiday schedule for 1994-1995 fiscal year; and budget adjustments for the period December 1, 1993-February 28, 1994 and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 23, 1994, 10:50 a.m.

TRD-9438005

Thursday, March 31, 1994, 1:30 p.m.

Room 2B152, Health Sciences Center Building, Campus

Lubbock

According to the complete agenda, the Campus Building Committee/Board of Regents will approve February 1, 1994, committee meeting minutes. Consider: approval for the 1994-1995 Traffic and Parking Regulations; approval of the schematic design and authorization for the president to proceed with contract documents and the receipt of bids for the construction of the International cultural Center; authorization

for the president to proceed with planning, establish a project budget and declare official intent to reimburse costs, and to appoint a project architect for the construction of a facility for the Southwest Collection; and ratification: acceptance date for the renovation of the existing offices in the Physical Plant and acceptance date for the expansion of the weight room in the Student Recreation Center and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 23, 1994, 10:50 a.m.

TRD-9438006

Thursday, March 31, 1994, 2:00 p.m.

Room 2B152, Health Sciences Center Building, Campus

Lubbock

According to the complete agenda, the Research Committee/Board of Regents will meet to discuss reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 23, 1994, 10:51 a.m.

TRD-9438007

Thursday, March 31, 1994, 2:15 p.m.

Room 2B152, Health Sciences Center Building, Campus

Lubbock

According to the complete agenda, the Development Committee/Board of Regents will meet to discuss reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 23, 1994, 10:51 a.m.

TRD-9438008

Friday, April 1, 1994, 9:40 a.m.

Board Suite, Administration Building, Campus

Lubbock

According to the agenda summary, the Board of Regents will meet to discuss reports and action on: minutes; academic and student affairs; finance and administration; campus and building; and development.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 23, 1994, 10:50 a.m.

TRD-9438003

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Texas Tech University Health Sciences Center

Thursday, March 31, 1994, 10:30 a.m.

Room 2B152, Health Sciences Center Building, Campus

Lubbock

According to the complete agenda, the Academic, Clinic and Student Affairs Commission/Board of Regents will approve February 1, 1994 committee meeting minutes. Consider: change of official name designation of the campuses of the Texas Tech University Health Sciences Center; approval of the Interagency Corporation Contract between Texas Tech University Health Sciences Center and Texas Department of Criminal Justice (Huntsville, Texas) to provide mental health provides to inmates at the Clements (excluding PAMIO), Roach, Jordan, Smith and Robertson units; approval of the agreement between Texas Tech University Health Sciences Center and the 64th Medical Squadron, Reese Air Force Base (Lubbock, Texas)-this agreement enables Texas Tech University Health Sciences Center to participate in the Health Car Finder Network by providing health care services to CHAMPUS-eligible beneficiaries and active duty personnel; granting of academic tenure; changes in academic rank; and granting of academic tenure with appointment and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 23, 1994, 10:51 a.m.

TRD-9438010

Thursday, March 31, 1994, 11:30 a.m.

Room 2B152, Health Sciences Center Building, Campus

Lubbock

According to the complete agenda, the Finance and Administration/Board of Regents will approve February 1, 1994 committee meeting minutes. Consider: approval of the establishment of a quasi-endowment for the Sherill Skibell Scholarship Endowment; holiday schedule for 1994-1994 fiscal year; and approval of the concession contract between Texas Tech University Health Sciences Center and Tom's Peanuts Distributor (El Paso, Texas) to provide candy, chips and pastries to the El Paso Regional Academic Health Center Family Medicine and Psychiatry clinics and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 23, 1994, 10:51 a.m.

TRD-9438011

Thursday, March 31, 1994, 1:30 p.m.
Room 2B152, Health Sciences Center
Building, Campus
Lubbock

According to the complete agenda, the Campus and Building Committee/Board of Regents will approve February 1, 1994 committee meeting minutes. Consider: approval of the 1994-1995 traffic and parking regulations and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 23, 1994, 10:51 a.m.

TRD-9438012

Thursday, March 31, 1994, 2:00 p.m.
Room 2B152, Health Sciences Center
Building, Campus
Lubbock

According to the complete agenda, the Research Committee/Board of Regents will meet to discuss reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 23, 1994, 10:51 a.m.

TRD-9438013

Thursday, March 31, 1994, 2:15 p.m.
Room 2B152, Health Sciences Center
Building, Campus
Lubbock

According to the complete agenda, the Development Committee/Board of Regents will meet to discuss reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 23, 1994, 10:52 a.m.

TRD-9438014

Friday, April 1, 1994, 9:00 a.m.
Board Suite, Administration Building, Campus
Lubbock

According to the agenda summary, the Board of Regents will meet on to discuss reports and action on: minutes; president's report; academic, clinical and student affairs; finance and administration; campus and building; and development.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 23, 1994, 10:51 a.m.

TRD-9438009

Texas Department of Transportation

Thursday, March 31, 1994, 10:00 a.m.
200 East Riverside Drive, Room 101
Austin

According to the agenda summary, the Texas Transportation Commission will discuss delegations: Anderson and Henderson Counties; Ellis County; Nacogdoches County; and Brazos County. Approve minutes. Awards/recognition/resolutions. Discuss regional intermodal planning re: S.H. 130 (MoKan) and Austin's new municipal airport. Consider nominating section of U.S. 287 for national highway system. Contract awards/rejections/defaults/assignments/leases. Consider approval for Texas Turnpike Authority to transfer Jesse H. Jones Memorial Bridge in Harris County. Routine minute orders. District/division/special offices reports. Authorize revisions to 1994-1996 STIP. Authorize: MOU with Health and Human Services Commission; allocate discretionary funding and commission selected projects; and allocate \$16 funds for FY 94. Rulemaking: 43 TAC Chapter 1 and 31. Executive session and open comment period.

Contact: Diane L. Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: March 23, 1994, 2:35 p.m.

TRD-9438023

Texas Workers' Compensation Insurance Fund

Wednesday, March 30, 1994, 8:30 a.m.
Texas Workers' Compensation Insurance Fund, 100 Congress Avenue, Sixth Floor
Austin

According to the agenda summary, the Board of Directors will call to order; roll call; review and approval of the minutes of the February 24, 1994, board meeting; public participation; Audit Committee report; executive report; financial report; Finance Committee report; briefing on information technology; consideration of Public Education Program expansion through revised contract with Benson and Associates; consideration of deletion of obsolete language from Direct Marketing Policy regarding Facility Depopulation Procedures; executive session; action items resulting from executive session deliberations; announcements; and adjourn.

