



INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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May 21, 1998

Yvonne E. Keairns, Ph.D., Chairperson
State Board of Psychology
116 Pine Street
Harrisburg, PA 17105

Re: IRRC Regulation #16A-633 (#1931)
State Board of Psychology
Sexual Intimacies

Dear Chairperson Keairns:

Enclosed are our comments on your proposed regulation #16A-633. These comments outline areas of concern raised by the Commission. The comments also offer suggestions for your consideration when you prepare the final version of this regulation. These comments should not, however, be viewed as a formal approval or disapproval of the proposed version of this regulation.

If you or your staff have any questions on these comments or desire to meet to discuss them in greater detail, please contact Chuck Tyrrell at 772-3455 or Kimberly Trammell de Bien at 783-6834. They have been assigned to review this regulation.

Sincerely,

Robert E. Nyce
Robert E. Nyce
Executive Director

REN:kcg
Enclosure
cc: Jackie Wiest Lutz
Joyce McKeever
Dorothy Childress
Kim Pizzingrilli
Office of General Counsel
Office of Attorney General
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COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

STATE BOARD OF PSYCHOLOGY REGULATION NO. 16A-633

SEXUAL INTIMACIES

MAY 21, 1998

We have reviewed this proposed regulation from the State Board of Psychology (Board) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to the reasonableness and clarity of the regulation. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 41.1. Definitions - Reasonableness and Clarity

Sexual intimacies

We have two concerns with this definition. First, the definition includes "nontherapeutic verbal communications" and "inappropriate nonverbal communications." It is not clear what these would be as they relate to sexual intimacies. We agree with the House Professional Licensure Committee that the communications should be of a sexual, romantic, or erotic nature. Therefore, we recommend the Board amend the regulation to make this clarification.

Second, the proposed definition of sexual intimacies includes "inappropriate touching and hugging." The Pennsylvania Psychological Association (PPA) believes that there are instances where hugging and touching may be an acceptable practice. We agree with the Board that hugging and touching of a sexual or erotic nature would be inappropriate. However, we believe that the term "inappropriate" is too vague. Therefore, we recommend that the Board clarify within the regulation that hugging and touching of a sexual or erotic nature is inappropriate.

2. Section 41.81. Prohibited Conduct - Clarity

In Subsection (a), there are examples of who will be considered "immediate family," but no actual definition of this term. We recommend the Board delete these examples and define this term in Section 41.1.

Subsection (b) provides that sexual intimacies with persons over whom the psychologist has current supervisory, evaluative, or other authority are prohibited. These persons include, students, supervisees, or research participants. We are concerned that the phrase "supervisory, ...or other

authority" and the term "supervisee" could be interpreted to prohibit a psychologist from having a relationship with an office administrator or receptionist. Instead, we believe the Board intended the term supervisee to be a psychological trainee, as defined in Section 41.1.

We recommend the Board revise the final-form regulation to limit the application of this provision to psychological trainee.

3. Section 41.83. Sexual Intimacies with Former Client/Patients - Reasonableness and Clarity

The regulation requires the psychologist to provide information about a patient's personal history and current mental status if the psychologist wants to have sexual intimacies with the patient or a member of the patient's immediate family two years after the last treatment. We have three concerns with this provision.

First, we believe the regulation needs to clarify that factors contained in Subsection (b) need to be demonstrated only after an order to show cause has been issued, and not necessarily before the relationship is started.

Second, the Board should determine whether the factors contained in (b)(1) through (b)(7) should be considered when a psychologist has sexual intimacies with a former client/patient and when the psychologist has sexual intimacies with an immediate family member of a former client/patient. We recommend that the Board explain why each factor is necessary in each type of relationship. Specifically, we question what relevancy the former client's personal history, current mental status, or the likelihood of adverse impact upon a former client/patient has to do with the psychologist having sexual intimacies with a member of a former client's immediate family.

Finally, Subsection (b)(7) provides as one of the criteria for allowing a relationship the consideration of "adverse impact on the client/patient and others." First, we question what would be considered an "adverse impact." Furthermore, we question who will be included within the term "others." We recommend the Board further clarify these terms in the final-form regulation.

4. Section 41.84. Disciplinary Proceedings - Clarity

Subsection (c) provides that in a 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. We believe the Board should clarify that this burden occurs after the Board has issued an order to show cause. Accordingly, the Board should amend the regulation to indicate that once an order to show cause has been issued, the psychologist shall have the burden of proving that there has been no exploitation of the client/patient.

5. Relationship with Immediate Family - Clarity

The House Professional Licensure Committee questioned whether the regulation would prohibit a psychologist from treating an individual who is an immediate family member of someone with whom the psychologist has already been having a relationship.

As we interpret the regulation, we believe this situation would be prohibited under Section 41.81. However, we agree the regulation is not clear on this matter. We recommend the Board amend the regulation to more clearly address this situation. Furthermore, we request the Board explain why a psychologist could not treat an immediate family member of a person with whom the psychologist has been having sexual intimacies.