



An affiliate of the
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Association

PENNSYLVANIA PSYCHOLOGICAL ASSOCIATION

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RECEIVED
MARCH 19 1998
INDEPENDENT REGULATORY
REVIEW COMMISSION

March 19, 1998

Ms. Kimberly Trammell DeBien
Independent Regulatory Review Commission (IRRC)
14th Floor
333 Market Street
Harrisburg, PA 17101

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Susan M. Shanaman, J.D.

Dear Ms. DeBien:

On behalf of the Pennsylvania Psychological Association (PPA), I want to thank you for soliciting our input on the proposed regulations of the State Board of Psychology dealing with sexual intimacies. PPA agrees with the State Board of Psychology that there is a need to amend this section of the regulations and we find much merit in regulations proposed by the State Board of Psychology.

We are, however, making one recommendation for change in the proposed regulations.

Need for Regulations

It is a regrettable fact that some psychologists do engage in harmful multiple relationships with patients. Some recent surveys show that the frequency of these acts by psychologists has been decreasing over the years, probably due to improvements in the training of psychologists and increased efforts at educating the public on the dangers of these relationships. Nevertheless, these acts still do occur and the professional consensus is that they pose a risk of substantial harm to patients.

Although I have no data unique to the State Board of Psychology, I do have data from the entire Bureau of Professional and Occupational Affairs (BPOA) which shows a substantial number of complaints against licensees for sexual misconduct cases in the last seven years. A copy of that February 1998 memo is enclosed.

Problems with Previous Regulations

Although the State Board of Psychology has always maintained that sexual multiple relationships with current and former patients are prohibited by their current Code of Ethics, at least two disciplinary cases dealing with sexual misconduct have been appealed to Commonwealth court on the grounds that the ethics code was not explicit enough about what was prohibited (copies of those court cases are enclosed). Consequently, the State Board of Psychology wants to make the details of misconduct explicit.

Commentary on Proposed Regulations

PPA finds much merit in the proposed regulations. For the most part, these regulations are similar to those found in the Ethical Principles and Code of Conduct of the American Psychological Association. Standards 4.05, 4.06, and 4.07 are especially comparable to the proposed regulations of the State Board of Psychology. I am enclosing a copy of the APA Code of Conduct and have highlighted the relevant portions.

The State Board of Psychology regulations go a step beyond the APA Code of Conduct by explicitly prohibiting sexual contact with immediate family members (parent/guardian, child, spouse) of patients. PPA supports these changes and believes they are consistent with the manner in which the APA Ethics Office interprets the APA Code of Conduct.

Suggested Modification

However, PPA does have a problem with the wording of the definition of sexual intimacies. The definition of sexual intimacies prohibits many activities such as sexual intercourse, sexual invitations, soliciting a date, masturbation, etc., which are clearly sexual and clearly should be grounds for disciplinary actions. However, the definition also includes "kissing, inappropriate hugging or touching or any other inappropriate physical contact or inappropriate self-disclosure" which may not be sexual and should not be grounds for disciplinary actions in and of themselves.

The problem does not appear to rest on the intent of the State Board of Psychology. From conversations with members of the State Board of Psychology, I have the impression that they do not want to prohibit or discipline psychologists who may engage in an occasional hug or who have, at sometime or another, touched a patient. These activities are certainly part of normal social interaction and some patients (especially child patients) may feel offended if the psychologist avoids a hug or withdraws quickly from any accidental physical touch.

Unfortunately, the wording in the section on sexual intimacies is ambiguous and unnecessarily confusing and could lead to consistent misinterpretations by psychologists and patients. The resources of the BPOA could be drained addressing frivolous complaints, when they should be directed toward protecting patients with substantial grievances.

A superficial reading of the proposed regulations would make it seem that the wording "inappropriate hugging, etc." would be sufficient to clarify the intent of the Board. However, the word inappropriate has a broad meaning that encompasses a wide range of behaviors that are not suitable or fitting. By analogy, a physician may, using the best of his or her judgement and following acceptable medical standards, order an antibiotic medication for a patient. If the medication does not clear up the infection, then it was inappropriate. We certainly would not discipline a physician who prescribed a medication which did not work, if he or she followed acceptable medical practice in doing so. Similarly, a psychologist may, using the best of his or her judgement and following acceptable professional standards, engage in limited and focused self-disclosure to help a patient "normalize" a problem or as a means of expressing empathy. If the self-disclosure did not help the patient, then it would be inappropriate. It would not be desirable, however, to discipline a psychologist for using reasonable and professionally acceptable interventions which, for whatever reason, were not successful.