Contact: Beth Naylor, 100 Congress Avenue, Suite 300, Austin, Texas 78701, (512) 322-3886.

Filed: March 22, 1994, 4:36 p.m.

TRD-9437965

Wednesday, March 30, 1994, 1:00 p.m.
Four Seasons Hotel, 98 San Jacinto Boulevard
Austin

According to the agenda summary, the Board of Directors will discuss overview of insurance finance; review of the fund's organization and operations; review of planning and budget procedures; and discussion of strategic issues.

No formal action will be taken at the meeting.

Contact: Beth Naylor, 100 Congress Avenue, Suite 300, Austin, Texas 78701, (512) 322-3886.

Filed: March 22, 1994, 4:33 p.m.

TRD-9437964

Texas Council on Workforce and Economic Competitiveness

Thursday, April 7, 1994, 9:00 a.m.

Austin Convention Center, 500 East Cesar Chavez Street, Room 5C

Austin

According to the complete agenda, the Evaluation and Performance Committee will welcome and public comment; briefing item: other Human Resource Investment Council strategies for development of standards and measures; briefing item: guests speaker-the development of performance standards and measures that encompass all workforce programs; discussion item: proposed draft of measures; and adjourn. Note: after a lunch break the full council will convene from 1:30 p.m. to 4:00 p.m. to act on recommendations of the intervention and worker transition/local systems committees.

Notice: persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007, or Relay Texas (800) 735-2988, at least two days before this meeting so that appropriate arrangements can be made.

Contact: Alexa Ray, P.O. Box 2241, Austin, Texas 78768, (512) 305-7007.

Filed: March 24, 1994, 9:08 a.m.

TRD-9438076

Thursday, April 7, 1994, 10:00 a.m.
Austin Convention Center, Room 5B, 500 Cesar Chavez Street
Austin

According to the complete agenda, the Intervention Committee will call to order, announcements, public comment; action item: review and approval of JTPA Summer Youth Program Plans; briefing item: review of criteria for assessing state plans, summary of review process, and correspondence to Federal Agencies; action item: comments and approval of Governor's Coordination and Special Services plan (JTPA State Plan); action item: TCWEC review of and comments on Department of Human Services JOBS and Support Services State Plans; and adjourn. Note: after a lunch break, the full council will convene from 1:30 p. m. to 4:00 p.m. to act on recommendations of the intervention and worker transition/local systems committees.

Notice: persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007, or Relay Texas (800) 735-2988, at least two days before this meeting so that appropriate arrangements can be made.

Contact: Alexa Ray, P.O. Box 2241, Austin, Texas 78768, (512) 305-7007.

Filed: March 24, 1994, 9:08 a.m.

TRD-9438077

Thursday, April 7, 1994, 10:00 a.m.

Austin Convention Center, Room 5A, 500 East Cesar Chavez Street

Austin

According to the complete agenda, the Career Foundation Committee will call to order, announcements, public comment; briefing item: demonstration of the automated, computer and video career information delivery system (C.I.D.S.); and adjourn. Note: after a lunch break, the full council will convene from 1:30 p.m. to 4:00 p.m. to act on recommendations of the intervention and worker transition/local systems committees.

Notice: persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007, or Relay Texas (800) 735-2988, at least two days before this meeting so that appropriate arrangements can be made.

Contact: Alexa Ray, P.O. Box 2241, Austin, Texas 78768, (512) 305-7007.

Filed: March 24, 1994, 9:08 a.m.

TRD-9438078

Thursday, April 7, 1994, 10:00 a.m.

Austin Convention Center, Room 4C, 500 East Cesar Chavez Street

Austin

According to the complete agenda, the Worker Transition/Local Systems Committee will call to order, announcements, public comment; briefing item: review of criteria for assessing state plans, summary of review process and correspondence to federal agencies; action item: JTPA disclosed worker state program plan; action item: Wagner-Peyser/State Employment Service plan; and adjourn. Note: after a lunch break, the full council will convene from 1:30 p. m. to 4:00 p.m. to act on recommendations of the intervention and worker transition/local systems committees.

Notice: persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007, or Relay Texas (800) 735-2988, at least two days before this meeting so that appropriate arrangements can be made.

Contact: Alexa Ray, P.O. Box 2241, Austin, Texas 78768, (512) 305-7007.

Filed: March 24, 1994, 9:08 a.m.

TRD-9438079

Thursday, April 7, 1994, 1:30 p.m.

Austin Convention Center, Room 9C, 500 East Cesar Chavez Street

Austin

According to the complete agenda, the Full Council will call to order, approval of minutes, public comment; briefing and discussion: general approach to review of state and local plans and accompanying correspondence from council and the Governor; report from committee chair and ratification of the following action items from the career foundation committee March 3 meeting: state plan for vocational education; split of Carl Perkins funds between secondary and post secondary education; report from intervention committee and consideration of the following action items: JTPA Governor's coordination and special services plan; JTPA Summer Youth program local plans; department of Human Services JOBS and support services plan; report from the worker transition/local systems committee and consideration of the following action items: JTPA Dislocated Worker State Program plan; Wagner-Peyser State Employment Service Plans; and adjourn.

Notice: persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007, or Relay Texas (800) 735-2988, at least two days before this meeting so that appropriate arrangements can be made.

Contact: Alexa Ray, P.O. Box 2241, Austin, Texas 78768, (512) 305-7007.

Filed: March 24, 1994, 9:08 a.m.

TRD-9438080

Regional Meetings

Meetings Filed March 22, 1994

The East Texas Council of Governments Board of Directors will meet at the Jefferson High School Cafeteria, Jefferson, March 31, 1994, at 7:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9437936.

The Tarrant Appraisal District Review Board will meet at 2329 Gravel Road, Fort Worth, March 29, 1994, at 9:30 a.m. Information may be obtained from Suzanne Williams, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9437953.

The West Central Texas Council of Governments Private Industry Council will meet at 1025 EN Tenth Street, Abilene, April 7, 1994, at 10:00 a.m. Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9437950.

The Wood County Appraisal District (Emergency Meeting.) Review Board met in the Conference Room, Wood County Appraisal District, 217 North Main, Quitman, March 25, 1994, at 9:00 a.m. (Reason for emergency: To correct an appraisal record that had been duplicated.) Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas, 75783-0518, (903) 763-4891. TRD-9437937.

