



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
116 PINE STREET, P.O. BOX 2649
HARRISBURG, PENNSYLVANIA 17105-2649

LEGAL OFFICE, COUNSEL DIVISION

ORIGINAL: 1931

Telephone: 717-783-7220
FAX: 717-787-0251

FAX COVER SHEET

DATE: 6/30/98

TO: Kimberly Trammell de Bien

FROM: Jackie Lutz

FAX #: (717) 783-2664

NUMBER OF PAGES INCLUDING COVER 4

October 16, 1997
15A-032

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.

October 14, 1997
14A-631

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).

As proposed, the first factor is intended to recognize that shorter time periods in excess of two years after the professional relationship terminates would argue against sexual involvement; the second factor is intended to recognize that there are differences between the intensity and depth of different therapies, i.e., intensive psychodynamic therapy versus biofeedback for headaches, and that therapy which consists of one or two sessions differs substantially from therapy which spans several years; the third factor is intended to recognize that circumstances of termination may have a large bearing on the likelihood of a post-therapy sexual relationship ever occurring without exploitation and/or harm to the client/patient. Examples of such circumstances may include abrupt or explosive terminations of therapy or therapeutic relationships in which

transference or countertransference issues are not manageable. The fourth factor is intended to recognize that unique vulnerabilities of a client/patient may increase the risk of vulnerability and harm to the client/patient if a sexual relationship with a former therapist were to develop; the fifth factor is intended to recognize that an individual who is struggling with mental conflicts may be more easily exploited or harmed than a person whose mental status is stable. The sixth factor would require consideration into whether or not the psychologist had suggested to the client/patient during therapy that a romantic relationship between them would be possible at the end of two years; finally, the seventh factor would require consideration of whether or not a post-therapy sexual relationship would likely adversely affect the client/patient or others.

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