

MARIO J. CIVERA, JR., MEMBER
HOUSE POST OFFICE BOX 202020
MAIN CAPITOL BUILDING
HARRISBURG, PENNSYLVANIA 17120-2020
PHONE: (717) 787-3850
FAX: (717) 705-1851

830 N. LANSDOWNE AVENUE
DREXEL HILL, PENNSYLVANIA 19026
PHONE: (610) 853-4115
FAX: (610) 853-4116

232 LONG LANE
UPPER DARBY, PENNSYLVANIA 19082
PHONE: (610) 352-7800
FAX: (610) 352-3389

ORIGINAL: 2176

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

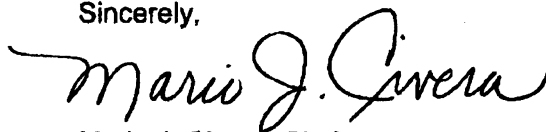
Dear Chairman McGinley:

I am writing to inform you that the House Professional Licensure Committee held a meeting on May 7, 2002. The committee voted to approve Regulation 16A-656, State Board of Physical Therapy; Regulation 16A-5210, State Board of Optometry; and Regulation 16A-662, Navigation Commission for the Delaware River and its Navigable Tributaries.

In addition, the committee voted to take no formal action on Regulation 16A-416, State Architects Licensure Board; and Regulation 16A-539, State Board of Osteopathic Medicine, until final form regulations are promulgated.

If you have any questions, please feel free to contact me.

Sincerely,



Mario J. Civera, Chairman
House Professional Licensure Committee

MJC/sms
Enclosures

cc: James J. Irrgang, Chairperson
State Board of Physical Therapy
Steven Reto, O.D., Chairperson
State Board of Optometry
C. Michael Weaver
Acting Secretary of the Commonwealth and
Chairperson of Navigation Commission for the
Delaware River and its Navigable Tributaries
Ann Shepard Houston, President
State Architects Licensure Board
Daniel D. Dowd, Jr., D.O., Chairperson
State Board of Osteopathic Medicine



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

May 7, 2002

COMMITTEES

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

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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.

Regulation 16A-656 is Final Rulemaking which was delivered to the Professional Licensure Committee on May 1, 2002. The Professional Licensure Committee has until May 21, 2002 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 physical therapist or physical therapist assistant (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.

The Committee recommended that a definition for “immediate family member” be provided in the regulations, as the term is used in the definition of “patient.” Instead, the Board has deleted the term so that a “patient” would be anyone other than the spouse of a licensee. The Committee also recommended 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. The Board has adopted the recommendation.

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

House of Representatives
Professional Licensure Committee
May 2, 2002