February 10, 2016

Sarah Faszholz
Interim Executive Director
Texas State Board of Examiners of Professional Counselors,
Mail Code 1982, P.O. Box 149347
Austin, Texas 78714-9347

RE: Proposed Rules 22 TAC §681.41

Dear Ms. Faszholz:

The American Telemedicine Association (ATA) appreciates the opportunity to comment on the Texas Board of Examiners of Professional Counselors (“the Board”) Proposed Rules on clinical practice. We strongly support the Board’s intention to ensure the protection of the public's health, safety and welfare, as well as other mechanisms that assure client safety and promote that all health services delivered either in-person or remotely are of the highest quality and provided in a safe manner.

Texas is not spared from the mental health access crisis in our country. Of the state’s 254 counties, roughly 200 are designated as Mental Health Professional Shortage Areas. In 2014, The Texas Department of State Health Services concluded in a report to the state legislature regarding the state’s mental health workforce shortage that the "expansion of tele-mental health services may prove beneficial in increasing the geographic reach of the mental health workforce." However, the Board’s proposed draft could have more harmful implications for Texas clients seeking access to an already sparse mental health network. Further, the regulations will require licensed Texas professional counselors to follow a separate standard of practice when using telehealth, resulting in two different standards of care for clients in the same state. With regard to clinical practice rules and ethical guidelines, we believe that, as much as possible, the practice of telehealth should not be regulated differently or held to a different standard than in-person care.

We highlight below important areas where the proposal would impose different and higher standards – and thus objectionable standards – for telehealth, and note several areas where changes would strengthen the overall intent.

Licensure & In-State Residence

Most state professional licensing boards do not impose in-state residence or an in-state presence as a prerequisite for clinical care delivery. In fact, the Board does not require in-state residency for full, temporary, or provisional licensure applicants. While all applicants must meet the state’s requirements for licensure and ethical clinical practice, enforcing an in-state residency precondition solely for “distance counseling” is an unreasonable burden that will further limit mental health service delivery across Texas.
We recommend that the Board remove requirements for in-state residency as it pertains to “distance counseling”.

Face-to-Face Requirement

Research has shown the effectiveness of using telemental health in lieu of in-person services, particularly through video-conferencing, to improve patient compliance to treatment and access to care.\textsuperscript{3,4} ATA has long held that clinical services delivered via telehealth should be treated the same as services delivered in-person. All telemental or behavioral health encounters, whether conducted in-person or remotely, should be based on the provider’s clinical competence and professional decision making using sufficient, appropriate clinical and non-clinical information to provide the health service. Yet, the Board’s proposal would enforce clinically unnecessary and ethically questionable standards and severely limit client access to mental health and behavioral health care.

We recommend that the Board remove requirements for an initial face-to-face intake session, and allow a professional counselor to rely on their clinical judgment and any appropriate tools that are necessary to uphold the standard of care. This includes accommodating counseling services that can be rendered without direct interaction with a client.

In conclusion, it is important that statutes and regulations not hinder patients from getting the best care that can be done under extenuating circumstances. As such, we see a need for prudent action by the Board to review and remove their proposed rules in order to address the needs of patients to access high quality mental and behavioral health care from licensed professional counselors providing services via telehealth.

In light of the recent U.S. Supreme Court's decision on \textit{N.C. State Bd. of Dental Examiners v. FTC}, state licensing boards that impose different requirements for telehealth as opposed to in-person services are newly exposed to risk of federal lawsuit for anticompetitive actions. We urge the Board to refrain from developing regulatory differences without an evidence base.

Sincerely,

Jonathan D. Linkous
Chief Executive Officer

\textsuperscript{1} Texas Department of State Health Services. “The Mental Health Workforce Shortage in Texas”. September 2014.
\textsuperscript{2} Ibid.