Meetings Filed March 23, 1994

The Austin-Travis County MHMR Center (Emergency Revised Agenda. Rescheduled from Thursday, March 24, 1994, 8:00 a.m.) Board of Trustees met in the Board Room, 1430 Collier Street, Austin, March 24, 1994, at 7:30 a.m. (Reason for emergency: Item added to agenda that needed immediate board action and meeting needed to be changed from 8:00 a.m. to 7:30 a.m.) Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548. TRD-9438001.

The Education Service Center, Region XIII Board of Directors met in the Board Room, #205, Education Service Center, Region XIII, 5701 Springdale Road, Austin, March 28, 1994, at 12:30 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1500. TRD-9437977.

The Edwards County Appraisal District Board of Directors will meet at the County Annex Building, Rocksprings, March 31, 1994, at 10:00 a.m. Information may be obtained from Natalie Pruitt, P.O. Box 378, Rocksprings, Texas 78880, (210) 683-4189. TRD-9438022.

The Leon County Central Appraisal District Board of Directors met at the Leon County Central Appraisal District Office, Centerville, March 28, 1994, at 7:00 p.m. Information may be obtained from Donald G. Gillum, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9438015.

The Texas Panhandle Mental Health Authority Board of Trustees, TPMHA will meet at 7201 I-40, West Second Floor, Amarillo, March 31, 1994, at 10:30 a.m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116, (806) 353-3699. TRD-9438026.

The Permian Basin Regulation Planning Commission Private Industry Council will

meet at the UTPB-CEED, FM 1788 and 191, Midland, March 30, 1994, at 3:30 p.m. Information may be obtained from Carole Burrow, P.O. Box 60660, Midland, Texas 79711-0660, (915) 563-1061. TRD-9437978.

The Southwest Milam Water Supply Corporation Board met at 114 East Cameron Street, Rockdale, March 28, 1994, at 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76567, (512) 446-2604. TRD-9437968.



Meetings Filed March 24, 1994

The Ark-Tex Council of Governments Board will meet at Hot Biscuit, Mt. Pleasant, March 31, 1994, at 5:30 p.m. Information may be obtained from Pam Plummer, P.O. Box 5307, Texarkana, Texas 75505-5307, (903) 832-8636. TRD-9438081.

The Johnson County Rural Water Supply Corporation Insurance Committee will meet at JCRWSC Office, Highway 171 South Cleburne, March 29, 1994, at 10:00 a.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9438083.

The Lubbock Regional MHMR Center Resource and Program Committees Worksession met at 1602 10th Street, Lubbock, March 28, 1994, at 11:00 a.m. Information may be obtained from Gene Menefee, 1602 10th Street, Lubbock, Texas 79401, (806) 766-0202. TRD-9438065.

The Lubbock Regional MHMR Center Board of Trustees met at 1602 10th Street, Lubbock, March 28, 1994, at Noon. Information may be obtained from Gene Menefee, 1602 10th Street, Lubbock, Texas 79401, (806) 766-0202. TRD-9438064.



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission on Alcohol and Drug Abuse

Consultant Services Contract Award

The following consultant contract (#517-4-1476) award is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The consultant request was published in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9863).

The contractor will conduct evaluations of a small number of substance abuse treatment programs funded by the Texas Commission on Alcohol and Drug Abuse. The consultant will supervise the collection of intake, in-treatment, and post-discharge data.

The contractor is: Treatment Research Institute, 3600 Market Street, Suite 846, Philadelphia, Pennsylvania 19104-2648.

The total value of the contract is \$55,999.00. The contract starts March 16, 1994, and ends August 31, 1995.

Issued in Austin, Texas, on March 21, 1994.

TRD-9437925

David P. Tatum
Interim Executive Director
Texas Commission on Alcohol and Drug
Abuse

Filed: March 22, 1994

Texas Education Agency RFA #701-94-015

This request for applications is filed under the Adult Education Act, Public Law (P.L.) 91-230, as amended by the National Literacy Act of 1991, P.L. 102-73, for adult education special projects.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications (RFA #701-94-015) from school districts, education service centers, correctional education agencies, community-based organizations, public or private nonprofit agencies, postsecondary education institutions, institutions that serve educationally disadvantaged adults, and any other institutions that have the ability to provide literacy services to adults and their families.

Description. TEA will fund projects on a competitive basis in the following categories.

Adult education through technology projects. This category of projects will provide seed money for innovative delivery of adult education instruction through technology and will include hardware, media, instruction materials/software, and/or training necessary for implementation

of technology programs. Applicants will be required to contribute to the research information regarding the effectiveness, including the cost effectiveness, or technology delivery of instruction to adults. The total amount available is \$185,000.

Collaboration in serving the same client demonstration project. This proposed two-year initiative will focus on developing a management approach to providing adult education and other human service needs of adult students, and will improve services to adults perceived as hard to service by providing an education and support services continuum. Through coordination and collaboration among providers, the project will define respective responsibilities for the same client to improve access and remove barriers. The total amount for this project is \$185,000.

Work force literacy partnerships. This category of projects will fund work for force literacy partnership implementation projects between adult education and literacy grant recipients and the private sector. Applicants will be required to describe the proposed partnership and the specific project roles each partner will play in the project. Development of a job-related basic skills curriculum is the expected product of these projects. The total amount available is \$150,000.

Adult education and outreach project. This two-year project will develop public information materials on the status of adult literacy in Texas and promote literacy activities to targeted populations through media public service announcements, including video, reports, brochures, and the development of a statewide outreach guide. The project will provide training for local adult education and literacy service providers that demonstrate ways to use public information materials, including message for special populations. The total amount available for this project is \$125,000.

Competency-based high school diploma project. This project will expand the capacity of adult education and literacy service providers to offer a competency-based high school diploma (CBHSD) program for adults. Project activities will include reviewing the existing CBHSD model for adult students so the adults meet the same graduation standards, including work place basic skills, as enrolled high school youth. The total amount available for this project is \$65,000.

Dates of Projects. Applicants should plan for a starting date of no earlier than July 1, 1994, and an ending date no later than June 30, 1995. Second year funding for the proposed two-year initiative will be contingent on satisfactory completion of first two-year project objectives.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the request for application. The TEA reserves

the right to select from the highest ranking applications those that address all requirements in the request for application.

