

Regulatory Analysis Form		This space for use by IRRC
(1) Agency Department of State, Bureau of Professional and Occupational Affairs, State Board of Psychology		SUBMITTED PM 1:05 GENERAL COUNCIL ON REVIEW COMMISSION IRRC Number: 1931
(2) I.D. Number (Governor's Office Use) 16A-633		
(3) Short Title Sexual Intimacies		
(4) PA Code Cite 49 Pa. Code §§41.1 and 41.81-41.85	(5) Agency Contacts & Telephone Numbers Primary Contact: Jackie Wiest Lutz, Counsel State Board of Psychology (717) 783-7200 Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Department of State (717) 783-7200	
(6) Type of Rulemaking (check one) Proposed Rulemaking <input checked="" type="checkbox"/> X Final Order Adopting Regulation Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? No <input checked="" type="checkbox"/> X Yes: By the Attorney General Yes: By the Governor
(8) Briefly explain the regulation in clear and nontechnical language. The regulation proposes to better protect consumers of psychological services and to provide guidance to the profession by addressing issues relating to: (1) sexual intimacies with <u>current</u> client/patients, immediate family members of current client/patients, students, supervisees or research participants; (2) sexual intimacies with <u>former</u> client/patients or an immediate family member of a former client patient, and (3) former sexual partners as (Continued on Page 8)		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. Section 3.2(2) of the Professional Psychologists Practice Act, the act of March 23, 1972, P.L. 136, <u>as amended</u>, Act of April 25, 1986, P.L. 89, 63 P.S. §1203.2(2).		

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Ethical Principle 6(b) of the Code of Ethics for psychologists practicing in the Commonwealth instructs that "[S]exual intimacies with clients are unethical." 49 Pa. Code §41.61. Despite this clear pronouncement, complaints are filed against psychologists every year by consumers of psychological services who suffer emotional harm by psychologists who violate this Ethical Principle.

Psychologists have attempted in the past to defend against prosecutions brought under Ethical Principle 6(b) by arguing that: (1) the psychologist/client relationship had terminated prior to the commencement of any sexual relationship; (2) the psychologist had ceased billing the client/patient throughout the duration of the sexual relationship; (3) the client/patient had initiated the relationship; and (4) the psychologist did not engage in "sexual intercourse." The latter argument assumed that "sexual intimacies" within the meaning of Ethical Principle 6(b) was limited to "sexual intercourse."

The proposed regulation seeks to better protect consumers of psychological services by providing specific guidance to psychologists on issues relating to: (1) sexual intimacies with current client/patients, immediate family members of current client/patients, students, supervisees or research participants; (2) sexual intimacies with former client/patients or immediate family members of former client/patients; and (3) former sexual partners as client/patients. The regulation also proposes to define "sexual intimacies", "client/patient," "professional relationship" and "psychologist" to eliminate arguments and/or confusion by psychologists on the meanings of these terms.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Absent specific regulations, consumers of psychological services will be dependent upon court decisions to address, on a case-by-case basis, the specific issues which the proposed regulations seek to clarify. By the time a case is decided on appeal, the consumer has already suffered harm.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Consumers of psychological services and the psychological profession as a whole will benefit from the guidance to be provided by the proposed regulations. Currently, there are 5,980 licensed psychologists in Pennsylvania who will benefit from the regulations.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There are no perceived people or groups of people who would be adversely affected by this proposed regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All licensed psychologists in the Commonwealth will be required to comply with the proposed regulation. Currently there are 5,980 licensed psychologists in Pennsylvania.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

In compliance with Executive Order 1996-1, prior to drafting this proposed regulation, the Board extended an invitation to the following associations to participate in preliminary discussions relative to the proposed amendments: Delaware County Association of School Psychologists, Laurel Mountains Psychological Association, Hospital Association of Pennsylvania, Pennsylvania Psychological Association, Pennsylvania Mental Health Consumers' Association, Association of School Psychologists of Pennsylvania, National Association of School Psychologists, Academy of Psychologists engaged in Private Practice in Lehigh Valley, Berks Area Psychological Society, Central Pennsylvania Psychological Association, Greater Pittsburgh Psychological Association, Harrisburg Area Psychological Association, Lancaster/Lebanon Psychological Association, Lehigh Valley Psychological Association, Mideast PA School Psychological Association, Northeastern PA Psychological Association, Northwestern PA Psychological Association, Philadelphia Society of Clinical Psychologists and the Philadelphia Neuropsychology Society.

