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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

June 6, 2000

Original: 1959, 1952, 2114, 2112, 2115

John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

Dear Chairman McGinley:

I am writing to inform you that the House Professional Licensure Committee held a meeting on June 6, 2000, and voted to approve Regulation 16A-464 and Regulation 16A-5110. The Committee took no formal action on Regulation 16A-558 and Regulation 16A-579 until final form regulations are promulgated.

In addition, the Committee voted to take no formal action on Regulation 16A-415 until final form regulations are promulgated. However, the Committee notes an apparent error in the Board's statement that the fee increase will be effective for the 1999-2001 biennial period. Renewal fees for that period have already been collected. The new fee could not be collected until the 2001-2003 biennial period.

Please feel free to contact my office if any questions should arise.

Sincerely,

Mario J. Civera, Chairman
House Professional Licensure Committee

MJC/sms
Enclosures

cc: Norbert O. Gannon, D.D.S., Chairman
State Board of Dentistry
K. Stephen Anderson, CRNA, Chairman
State Board of Nursing
Thomas J. Baumgartner, CPA, Chairman
State Board of Accountancy
Brian V. Harpster, V.M.D., Chairman
State Board of Veterinary Medicine
Frank M. Adams, President
State Architects Licensure Board
Honorable Kim H. Pizzigrilli, Secretary of the Commonwealth
Department of State

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MAJORITY CHAIRMAN
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COCHAIRMAN EMERITUS

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Regulation 16A-5110

State Board of Nursing

PROPOSAL: Regulation 16A-5110 amends 49 PA Code, Chapter 21, regulations of the State Board of Nursing. The amendments define conduct which would be considered sexually inappropriate with patients during the course of a professional relationship, and constitute a violation of the standards of nursing conduct.

Regulation 16A-5110 is Final Rulemaking which was delivered to the Professional Licensure Committee on May 23, 2000. The Professional Licensure Committee has until June 12, 2000, to approve or disapprove the regulation.

ANALYSIS: The Board states that the amendments were proposed against a background of increasing complaints of sexual misconduct against health care professionals, and are intended to protect patients from sexual exploitation. The amendments define "patient" and "professional relationship." A professional relationship would begin with the first professional contact between a nurse and a patient, and end with the patient's discharge or a discontinuation of services. However, in the case of a registered nurse involved in providing mental health services, the relationship would end two years after discharge or discontinuation of services. For a minor patient, a professional relationship would be deemed to exist for two years after discharge or one year after the minor attains the age of majority, whichever is longer.

The amendments set forth six acts which would constitute "sexual impropriety" on the part of a nurse, and seven acts which would constitute "sexual violations." Although conduct defined as sexual violations would appear to constitute more serious transgressions than conduct defined as sexual improprieties, the amendments make no distinction between the two for purposes of disciplinary proceedings or penalties. Both would be prohibited pursuant to the standards of nursing conduct.

Consent of a patient would not be a defense to a charge of any sexual impropriety or violation. Evidence of a patient's past sexual conduct would not be admissible in any disciplinary proceeding, although the Board could consider evidence of a sexual relationship between nurse and patient occurring prior to the professional relationship. A nurse who raises the defense that the normally prohibited conduct was appropriate for the treatment of a patient would be required to demonstrate competency in practice which relates directly to sexual function or dysfunction. All appropriate discussions of sexual matters must be fully documented in the patient's records.

The amendments would make a nurse who violates any of the standards of nursing conduct subject to the full range of disciplinary and corrective measures authorized by Section 14 of the act. Additionally, for conduct constituting a sexual impropriety or violation, the civil penalties authorized under Section 13(b) of the act could be assessed. Nurses found guilty of a sexual impropriety or violation would not be eligible for placement into an impaired professional program.

RECOMMENDATIONS: It is recommended that the Professional Licensure Committee approve the regulation.

House of Representatives
Professional Licensure Committee
June 1, 2000