The TEA is under no obligation to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs incurred before the approval of an application. The issuance of this RFA in no way obligates TEA to award a grant or to pay any costs incurred in the preparation of a response.

Requesting the Application. A copy of the complete request for application (RFA #701-94-015) may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about the request for application, contact Dr. Deborah Stedman or Dr. Dennis Harrison, Division of Adult and Community Education, Texas Education Agency, (512) 463-9294.

Deadline for Receipt of Applications. The deadline for receiving an application in the Document Control Center of the Texas Education Agency is 5:00 p.m., Friday, April 29, 1994.

Issued in Austin, Texas, on March 23, 1994.

TRD-9437998

Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: March 23, 1994

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Texas Department of Health

Notices of Emergency Cease and Desist Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered William J. Lawhorn, D.D.S. (registrant-R09816) of Dallas to cease and desist using the Siemens dental x-ray unit (serial number 7419) and the Weber dental x-ray units (serial numbers 6R8765 and 2571) until all the health-related violations found during a recent inspection of the facility have been corrected. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct these violations and the methods used to prevent their recurrence.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on March 22, 1994.

TRD-9437969

Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: March 23, 1994

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Cy-Fair Medical Clinic (registrant-R14471) of Houston to cease and desist from operating any source of radiation for the purpose of performing diagnostic x-ray examinations on patients until all the health-related violations found during a recent inspection of the facility have been corrected. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct these violations and the methods used to prevent their recurrence.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on March 22, 1994.

TRD-9437973

Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: March 23, 1994

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Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Richard E. Burt, D.D.S. (registrant-R05311) of Richardson to cease and desist using the Philips dental x-ray units in Rooms 2 and 3 until entrance exposure limits for dental x-ray procedures are brought within regulatory limits. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct these violations and the methods used to prevent their recurrence.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on March 22, 1994.

TRD-9437974

Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: March 23, 1994

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Notices of Rescission of Orders

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Cease and Desist and Impoundment Order and Notices of Violation issued September 16, 1993, to West Mockingbird Clinic, 7203 John Carpenter Freeway, Dallas, Texas 75247, holder of Certificate of Registration Number R16890.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on March 22, 1994.

TRD-9437970 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: March 23, 1994



Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following orders: Emergency Cease and Desist Order and Notice of Violation issued December 29, 1992, to Bernard J. Hersh, D.P.M., 707 North Zang Boulevard, Dallas, Texas 75208, holder of Certificate of Registration Number R04714; and Emergency Cease and Desist Order and Notice of Violation issued January 7, 1994, to Robert M. Anderton, D. D.S., 1909 Walnut Avenue Plaza, Carrollton, Texas 75006, holder of Certificate of Registration Number R18968.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on March 22, 1994.

TRD-9437975 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: March 23, 1994



Sexual Assault Prevention and Crisis Services Funding

The Texas Department of Health (department) is accepting letters of intent to apply for Sexual Assault Prevention and Crisis Services funding under the Preventive Health and Health Services block grant and state funds. Funds will be available October 1, 1994.

Eligible entries who send letters of intent will receive application kits consisting of materials pertinent to submitting an application. An eligible entity is a sexual assault program which has been providing service on or before January 1, 1994.

The program must provide a 24-hour hotline, advocacy and accompaniment, liaison, professional training and public education.

Letters of intent to apply for funds should be sent by April 30, 1994, to Cecelia McKenzie, Program Administrator, Sexual Assault Prevention and Crisis Services, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 834-6700. Applications will be due on or before June 15, 1994, at 5:00 p.m.

Issued in Austin, Texas, on March 22, 1994.

TRD-9437971 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: March 23, 1994



Texas Department of Health Schedule for Development and Review of Block Grant Funds

Under the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), the State of Texas became the recipient of the Maternal and Child Health Services (MCHS) and the Preventive Health and Health Services (PHHS) Block Grants. The Texas Department of Health (department) is the agency designated to administer these block grants. Provisions in the Act require the chief executive officer of each state to annually furnish the Secretary of Health and Human Services a description of the intended use of block grant funds in advance of each federal fiscal year (FFY). This description is to be made public within each state in such a manner as to facilitate comments and/or any complaints regarding the quality of services funded by the block grants. Additionally, the Interagency Council (IAC) for Genetic Services will be soliciting public comment for consideration in developing its biennial resource allocation plan which recommends allocation of public funds, both MCHS Block Grant and state, for genetic services.

Programs included in the MCHS Block Grant include maternal and child health services, services for children with special health care needs, and other special projects that are a part of the state's maternal and child health services. The award for FFY 1993 was \$34,951,877. Funding for FFY 1994 increased to \$36,586,740.

The PHHS Block Grant previously funded five departmental program areas: public health promotion, emergency medical services systems, sexual assault prevention and crisis services, fluoridation, and preventive health and health incentive. The grant can now be used to support additional public health activity as a result of the passage and signing of the Preventive Health Amendments of 1992. New federal regulations specify that block grant monies can be expended for "activities consistent with making progress toward achieving the objectives established by the year 2000 health objectives." The PHHS Block Grant award for FFY 1993 was \$6,074,094. Of this amount, \$470,007 was required to be used for sexual assault prevention and crisis services. Funding for FFY 1994 increased to \$6,421,210 and, of this amount, \$470,007 is the required set-aside for funding sexual assault prevention and crisis services.

The department developed the following schedule for the development and review of the FFY 1995 Application for MCHS Block Grant and the FFY 1995 State Plan for the PHHS Block Grant: In April of 1994, the department will hold public hearings/roundtable discussions in four public health regions (PHR): from 4:00-7:00 p.m., Tuesday, April 12, 1994, at Public Health Region 7, 2408 South 37th Street, Temple, Texas; from 8:00 a.m.-4:30 p.m., Tuesday, April 19, 1994, Public Health Region 11, Texas Department of Human Services, 600 South Bicentennial, McAllen, Texas; from 8:00 a.m.-4:30 p.m., Tuesday, April 26, 1994, Public Health Region 9 and 10, United Way of Concho Valley, Inc., 955 Turner, San Angelo, Texas; and from 8:00 a.m.-4:30 p.m., and from 6:30-8:30 p.m., Thursday, April 28, 1994, Public Health Region 4 and 5 North, Regional Training and Development Complex, Room 124, 1530 SSW Loop 323, Tyler, Texas.