(Continued on Page 8)

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

There should be no cost to the regulated community associated with compliance with this regulation. Savings to the regulated community are not specifically quantifiable, but, would include legal fees and expenses which otherwise would be spent by psychologists in defending Ethical Principle 6(b) violations.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

N/A.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

N/A.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A
Regulated						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There should be no adverse effects and costs associated with compliance with the regulation. The benefits of the regulation are described in paragraphs 11 and 13 above.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives were not considered by the Board for two reasons: (1) A policy statement on the issue of sexual intimacies would not have the force or the effect of law; (2) Waiting for court decisions to address the issues addressed by the regulation would benefit neither consumers of psychological services nor the psychological profession.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

N/A.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

It is unknown how this regulation compares with those of other states; however, the regulation is fairly consistent with the Ethics Code of the American Psychological Association to which many State Boards of Psychology adhere.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will amplify the meaning of "Sexual intimacies with clients" currently proscribed by Ethical Principle 6(b) of the Pennsylvania Code of Ethics for psychologists, 49 Pa. Code §41.61. The regulation should have no effect on existing regulations of other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

In light of the extensive public outreach already conducted in promulgation of this proposed regulation, the Board has scheduled no public hearings or informational meetings regarding this regulation.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board is aware of no special needs of any subset or group which should be excepted.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication as an Order of Final Rulemaking in the Pennsylvania Bulletin. Compliance will be required as of that date.

(31) Provide the schedule for continual review of the regulation.

The Board continuously reviews its regulations, periodically communicates with licensees through newsletters and obtains information and feed-back from its licensees on a frequent basis.

(Continued from #8, Page 1)

client/patients. The regulation also seeks to put psychologists on notice that the consent of an individual to engage in sexual intimacies with the psychologist may not be a defense in any disciplinary proceeding brought under sections 41.81-41.83, and that a psychologist who engages in conduct prohibited by the amendments will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

(Continued from #16, Page 3)

These same associations were subsequently extended an opportunity to preliminarily review and comment on the Board's draft regulatory proposal. In addition, a copy of the Board's draft regulatory proposal was made available for comment to at least 450 attendees of the June, 1997 Pennsylvania Psychological Association's Annual meeting in Harrisburg, Pennsylvania.

In formulating this proposal, the Board reviewed and considered all comments and suggestions received by interested parties.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

50 MAR 10 PM 1:05

REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by

Copy below is approved as to form and legality. Executive Independent Agency

[Signature]
BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Psychology
(AGENCY)

[Signature]

DOCUMENT/FISCAL NOTE NO. 16A-633

DATE OF APPROVAL

DATE OF ADOPTION: _____

1/27/98
DATE OF APPROVAL

BY: Yvonne E. Keairns Ph.D.
Yvonne E. Keairns, Ph.D.

(Deputy General Counsel
~~Chief Counsel,~~
~~Independent Agency~~
(Strike inapplicable title)

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if applicable. No Attorney
General approval or
objection within 30 day
after submission.

NOTICE OF PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF PSYCHOLOGY
49 PA. CODE, CHAPTER 41
SEXUAL INTIMACIES

The State Board of Psychology (Board) proposes to amend §41.1 (relating to definitions) and to adopt §41.81-41.85 (relating to sexual intimacies) to read as set forth in Annex A.

BACKGROUND:

Under Ethical Principle 6(b) of the Code of Ethics for psychologists practicing in the Commonwealth, 49 Pa. Code §41.61, psychologists are advised that "[s]exual intimacies with clients are unethical." Despite this clear pronouncement, complaints are filed against psychologists every year by consumers who suffer emotional harm by psychologists who violate this Ethical Principle.