Conclusion

We would like the definition of sexual intimacies rewritten so that it is clear that the State Board is prohibiting sexualized or eroticized hugging, touching, physical contact or self-disclosure. Obviously such eroticized behaviors should be grounds for disciplinary actions.

If modifications are made to clarify the intent of the proposed definition of sexual intimacies, then PPA would be able to support these proposed regulations. We hope that such a clarification can be made.

I would be glad to provide you with additional information if you wish.

Sincerely,



Samuel Knapp, Ed.D.
Professional Affairs Officer

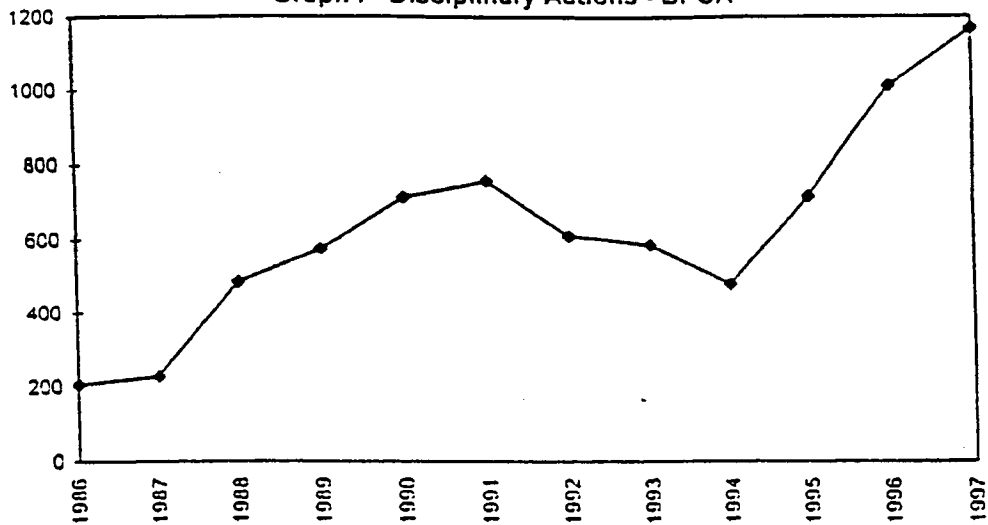
Attachment B

Chart I -- BPOA - Disciplinary Actions 1990 - 1997

Type/Year	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Revocation	54	41	75	89	87	83	40	42	47	65	69	96
Suspension	52	55	91	107	87	110	84	90	105	168	240	225
Probation	32	35	99	55	60	71	65	72	59	105	81	114
Reprimand	43	52	93	98	103	106	78	62	55	69	72	84
Civil Penalty	20	32	114	204	345	344	313	275	164	245	506	595
Other	4	11	13	22	31	43	30	44	48	64	44	55
Total Actions	205	226	485	575	713	757	610	585	478	716	1012	1169
Total Serious*	106	96	166	196	174	193	124	132	152	233	309	321