Following these meetings, the department will summarize and consider the impact of the public comments received. The department will then notify the public of the availabil-

ity of published summaries of these meetings. In June of 1994, the department will prepare the final 1995 Application for MCHS Block Grant funds and State Plan for the PHHS Block Grant and forward grant applications and materials to the governor, state legislature, and federal government.

Please note that the department will continuously conduct activities to inform recipients of the availability of services/benefits, the rules and eligibility requirements, and complaint procedures. Written comments regarding the MCHS Block Grant may be submitted through April 29, 1994, to Patti J. Patterson, M.D., Chief, Bureau of Women and Children, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Comments directed toward the PHHS Block Grant may be submitted through April 29, 1994, to Dora McDonald, Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Written comments regarding the genetics resource allocation plan may be submitted through April 29, 1994 to Joseph D. Martinec, J.D., Chairman, Interagency Council for Genetic Services, in care of Bureau of Women and Children, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199.

Issued in Austin, Texas, on March 22, 1994.

TRD-9437972 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed March 23, 1994

◆ ◆ ◆
Texas Department of Insurance
Company License

The following applications have been filed with the Texas Department of Insurance and are under consideration:

1. Application for name change in Texas for Liberty National Fire Insurance Company, a foreign fire and casualty company. The proposed new name is Vesta Fire Insurance Corporation. The home office is in Birmingham, Alabama.
2. Application for admission in Texas for International Guaranty Insurance Corporation, a foreign fire and casualty company. The home office is in Richmond, Virginia.
3. Application for name and home office change for American Managed Care, Inc., a third party administrator. The proposed new name is NHS Coordinated Care, Inc. and the new home office is in Reno, Nevada.
4. Application for name change in Texas for American Royal Reinsurance Company, a foreign fire and casualty company. The proposed new name is Sydney Reinsurance Corporation. The home office is in Philadelphia, Pennsylvania.

Issued in Austin, Texas, on March 23, 1994.

TRD-9437985 Linda K von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed March 23, 1994

Legislative Budget Board
Budget Execution Proposal

Pursuant to Texas Government Code, §317.002(b)(2), relating to budget execution authority. I make the following budget execution proposal:

The Texas Department of Criminal Justice requests authority to expend funds appropriated for an additional purpose. Appropriations made to the Department relating to capital budget items will be affected.

I find that the significant increase in the backlog of offenders confined in the county jails awaiting transfer to state prisons, now numbering in excess of 28,000, creates an emergency requiring the construction of 15,000 additional prison beds and the acceleration of 6,000 state jail beds.

I therefore propose that during the 1994-1995 biennium, the Department may have full transferability within the total amount of its capital budget rider provided in the General Appropriations Act (Acts of the 73rd Legislature, Regular Session, 1993) for the projects necessary to meet this emergency.

Ann Richards, Governor of Texas

Bob Bullock, Lt. Governor

Pete Laney, Speaker of the House

I certify that this Budget Execution Proposal was adopted by the Legislative Budget Board on March 14, 1994 by the following vote: On the part of the Senate, Yeas: 4, Nays: 0. On the part of the House Yeas: 4, Nays: 0.

Issued in Austin, Texas, on March 1, 1994.

TRD-9437567 Jim Oliver
Director
Legislative Budget Board

Filed March 14, 1994

◆ ◆ ◆
Texas Department of Mental Health
and Mental Retardation

Notice of Opportunity for Public
Testimony to the Authority/Provider
Task Force

The Authority/Provider Task Force, an advisory group to the Board of the Texas Department of Mental Health and Mental Retardation, will meet on Tuesday, April 5, 1994, at 3:30 p.m. in the TXMHMR Central Office Auditorium, 909 West 45th Street, Austin, to solicit public testimony concerning issues related to the role of state and local mental health and mental retardation authorities. This task force has been formed to explore the issues relating to organizing, financing, and delivering mental health and mental retardation services and to make recommendations to the Commissioner and the Board about changes needed to ensure that TXMHMR can implement the mental health and mental retardation authority role in a way which supports our vision for the future. Testimony is invited to address the following issues: definition of the functions and responsibilities of TDMHMR as a state mental health and mental retardation authority; the distinction between TDMHMR being an authority and a provider of services and how we reconcile, implement, and measure the ac-

countability of these two functions; the delegation of this authority to the regional (or local) level; the relationship we should have with the private sector; and possible roles that the state mental health and mental retardation authority should have under various scenarios of health care reform. The Task Force will also accept written testimony in lieu of or in addition to verbal testimony. Individuals requiring an interpreter for the hearing impaired should contact Charlotte Quiter at (512) 206-4698 at least 72 hours prior to the hearing.

Issued in Austin, Texas, on March 20, 1994.

TRD-9437928

Linda Logan
Director, Policy Development
Texas Department of Mental Health and
Mental Retardation

Filed: March 22, 1994

Texas Natural Resource Conservation Commission

Notice of Opportunity to Comment on Administrative Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Clean Air Act, §382.096, Health and Safety Code, Chapter 382. The Act, §382.096, requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is April 27, 1994. Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Clean Air Act. Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, Third Floor, Austin, Texas 78753, (512) 239-0600 and at the following applicable Regional Office listed. Written comments about these AOs should be sent to the Staff Attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on April 27, 1994. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 239-0606 or (512) 239-0626. The TNRCC Staff Attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the AOs should be submitted to the TNRCC in writing.

Company: Allan Products, Incorporated, Location: Garland, Dallas County, Type of Facility: woodworking plant, Rule Violated: TNRCC Rule 30 TAC §116.115, TNRCC Rule 30 TAC §116.114(a), and Agreed Board Order Number 88-05(c), failing to comply with maximum allowable emission rates in Permit Number S-18710, as well as with representations in the application for that permit; Penalty: \$3,650, Staff Attorney: Walter Ehresman, (512)

239-0573, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

Company: Brass Craft Western Company, Location: Lancaster, Dallas County, Type of Facility: plumbing supply manufacturing plant, Rule Violated: TNRCC Rule 30 TAC §116.110(a), unauthorized construction of a chromium plating line without first obtaining a permit or qualifying for a standard exemption; Penalty: \$0, Staff Attorney: Rachael Rawlins, (512) 239-0673, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

Company: Buckholts Farmers Gin, Location: Buckholts, Milam County, Type of Facility: cotton gin, Rule Violated: TNRCC Rule 30 TAC §101.4, nuisance level air contaminant emissions; and TNRCC Rule 30 TAC §116.110, operating a gin stand without first obtaining a permit or qualifying for a standard exemption; Penalty: \$4,000, Staff Attorney: Walter Ehresman, (512) 239-0573, Regional Office: 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240.

