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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

PROFESSIONAL LICENSURE,
MAJORITY CHAIRMAN
LIQUOR CONTROL
FIREFIGHTERS' CAUCUS,
COCHAIRMAN EMERITUS

ORIGINAL: 2176

April 24, 2001

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 April 24, 2001. The Committee submits the comments listed below pertaining to the regulations that were considered.

Regulation 16A-482, State Board of Funeral Directors. The Committee voted to take no formal action until final form regulations are promulgated. However, the Committee offers the following comments:

- (1) The Committee notes that a fee for "Preceptor Registration or Change" is listed in the description of proposed amendments but is not included in the schedule of fees listed in Annex A of the rulemaking package. The Committee requests an explanation for this omission.
- (2) The Committee notes that the Board charges a fee for "Address change without reinspection." However, the Fee Report Form indicates that this fee is actually charged for a change of director or name on an existing funeral establishment license. The Committee recommends that this fee be renamed to more accurately describe the services provided.

Regulation 16A-656, State Board of Physical Therapy. The Committee voted to take no formal action until final form regulations are promulgated. However, the Committee offers the following comments:

- (1) The Committee recommends that a definition for "immediate family member" be provided in the regulations.
- (2) The Committee recommends that in proposed Sec. 40.304, the word "sexual" be inserted before the word "violation" to be consistent with the definition of the term in Sec. 40.301.

Regulation 16A-516, State Board of Nursing. The Committee voted to take no formal action until final form regulations are promulgated. However, the Committee offers the following comments:

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INDEPENDENT REGULATORY
REVIEW COMMISSION

- (1) The Committee notes the Board's statistics pertaining to the number of nursing education programs that would be placed on provisional status should the Board's proposal of requiring an 80% examination pass rate as the standard for granting full program approval. The Board indicates that 11 of 22 associate degree programs, 17 of 32 baccalaureate degree programs, and six of 26 diploma programs would be on provisional status if the higher standard were used. The Committee also notes the public comments received by the Board, indicating that there is currently a rather low number of nursing graduates at many programs. The Committee requests an explanation as to the Board's rationale in making the revision, whether it is intended to address safety issues or other concerns. The Committee also requests an explanation as to the Board's timing in revising the standard, given the severe shortage of nursing professionals practicing in the Commonwealth. The Committee recommends that the Board reconsider its proposal to raise the standard for program approval, in that this action would likely have an adverse impact on the shortage of nursing professionals.
- (2) The Committee agrees with public comments received by the Board and suggests that in calculating a nursing education program's pass rate, the results of graduates taking out-of-state examinations be included.
- (3) Proposed Sec. 21.90 requires a program's curriculum to address representative areas of nursing practice identified as entry level by the NCSBN. The Committee agrees with public comments received by the Board and believes this regulation to be overly restrictive. The Committee requests an explanation as to the Board's rationale in utilizing data from only one organization when information is available from a variety of sources.
- (4) In reference to proposed Sec. 21.90.2(f), the Committee recommends that the ratio of students to faculty be established to address safety considerations in addition to the stated purpose of assuring optimal learning opportunities.

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: James O. Pinkerton, FD, Chairperson
State Board of Funeral Directors
James J. Irrgang, Chairperson
State Board of Physical Therapy
K. Stephen Anderson, CRNA, Chairperson
State Board of Nursing
Honorable Kim H. Pizzigrilli, Secretary of the Commonwealth
Department of State

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REVIEW COMMISSION



Regulation 16A-656

State Board of Physical Therapy

PROPOSAL: Regulation 16A-656 amends 49 PA Code, Chapter 40, regulations of the State Board of Physical Therapy. The amendments define conduct which would be considered sexual improprieties and sexual violations when conducted with patients during the course of a professional relationship.

The proposed Rulemaking was published in the Pennsylvania Bulletin on March 17, 2001. The Professional Licensure Committee has until May 7, 2001 to submit comments on 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 physical therapist, physical therapist assistant or certified athletic trainer (licensees) and a patient, and end with the patient’s discharge or discontinuation of services.

The amendments set forth six acts which would constitute “sexual impropriety” on the part of a licensee, and six 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 types of conduct would be prohibited and subject licensees to disciplinary action pursuant to the appropriate sections of the Physical Therapy Practice Act pertaining to unprofessional 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 a licensee and patient occurring prior to the professional relationship. A licensee who raises the defense that the normally prohibited conduct was appropriate for the treatment of a patient would be required to demonstrate the relevancy of the conduct in question to the patient’s condition or diagnosis. All appropriate discussions of sexual matters must be fully documented in the patient’s records. Licensees 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 take no formal action until final form regulations are promulgated. However, the Committee submits the following comments:

- (1) The Committee recommends that a definition for “immediate family member” be provided in the regulations.
- (2) The Committee recommends that in proposed Sec. 40.304, the word “sexual” be inserted before the word “violation” to be consistent with the definition of the term in Sec. 40.301.

House of Representatives
Professional Licensure Committee
April 12, 2001