*Serious defined as revocation or Active Suspension

Graph I - Disciplinary Actions - BPOA



Graph II -- Serious Disciplinary Sanctions - BPOA

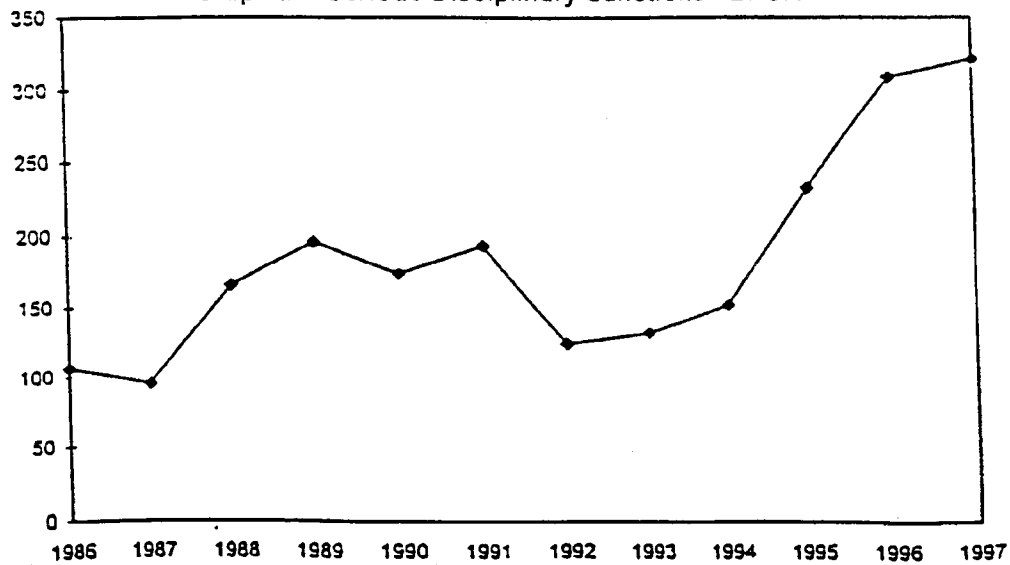
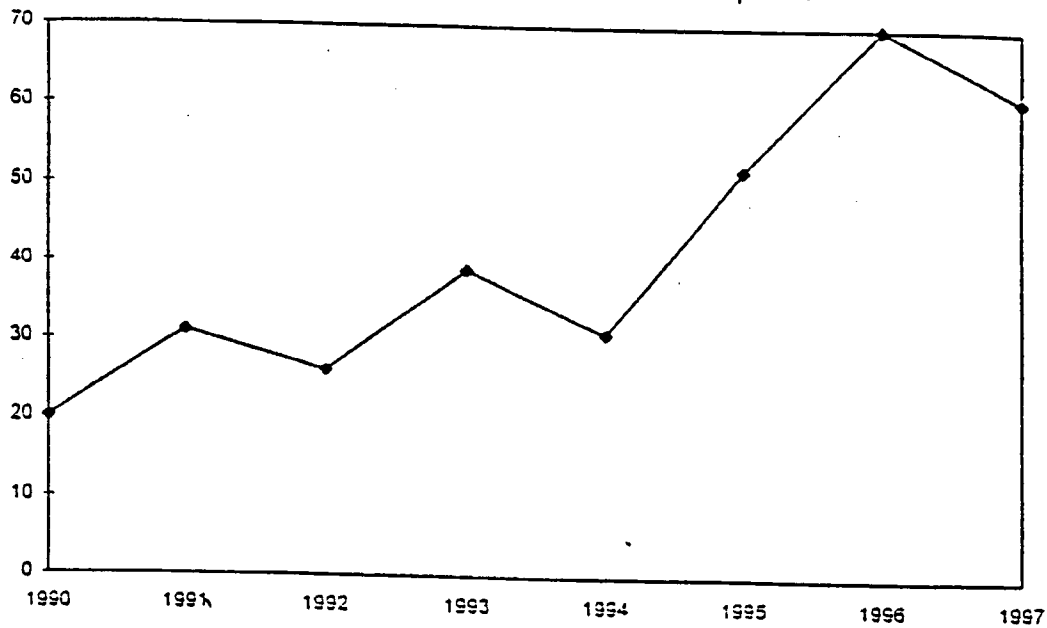