Company: C & S Woodcrafters, Inc., Location: Sansom Park, Tarrant County, Type of Facility: woodworking plant, Rule Violated: TNRCC Rule 30 TAC §101.4, nuisance level air contaminant emissions; Penalty: \$9,000, Staff Attorney: Peter T. Gregg, (512) 239-0450, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

Company: D & R Metal Finishing, Location: Houston, Harris County, Type of Facility: metal finishing facility, Rule Violated: TNRCC Rule 30 TAC §116.115, Special Provision 2 of TNRCC Permit Number S-18193, failing to provide production and operation records upon investigator's request, and Special Provision 5 of TNRCC Permit Number S-18193, failing to conduct inside sandblasting in a totally enclosed building; Penalty: \$2,000, Staff Attorney: Peter T. Gregg, (512) 239-0450, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Company: Magnablend, Incorporated, Location: Waxahachie, Ellis County, Type of Facility: chemical blending facility, Rule Violated: TNRCC Rule 30 TAC §116.110(a), unauthorized construction of an anhydrous ammonia tank without first obtaining a permit or qualifying for a standard exemption; Penalty: \$0, Staff Attorney: Rachael Rawlins, (512) 239-0673, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

Company: Mark Elliott Autos, Location: Killeen, Bell County, Type of Facility: automobile sales lot, Rule Violated: TNRCC Rule 30 TAC §114.1(c)(1), offering for sale in the State of Texas motor vehicles with missing or inoperable emission control systems or devices with which the motor vehicle was originally equipped; TNRCC Rule 30 TAC §114.1(c)(3), failing to display a bulletin concerning the anti-tampering regulations; Penalty: \$0, Staff Attorney: Terry Salem, (512) 239-0469, Regional Office: 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240.

Company: Mayfield Concrete, Inc., Location: Greenville, Hunt County, Type of Facility: concrete batch plant, Rule Violated: TNRCC Rule 30 TAC §116.115, violating a permit condition requiring the Company to properly maintain and operate all air pollution control equipment and emitting excessive dust emissions, violating a permit condition requiring the Company to submit documentation to

the Air Program Manager which demonstrates facility is in compliance with provisions of Permit Number 3066D, and violating a permit condition requiring the Company to install water sprays on transfer points of aggregate conveyors, and violating a permit provision requiring the Company to have a copy of the permit on site; Penalty: \$1,500, Staff Attorney: Peter T. Gregg, (512) 239-0450, Regional Office 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

Company: Naim Nemry, Location: Houston, Harris County, Type of Facility: property at which a metal structure and service and automotive repair station was demolished, Rule Violated TNRCC Rule 30 TAC §101.20(2), failure to perform an asbestos survey prior to demolition, and failure to submit the required ten-day notification prior to demolition; Penalty: \$0, Staff Attorney: Walter Ehresman, (512) 239-0573, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Company Springtown Truck Sales, Location: Springtown, Parker County, Type of Facility: motor vehicle sales operation, Rule Violated TNRCC Rule 30 TAC §114 1(c) offering for sale in the State of Texas motor vehicles which were not equipped with the emission control systems or devices with which the motor vehicles were originally equipped, Penalty: \$1,000, Staff Attorney: Janis Boyd Hudson, (512) 239-0466, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531

Company: Transit Mix Concrete & Materials Company, Location Waco, McLennan County, Type of Facility: concrete batch plant, Rule Violated: TNRCC Rule 30 TAC §116.115 and §116.211, failing to vent the cement weigh hopper to a control device which eliminates visible emissions, Penalty \$1,000, Staff Attorney: Janis Boyd Hudson, (512) 239-0466, Regional Office. 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240.

Issued in Austin, Texas, on March 23, 1994.

TRD-9437966 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed March 23, 1994

Public Hearing Notice

The Texas Natural Resource Conservation Commission will conduct a public hearing beginning at 5.00 p.m., May 17, 1994, City of Baytown, Community Center, Pecan Room, 2407 Market Street, Baytown, Texas

This hearing is scheduled to receive testimony concerning the waste load evaluation report for Dissolved Oxygen in Cedar Bayou in the Trinity-San Jacinto Coastal Basin (Segments 0901 and 0902) The public hearing shall be conducted in accordance with the Texas Water Code, §26.011 and §26.037

The primary purpose of a waste load evaluation is to define treatment levels for wastewater dischargers to a segment and specify other program actions that need to be taken in order to attain and maintain the water quality standards, describe nonpoint source pollution from areas tributary to a segment, and identify treatment level alternatives using receiving stream water quality simulations. A section containing recommended treatment levels and other proposed recommended actions is also included.

The public is encouraged to attend the hearing and to present relevant evidence or opinions concerning the waste load evaluation. Written testimony which is submitted prior to or during the public hearing will be included in the record. The Commission would appreciate receiving a copy of all written testimony at least five days before the hearing. Copies of written testimony and questions concerning the public hearing should be addressed to Mark Rudolph, TNRCC, Watershed Management Division, P.O. Box 13087, Austin, Texas 78711, or call (512) 475-2213.

A limited number of copies of the draft waste load evaluation are available for review in the TNRCC Library, Park 35 Complex, Building A, Room 102, 120100 Park 35 Circle in Austin. A copy of the report may be obtained upon written request from Mark Rudolph at the previously mentioned post office box address. There are no charges for the pre-hearing draft copies of the waste load evaluation; however, a fee will be charged for the finalized post-hearing copies.

The date selected for this hearing is intended to comply with deadlines set by statute and regulation. Any publication or receipt of this notice less than 45 calendar days prior to the hearing date is due to the necessity of scheduling the hearing on the date selected.

Issued in Austin, Texas, on March 23, 1994.

TRD-9437967 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed. March 23, 1994

North Central Texas Council of Governments

Notice of Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the January 25, 1994, issue of the *Texas Register* (19 TexReg 547). The consultant is to conduct a Service Analysis and Development Plan for the Forth Worth Transportation Authority.

The consultant selected to conduct the study is LKC Consulting Services, 5002 Morningside, Houston, Texas 77005. The maximum amount of the contract is \$99,992. The contract began March 16, 1994, and will terminate in approximately seven months.

At the conclusion of the project, the consultant will prepare a final report describing the study purpose, recommendations from each task, methods, procedures, and final recommendations.