In the past, psychologists have attempted to defend against prosecutions brought under Ethical Principle 6(b) by arguing that: (1) the psychologist/client relationship had terminated prior to the commencement of any sexual relationship; (2) the psychologist had ceased billing the client/patient throughout the duration of the sexual relationship; (3) the client/patient had initiated the relationship; and (4) the psychologist did not engage in "sexual intercourse" with the client/patient during the therapeutic relationship. The latter argument assumed that "sexual intimacies" within the meaning of Ethical Principle 6(b) was limited to "sexual intercourse."

The proposed amendments seek to better protect consumers of psychological services and to provide guidance to the profession by defining the terms "client/patient," "professional relationship," "psychologist" and "sexual intimacies," and by providing specific guidance to psychologists on issues relating to: (1) sexual intimacies with current client/patients, immediate family members of current client/patients, students, supervisees or research participants; (2) sexual intimacies with former client/patients or an immediate family member of a former client/patient, and (3) former sexual partners as client/patients. The amendments also seek to put psychologists on notice that the consent of an individual to engage in sexual intimacies with the psychologist may not be a defense in any disciplinary proceeding brought under sections 41.81-41.83, and that a psychologist who engages in conduct prohibited by the amendments will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

COMPLIANCE WITH EXECUTIVE ORDER 1996-1, REGULATORY REVIEW AND PROMULGATION.

In compliance with Executive Order 1996-1, prior to drafting this proposed regulation, the Board extended an invitation to the following associations to participate in preliminary discussions relative to the proposed amendments: Delaware County Association of School Psychologists, Laurel Mountains Psychological Association, Hospital Association of Pennsylvania, Pennsylvania Psychological Association, Pennsylvania Mental Health Consumers Association, Association of School Psychologists of Pennsylvania, National Association of School Psychologists, Academy of Psychologists Engaged in Private Practice in the Lehigh Valley, Berks Area Psychological Society, Central Pennsylvania Psychological Association, Greater Pittsburgh Psychological Association, Harrisburg Area Psychological Association, Lancaster/Lebanon Psychological Association, Lehigh Valley Psychological Association, Mideast PA School Psychological Association, Northeastern PA Psychological Association, Northwestern PA Psychological Association, Philadelphia Society of Clinical Psychologists, and the Philadelphia Neuropsychology Society.

These same associations were subsequently extended an opportunity to preliminarily review and comment on the Board's draft regulatory proposal. In addition, a copy of the Board's draft regulatory proposal was made available for comment to at least 450 attendees of the June, 1997 Pennsylvania Psychological Association's Annual meeting in Harrisburg, Pennsylvania.

In formulating this proposal, the Board reviewed and considered all comments and suggestions received by interested parties during the regulatory development process.

DESCRIPTION OF PROPOSED AMENDMENTS:

§41.1 (relating to definitions).

Definitions are proposed to be added to §41.1 for the terms "client/patient," "professional relationship," "Psychologist," and "sexual intimacies." As proposed, the term "client/patient" would be defined to mean: "A person, system, organization, group or family for whom a psychologist provides psychological services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships."

The term "professional relationship" would be defined to

mean: "A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a psychologist and a client/patient and continuing thereafter until the last date of a professional service. If a psychologist sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the psychologist provides a professional service to the client/patient." Reference to "professional relationship" is found in proposed section 41.83 (relating to sexual intimacies with former client/patients or an immediate family member of a former client/patient). The definition is intended to provide guidance to psychologists on the issue of when a client/patient relationship terminates, if ever. As proposed, if a psychologist sees a client/patient on an intermittent basis, the professional relationship would be deemed to start anew on each date that the psychologist provides a professional service to the client/patient.

The proposal would define "psychologist" to mean "a person who holds a license issued under the provisions of the Act to engage in the practice of psychology." Although the Professional Psychologists Practice Act, Act of March 23, 1972, P.L. 136, as amended, 63 P.S. §§1201.1 et seq. (Act), empowers the Board to license and regulate psychologists, the term "psychologist" is not defined by the Act.