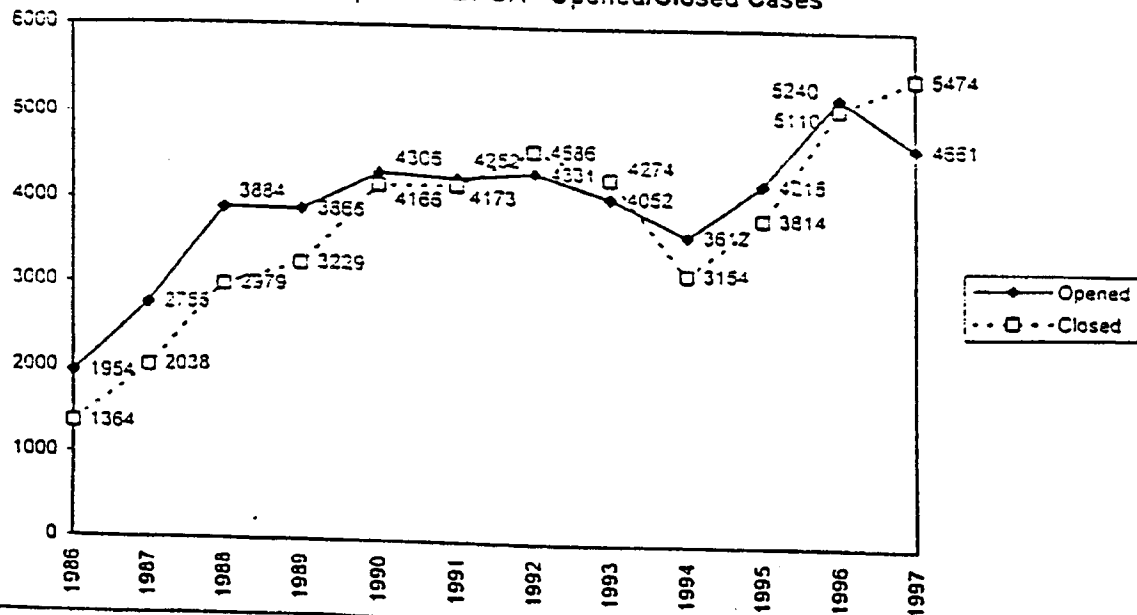
Chart II - BPOA Cases Opened/Closed - 1986 -1997

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Opened	1954	2755	3884	3866	4306	4252	4331	4052	3612	4215	5240	4661
Closed	1364	2038	2979	3229	4166	4173	4586	4274	3154	3814	5110	5474
Opened Sexual Misconduct Cases					20	31	26	39	31	52	70	61

Graph III - Sexual Misconduct Cases Opened



Graph IV - BPOA - Opened/Closed Cases



**Commonwealth of Pennsylvania
Bureau of Professional and Occupational Affairs**

DATE: January 16, 1998

SUBJECT: 1997 BPOA disciplinary activity

TO: All BPOA Legal Office Staff

FROM: Gerard M. Mackarevich
Deputy Chief Counsel

Each of us who works in the BPOA Legal Office can take pride in what was accomplished in 1997, especially in one of our core functions: investigating, prosecuting and adjudicating allegations of professional misconduct. During the past year, BPOA and its Legal Office accomplished the following high points:

- Tremendous success of the newly-revamped Voluntary Recovery Program, seeing confidential stayed suspensions entered in 130 cases of impaired professionals
- Highest number ever of "serious" disciplinary penalties imposed, defined by us as revocation or active suspension (321).
- Highest number ever of total disciplinary sanctions (1,169).
- Highest number ever of cases closed (5,474), eclipsing the number of cases opened (4,661), thus reducing backlogs substantially.
- The total of 1,169 actions includes 377 penalties imposed through Act 48 citations, a new high.
- The figure of 1,169 sanctions also includes 792 actions generated by the traditional administrative process (not Act 48). This is an all-time high, eclipsing the previous high of 757 entered in 1991.
- Continued high production of immediate temporary suspensions and petitions for appropriate relief (16).

All of us, whether Prosecution or Counsel, whether attorney, legal assistant or clerical person, deserves to take credit for these achievements. Through your hard

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work and professionalism, BPOA is making a real impact on the public health and welfare of the Commonwealth of Pennsylvania.

GMM/med

cc: The Honorable Yvette Kane
The Honorable Kim Pizzingrilli
The Honorable George Manakos
David Williams
Commissioner Dorothy Childress
Robert J. DeSousa
Steve Cerutti
Robert Wolf
Kevin Shivers
Deborah Griffiths
C. Michael Weaver
Linda Dinger
Miriam Limo
Rita Solie
Teresa Woodall