Issued in Arlington, Texas, on March 16, 1994.

TRD-9437881 Mike Eastland
Executive Director
North Central Texas Council of
Governments

Filed: March 21, 1994

Texas Water Development Board
Notice of Hearing to Receive Comments
on Board Goals

A representative of the Texas Water Development Board (Board) will hold a hearing on Thursday, April 14, 1994 at 10:00 a.m. in Room 513F of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas, to receive comments on the Board's proposed functional goals printed here in entirety. The goals are part of the draft strategic plan. When adopted, the plan will be utilized as a management tool to guide the Board in managing its resources. Comments also may be submitted in writing by 5:00 p.m. on April 14, 1994 to Leslie Tugman, Deputy Executive Administrator for Administration and Support Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711, (512) 463-0982.

GOAL 1: Plan and guide the conservation, orderly and cost-effective development, and best management of the State's water resources for the benefit of all Texans.

OBJECTIVE 1: Collect, analyze, and disseminate current state water planning information for 53% of Texas water resource needs by 1998 to aid communities in planning for water supplies and water-related infrastructure and also to assist the Legislature with recommendations for enacting policies that improve water management.

STRATEGY 1: Operate a statewide data collection and water resources evaluation program that provides information adequate to conduct planning assessments of current and future water resource needs.

STRATEGY 2: Update Texas Water Plan information every two years based on significantly changed demographic, economic, or other water-related conditions involving key water interests and the general public in the planning process to seek to increase the acceptance of the Plan data and conclusions.

STRATEGY 3: Operate TNRIS to facilitate cost-effective information integrating and sharing among natural resource agencies and the public.

OBJECTIVE 2: Provide annually 10% of Texas communities with technical and financial assistance for water conservation and for planning, maintaining, and operating water related infrastructure by 1998.

STRATEGY 1: Develop regional plans for areas of the state which lack long-term water supplies, adequate wastewater treatment or flood protection.

STRATEGY 2: Provide water conservation and other technical and financial assistance to Texas communities to promote increase water use efficiency and improve water systems operations.

STRATEGY 3: Provide technical and financial assistance to Texas communities in conducting multi-regional, multi-year, detailed water-supply and wastewater studies.

GOAL 2: Provide Texas citizens with reasonably-priced, long-term water supplies of sufficient quality and quantity to meet human and environmental needs, proper waste treatment to maintain or enhance the natural environment, and flood management for protection of life and property.

OBJECTIVE 1: Provide TWDB financing to 34% of Texas communities constructing needed water and wastewater related infrastructure by August 31, 1995.

STRATEGY 1: Provide financial assistance to save Texas communities money for water supply, wastewater treatment, flood protection.

STRATEGY 2: Provide special financial assistance for colonia and other economically distressed area residents so they will have access to adequate water supplies or wastewater treatment systems.

STRATEGY 3: Provide financial assistance to small communities (under 5,000) with high per capita cost for needed water and wastewater facilities.

STRATEGY 4: Make state financial ownership investments (state participation) in water and wastewater systems to promote and construct regional systems.

GOAL 3: Develop and implement practices, policies and procedures which encourage, promote and provide opportunities for the participation and inclusion of Historically Underutilized Business in the Board's activities.

OBJECTIVE 1: Achieve HUB participation in at least 30% of the total value of contract awards for the purchase of supplies, materials, services, and equipment.

STRATEGY: Achieve HUB participation of at least 30% of the total value for the contract awards for goods and services by 1996.

OBJECTIVE 2: Provide opportunities to HUB firms for participation in at least 30% of the fees paid for sale of bonds by the TWDB.

STRATEGY: Achieve at least 30% participation by HUB firms throughout the bond issuance and distribution process.

GOAL 4: Create an environment throughout the organization that maximizes the productivity and effectiveness of the agency with regard to both internal and external customers, rewards, recognizes, and/or promotes high performing employees and employee teams, and establishes a workforce reflective of the state's demographic diversity.

OBJECTIVE 1: Provide a level of service rated as satisfactory or higher by 95% of the Board's customers by January 1, 1997.

STRATEGY 1: Measure, evaluate, and continuously improve processes affecting external customer satisfaction.

STRATEGY 2: Measure, evaluate, and continuously improve processes affecting internal customer satisfaction.

STRATEGY 3: Communicate regularly with all employees.

OBJECTIVE 2: Establish a qualified work force that reflects the demographic diversity of the state.

STRATEGY 1: Recruit qualified candidates to ensure a demographically diverse workforce.

STRATEGY 2: Retain high performing employees to ensure a demographically diverse workforce.

STRATEGY 3: Maintain and continuously improve summer intern and cooperative education programs.

OBJECTIVE 3: Continuously improve processes and procedures to reward, recognize and promote high performing employees and teams.

STRATEGY 1: Create and continuously improve a system of rewards and recognition for high performing employees and teams.

STRATEGY 2: Create and continuously improve a system to promote, where appropriate, high performing employees and teams.

Issued in Austin, Texas, on March 23, 1994.

**TRD-9437999 Suzanne Schwartz
 General Counsel
 Texas Water Development Board**

Filed: March 23, 1994



1994 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on March 11, July 22, November 11, and November 29. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Tuesday, January 4	Wednesday, December 29	Thursday, December 30
2 Friday, January 7	Monday, January 3	Tuesday, January 4
3 Tuesday, January 11	Wednesday, January 5	Thursday, January 6
4 Friday, January 14	Monday, January 10	Tuesday, January 11
5 Tuesday, January 18	Wednesday, January 12	Thursday, January 13
Friday, January 21	1993 ANNUAL INDEX	
6 Tuesday, January 25	Wednesday, January 19	Thursday, January 20
7 Friday, January 28	Monday, January 24	Tuesday, January 25
8 Tuesday, February 1	Wednesday, January 26	Thursday, January 27
9 Friday, February 4	Monday, January 31	Tuesday, February 1
10 Tuesday, February 8	Wednesday, February 2	Thursday, February 3
11 Friday, February 11	Monday, February 7	Tuesday, February 8
12 Tuesday, February 15	Wednesday, February 9	Thursday, February 10
13 Friday, February 18	Monday, February 14	Tuesday, February 15
14 Tuesday, February 22	Wednesday, February 16	Thursday, February 17
15 *Friday, February 25	Friday, February 18	Tuesday, February 22
16 Tuesday, March 1	Wednesday, February 23	Thursday, February 24
17 Friday, March 4	Monday, February 28	Tuesday, March 1
18 Tuesday, March 8	Wednesday, March 2	Thursday, March 3
Friday, March 11	NO ISSUE PUBLISHED	
19 Tuesday, March 15	Wednesday, March 9	Thursday, March 10
20 Friday, March 18	Monday, March 14	Tuesday, March 15
21 Tuesday, March 23	Wednesday, March 16	Thursday, March 17
22 Friday, March 25	Monday, March 21	Tuesday, March 22
23 Tuesday, March 29	Wednesday, March 23	Thursday, March 24
24 Friday, April 1	Monday, March 28	Tuesday, March 29
25 Tuesday, April 5	Wednesday, March 30	Thursday, March 31
26 Friday, April 8	Monday, April 4	Tuesday, April 5
27 Tuesday, April 12	Wednesday, April 6	Thursday, April 7
Friday, April 15	FIRST QUARTERLY INDEX	
28 Tuesday, April 19	Wednesday, April 13	Thursday, April 14