Finally, the term "sexual intimacies" would be defined to include "any romantic, sexually suggestive, sexually demeaning or erotic behavior. Examples of such behavior shall include but not be limited to, sexual intercourse, non-therapeutic verbal communications, inappropriate non-verbal communications, sexual invitations, soliciting a date from a client/patient, masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the psychologist), exposure, kissing, inappropriate hugging or touching or any other inappropriate physical contact or inappropriate self-disclosure." The definition is intended to emphasize that "sexual intimacies" within the context of Ethical Principle 6(b) includes not only sexual intercourse but, also, any other type of inappropriate sexualized behavior or non-therapeutic touch.

§41.81 (relating to prohibited conduct).

Proposed section 41.81 is divided into two subsections, (a) and (b). As proposed, subsection (a) addresses the issue of sexual intimacies between a psychologist and a current client/patient or an immediate family member of a current client/patient, e.g., parent/guardian, child, or spouse.

Subsection (b) addresses sexual intimacies between psychologists and persons over whom they have current supervisory, evaluative or other authority.

As proposed, subsection (a) would outright prohibit an intimate relationship between a psychologist and a current client/patient or an immediate family member of a current client/patient. The sole goal of the therapeutic alliance is to help the patient. During the therapeutic relationship, trust, openness and empathy are promoted, dependency often develops and confidences are fostered. For sexual intimacies to intrude upon this relationship, distorts therapy, creates unrealistic expectations and shame in the patient, and exploits the patient's trust and dependency. Proposed subsection (a) seeks to reinforce the prohibition against sexual intimacies with clients announced in Ethical Principle 6(b), and to extend the prohibition to immediate family members of a current client/patient.

Ethical Principle 6(b) of the Code of Ethics, 49 Pa. Code §41.61, also directs psychologists to avoid relationships which might impair their professional judgment or increase the risk of exploitation. Consistent with this directive, proposed subsection (b) would prohibit sexual intimacies between psychologists and persons over whom they have current supervisory, evaluative or other authority. Such persons would include students, supervisees or research participants.

§41.82 (relating to former sexual partners as client/patients).

Proposed section 41.82 addresses the issue of former sexual partners as client/patients. For reasons similar to those which support the outright ban of sexual intimacies with current client/patients, the proposal would prohibit psychologists from accepting as client/patients persons with whom they have engaged in sexual intimacies. This prohibition is consistent with a new provision added to the 1992 Ethics Code of the American Psychological Association.

§41.83 (relating to sexual intimacies with former client/patients or an immediate family member of a former client/patient).

Proposed section 41.83 addresses the issue of sexual intimacies with a former client/patient or an immediate family member of a former client/patient. The section is divided into two subsections, (a) and (b).

As proposed, subsection (a) would establish an absolute prohibition against such conduct for a period of at least two years following the termination of the professional relationship.

The phrase "termination of the professional relationship" is key. If a psychologist sees a patient on only a periodic basis, the two year period would not begin to run until the last date of professional service. Any professional contact or service thereafter, for example, telephone contacts, brief consults or providing psychological reports about the client/patient, would restart the two-year period.

Proposed subsection (b) addresses behavior after two years. As proposed, following the passage of the two-year period, psychologists who engage in sexual intimacies with former client/patients or immediate family members of former client/patients will have the burden of demonstrating that there has been no exploitation of the client/patient in light of all relevant factors including: (1) the amount of time that has passed since the professional relationship terminated; (2) the nature and duration of the therapy; (3) the circumstances of termination; (4) the client/patient's personal history, e.g., unique vulnerabilities; (5) the client/patient's current mental status; (6) any statements or actions made by the psychologist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client/patient; and (7) the likelihood of adverse impact on the client/patient and others.

The intent of subsection (b) is not to suggest that sexual intimacies between a psychologist and a former client/patient or immediate family member of a former client/patient are always acceptable after two years. On the contrary, the proposal is a very restrictive rule which contemplates that sexual involvement after two years would occur only under very limited circumstances. After two years, the onus would be on the psychologist who engages in such activity to demonstrate that "there has been no exploitation of the client/patient in light of all relevant factors," including the seven enumerated factors in subsection (b).

The proposal outlined in section 41.83 is consistent with the Ethics Code of the American Psychological Association.

§41.84 (relating to disciplinary proceedings).

