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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 17, 2001

James J. Irrgang, Chairman  
State Board of Physical Therapy  
116 Pine Street  
Harrisburg, PA 17105

Re: Regulation #16A-656 (IRRC #2176)  
State Board of Physical Therapy  
Sexual Misconduct

Dear Chairman Irrgang:

Enclosed are our Comments. They will soon be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce  
Executive Director  
evp  
Enclosure

cc: Honorable Mario J. Civera, Jr., Majority Chairman, House Professional Licensure Committee  
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee  
Honorable Clarence D. Bell, Chairman, Senate Consumer Protection & Professional Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection & Professional Licensure Committee  
Honorable Kim Pizzingrilli, Secretary of the Commonwealth

# Comments of the Independent Regulatory Review Commission

on

## State Board of Physical Therapy Regulation No. 16A-656

### Sexual Misconduct

May 17, 2001

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The State Board of Physical Therapy (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by April 16, 2003, the regulation will be deemed withdrawn.

#### 1. Section 40.301. Definitions. – Need; Clarity.

##### *Patient*

The definition of “patient” includes the term “immediate family member.” This term is not defined. Existing regulations for other licensure boards contain definitions for similar terms. For example, Section 36.201 of the regulations for Certified Pennsylvania Evaluators defines the term “immediate family” as “A parent, spouse, child, brother, sister, grandparent or grandchild and, when living in the family household (or under a common roof), all other individuals related by blood or marriage.” A similar definition of “immediate family member,” in this regulation, would improve clarity.

##### *Sexual impropriety*

The last sentence of Paragraph (iv) states “Discussion of a patient’s sexual practices and preferences shall be fully documented in the patient’s chart.” This sentence contains a substantive requirement. Substantive requirements should not be included in definitions; rather, they should be contained in the body of the regulation.

Furthermore, the sentence is unnecessary because the documentation requirement is contained in Section 40.302(c), relating to procedural matters. Therefore, the last sentence of Paragraph (iv) should be deleted.

#### 2. Section 40.302. Procedural matters. – Clarity; feasibility.

Subsection (b) states, “The Board may consider sexual relationships between the physical therapist or the physical therapist assistant or the certified athletic trainer and the patient occurring prior to the professional relationship.” Is the intent of this provision to provide that a

sexual relationship occurring prior to the professional relationship could be raised as a defense to sexual misconduct? Would this defense only apply in cases where the client consents to the sexual conduct after the professional relationship has begun? If so, wouldn't Subsection (b) directly conflict with Subsection (a), which provides that consent is not a defense? The Board should clarify its intent in Subsection (b).

**3. Section 40.304. Disciplinary action. – Clarity.**

The first sentence of this section states “A physical therapist, physical therapist assistant or certified athletic trainer who engages in sexual impropriety or violation....” For consistency, the word “sexual” should be inserted before the word “violation” to be consistent with the defined term “sexual violation.”



# INDEPENDENT REGULATORY REVIEW COMMISSION



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INDEPENDENT REGULATORY REVIEW COMMISSION

**To:** Suzanne Hoy  
**Agency:** Department of State  
State Board of Physical Therapy  
**Phone:** 7-2628  
**Fax:** 7-0251

**From:** Kristine M. Shomper  
Administrative Officer  
**Company:** Independent Regulatory Review  
Commission  
**Phone:** (717) 783-5419 or (717) 783-5417  
**Fax:** (717) 783-2664

**Date:** May 17, 2001  
**# of Pages:** 4

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the State Board of Physical Therapy regulation #16A-656 (#2176). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:

*Suzanne Hoy*

Date:

5/17/01