29 Friday, April 22	Monday, April 18	Tuesday, April 19
30 Tuesday, April 26	Wednesday, April 20	Thursday, April 21
31 Friday, April 29	Monday, April 25	Tuesday, April 26
32 Tuesday, May 3	Wednesday, April 27	Thursday, April 28
33 Friday, May 6	Monday, May 2	Tuesday, May 3
34 Tuesday, May 10	Wednesday, May 4	Thursday, May 5
35 Friday, May 13	Monday, May 9	Tuesday, May 10
36 Tuesday, May 18	Wednesday, May 11	Thursday, May 12
37 Friday, May 20	Monday, May 16	Tuesday, May 17
38 Tuesday, May 24	Wednesday, May 18	Thursday, May 29
39 Friday, May 27	Monday, May 23	Tuesday, May 24
40 Tuesday, May 31	Wednesday, May 25	Thursday, May 26
41 *Friday, June 3	Friday, May 27	Tuesday, May 31
42 Tuesday, June 7	Wednesday, June 1	Thursday, June 2
43 Friday, June 10	Monday, June 6	Tuesday, June 7
44 Tuesday, June 14	Wednesday, June 8	Thursday, June 9
45 Friday, June 17	Monday, June 13	Tuesday, June 14
46 Tuesday, June 21	Wednesday, June 15	Thursday, June 16
47 Friday, June 24	Monday, June 20	Tuesday, June 21
48 Tuesday, June 28	Wednesday, June 22	Thursday, June 23
49 Friday, July 1	Monday, June 27	Tuesday, June 28
50 Tuesday, July 6	Wednesday, June 29	Thursday, June 30
51 *Friday, July 8	Friday, July 1	Tuesday, July 5
Tuesday, July 12	SECOND QUARTERLY INDEX	
52 Friday, July 15	Monday, July 11	Tuesday, July 12
53 Tuesday, July 19	Wednesday, July 13	Thursday, July 14
Friday, July 22	NO ISSUE PUBLISHED	
54 Tuesday, July 26	Wednesday, July 20	Thursday, July 21
55 Friday, July 29	Monday, July 25	Tuesday, July 26
56 Tuesday, August 2	Wednesday, July 27	Thursday, July 28
57 Friday, August 5	Monday, August 1	Tuesday, August 2
58 Tuesday, August 9	Wednesday, August 3	Thursday, August 4
59 Friday, August 12	Monday, August 8	Tuesday, August 9
60 Tuesday, August 16	Wednesday, August 10	Thursday, August 11
61 Friday, August 19	Monday, August 15	Tuesday, August 16
62 Tuesday, August 23	Wednesday, August 17	Thursday, August 18
63 Friday, August 26	Monday, August 22	Tuesday, August 23
64 Tuesday, August 30	Wednesday, August 24	Thursday, August 25
65 Friday, September 2	Monday, August 29	Tuesday, August 30
66 Tuesday, September 6	Wednesday, August 31	Thursday, September 1
67 *Friday, September 9	Friday, September 2	Tuesday, September 6

68 Tuesday, September 13	Wednesday, September 7	Thursday, September 8
69 Friday, September 16	Monday, September 12	Tuesday, September 13
70 Tuesday, September 20	Wednesday, September 14	Thursday, September 15
71 Friday, September 23	Monday, September 19	Tuesday, September 20
72 Tuesday, September 27	Wednesday, September 21	Thursday, September 22
73 Friday, September 30	Monday, September 26	Tuesday, September 27
74 Tuesday, October 4	Wednesday, September 28	Thursday, September 29
75 Friday, October 7	Monday, October 3	Tuesday, October 4
Tuesday, October 11	THIRD QUARTERLY INDEX	
76 Friday, October 14	Monday, October 10	Tuesday, October 11
77 Tuesday, October 18	Wednesday, October 12	Thursday, October 13
78 Friday, October 21	Monday, October 17	Tuesday, October 18
79 Tuesday, October 25	Wednesday, October 19	Thursday, October 20
80 Friday, October 28	Monday, October 24	Tuesday, October 25
81 Tuesday, November 1	Wednesday, October 26	Thursday, October 27
82 Friday, November 4	Monday, October 31	Tuesday, November 1
83 Tuesday, November 8	Wednesday, November 2	Thursday, November 34
Friday, November 11	NO ISSUE PUBLISHED	
84 Tuesday, November 15	Wednesday, November 9	Thursday, November 10
85 Friday, November 18	Monday, November 14	Tuesday, November 15
86 Tuesday, November 22	Wednesday, November 16	Thursday, November 17
87 Friday, November 25	Monday, November 21	Tuesday, November 22
Tuesday, November 29	NO ISSUE PUBLISHED	
88 Friday, December 2	Monday, November 28	Tuesday, November 29
89 Tuesday, December 6	Wednesday, November 30	Thursday, December 1
90 Friday, December 9	Monday, December 5	Tuesday, December 6
91 Tuesday, December 13	Wednesday, December 7	Thursday, December 8
92 Friday, December 16	Monday, December 12	Tuesday, December 13
93 Tuesday, December 20	Wednesday, December 14	Thursday, December 15
94 Friday, December 23	Monday, December 19	Tuesday, December 20
95 Tuesday, December 27	Wednesday, December 21	Thursday, December 22
96 *Friday, December 30	Friday, December 23	Tuesday, December 27