Proposed section 41.84 would address procedural issues in disciplinary proceedings before the Board.

As proposed, the section would be divided into three subsections, (a)-(c). Proposed subsection (a) would put psychologists on notice that the consent of an individual to engage in sexual intimacies with the psychologist may not be a

defense in any disciplinary action brought under sections 41.81-41.83. Courts have traditionally rejected such arguments on two grounds: (1) that consent in such instances cannot be voluntary or informed because it is affected by the powerful transference created by therapy, and (2) that as a matter of public policy, a patient cannot consent to unprofessional forms of treatment. Stromberg, Clifford D. and his colleagues of the law firm of Hogan & Hartson, "Physical Contact and Sexual Relations with Patients," The Psychologist's Legal Handbook, Chapter 8, §8.07 (1988).

Proposed subsection (b) would similarly put psychologists on notice that, with the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of an individual may be admissible in any disciplinary action brought under sections 41.81-41.83. With one exception, this provision, as proposed, is consistent with Pennsylvania's Rape Shield Law, 18 Pa. C.S.A. §3104. The Rape Shield Law allows evidence of an alleged victim's past sexual conduct with the defendant where the consent of the victim is at issue. Proposed section 41.82 would prohibit a psychologist from accepting as a client/patient a person with whom he has engaged in sexual intimacies. Proposed section 41.84 would bar consent as a defense in any proceeding before the Board. Thus, the Rape Shield Law exception would not be germane to Board disciplinary proceedings.

Proposed subsection (c) would put psychologists on notice that in any disciplinary proceeding brought under sections 41.81-41.83, the psychologist shall have the burden of proving that there has been no exploitation of the client/patient in light of all of the relevant factors enumerated under section 41.83(b)(i)-(vii).

§41.85 (relating to impaired professional program).

Pursuant to section 18(b) of the Act, 63 P.S. §1218(b), the Board is empowered to defer and ultimately dismiss any types of corrective action that the Board may otherwise impose against a psychologist who violates any provision of the Act or regulations of the Board, for an impaired professional. Proposed section 41.85 would put psychologists on notice that they would be ineligible for placement into an impaired professional program in lieu of disciplinary or corrective action for engaging in conduct prohibited by proposed sections 41.81-41.83.

REGULATORY REVIEW

Under section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), the Board submitted a copy of these proposed amendments on *March 10*, 1998, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the proposed amendments.

FISCAL IMPACT AND PAPERWORK REQUIREMENTS

The proposed amendments should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the proposed amendments should not necessitate any legal, accounting, reporting or other paperwork requirements.

STATUTORY AUTHORITY

The amendments are proposed under the authority of section 3.2(2) of the Act (63 P.S. §1203.2(2)).

PUBLIC COMMENT

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Jackie Wiest Lutz, Counsel, State Board of Psychology, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

ANNEX A
TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 41. STATE BOARD OF PSYCHOLOGY

GENERAL

§41.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * *

[Client] Client/patient - A person, system, organization, group or family for whom a psychologist provides psychological services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decision-making purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships.

* * *

Professional relationship - A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a psychologist and a client/patient and continuing thereafter until the last date of a professional service. If a psychologist sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the psychologist provides a professional service to the client/patient.

* * *

Psychologist - A person who holds a license issued under the provisions of the Act to engage in the practice of psychology.

* * *

Sexual intimacies - Any romantic, sexually suggestive, sexually demeaning or erotic behavior. Examples of such behavior shall include, but not be limited to, sexual intercourse, non-therapeutic

verbal communications, inappropriate non-verbal communications, sexual invitations, soliciting a date from a client/patient, masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the psychologist), exposure, kissing, inappropriate hugging or touching or any other inappropriate physical contact or inappropriate self disclosure.

* * *

SEXUAL INTIMACIES

§41.81. Prohibited conduct.

a. Sexual intimacies between a psychologist and a current client/patient or an immediate family member of a current client/patient, e.g., parent/guardian, child, spouse, are prohibited.

b. Sexual intimacies with persons over whom psychologists have current supervisory, evaluative or other authority are prohibited. Such persons include students, supervisees, or research participants.

§41.82. Former sexual partners as client/patients.

Psychologists shall not accept as client/patients persons with whom they have engaged in sexual intimacies.

§41.83. Sexual intimacies with former client/patients or an immediate family member of a former client/patient.

a. Sexual intimacies between a psychologist and a former client/patient or an immediate family member of a former client/patient are prohibited for at least two years following the termination of the professional relationship, and then only under very limited circumstances.

b. Following the passage of the two-year period, psychologists who engage in sexual intimacies with former client/patients or immediate family members of former client/patients shall have the burden of demonstrating that there has been no exploitation of the client/patient in light of all relevant factors, including:

(i) The amount of time that has passed since the professional relationship terminated;

(ii) The nature and duration of the therapy;

(iii) The circumstances of termination;

(iv) The client/patient's personal history, e. g., unique vulnerabilities;

(v) The client/patient's current mental status;

(vi) Any statements or actions made by the psychologist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client/patient; and

(vii) The likelihood of adverse impact on the client/patient and others.

§41.84. Disciplinary proceedings.

a. The consent of any individual to engage in sexual intimacies with the psychologist may not be a defense in any disciplinary action brought under sections 41.81-41.83 of this Chapter.

b. With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of any individual may be admissible in any disciplinary action brought under sections 41.81-41.83 of this Chapter.

c. In any disciplinary proceeding brought under sections 41.81-41.83 of this Chapter, the psychologist shall have the burden of proving that there has been no exploitation of the client/patient in light of all of the relevant factors enumerated under section 41.83(b)(i)-(vii).

§41.85. Impaired professional program.

When the Board takes disciplinary or corrective action against a psychologist under section 8(a) of the Act, 63 P.S. §1208(a), for conduct prohibited by sections 41.81-41.83 of this Chapter, the psychologist will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective actions.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

LEGAL OFFICE
COUNSEL DIVISION
(717) 783-7200
Fax: (717) 787-0251

116 PINE STREET
P.O. BOX 2649
HARRISBURG, PA
17105-2649

March 10, 1998

The Honorable John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission
14th Floor, 333 Market Street
Harrisburg, PA 17120

RE: Proposed Rulemaking of the State Board of Psychology
Pertaining to "Sexual Intimacies" (16A-633)

Dear Chairman McGinley:

I deliver to you herewith for review by the Independent Regulatory Review Commission, a copy of a Regulatory Package of the State Board of Psychology pertaining to "Sexual Intimacies" (16A-633).

Pursuant to Section 5(d) of the Regulatory Review Act (71 P.S. §745.5(d)), the Commission shall, within 30 calendar days from the closing date of the public comment period, convey to the Board a summary of its comments and/or objections, if any, regarding the regulation. The proposed regulation is scheduled to be published in the Pennsylvania Bulletin on March 21, 1998, which will begin the thirty (30) day public comment period.

The State Board of Psychology stands ready to provide your Commission with any assistance it may require in conducting a thorough review of the regulation.

Sincerely,

A handwritten signature in black ink that reads "Yvonne E. Keairns".

Yvonne E. Keairns, Ph.D., Chairperson
State Board of Psychology

YEK:JWL:apm

cc: **David Williams, Executive Assistant/Legislative Liaison
Department of State**

**Kim Pizzigrilli, Deputy Secretary for Regulatory Programs
Department of State**

**Joyce McKeever, Deputy Chief Counsel
Department of State**

**Deborah M. Griffiths, Regulatory Review Officer
Department of State**

**Dorothy Childress, Commissioner
Bureau of Professional and Occupational Affairs**

State Board of Psychology

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-633
 SUBJECT: State Board of Psychology – Sexual Intimacies
 AGENCY: Department of State

RECEIVED
 98 MAR 10 PM 1:05
 REGULATORY REVIEW COMMISSION

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. _____ With Revisions
 - b. _____ Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/10/98	<u>[Signature]</u>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
3/10	<u>[Signature]</u>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
3/10/98	<u>[Signature]</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
3-10-98	<u>[Signature]</u>	LEGISLATIVE REFERENCE BUREAU

February 25, 1998