



Pennsylvania
MEDICAL SOCIETY®

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2003 OCT 29 AM 8:59

INDEPENDENT REGULATORY
REVIEW COMMISSION

October 24, 2003

Original: 2230

Commissioner John R. McGinley, Jr. Chair
Independent Regulatory Commission
14th Floor, Harrisstown 2
333 Market St.
Harrisburg, PA 17101

Dear Commissioner McGinley:

As President of the Pennsylvania Medical Society, I am writing to express concerns about Regulation Number 16A-497: State Board of Medicine Sexual Misconduct presented for approval to the Independent Regulatory Review Commission.

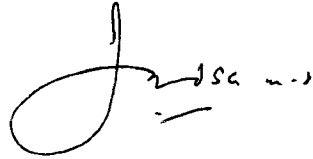
The Medical Society has opposed these regulations since they were first drafted. While we certainly support removing any physician from practice who sexually exploits patients, the Medical Board already has, and exercises, this authority. Section 16.61 in the regulations prohibits unprofessional and immoral conduct. Since virtually every ethical statement from every group representing medicine condemns sexual exploitation as an extreme case of immoral and unprofessional conduct, we fail to see what these regulations add.

We've expressed concern in the past that these regulations are so broad they could prohibit behavior that any reasonable person would accept as innocent. We are pleased to see that the Medical Board did add a provision clarifying that nothing in the regulations intends to prohibit physicians from providing care for a spouse. However, we still believe that there exists a risk of misinterpretation of these regulations. They still read in such a way as to appear to prohibit writing a prescription to treat a common illness afflicting the child of a physician's partner in a romantic relationship unless the physician and partner marry prior to writing the prescription. We can't imagine that the Board intended to prohibit such care but it illustrates the difficulty with these regulations.

Since the regulations aren't needed to revoke the license of a physician who sexually exploits patients and they appear to prohibit innocent behavior, we believe they are counter-productive. We have seen some problems in the past with prosecuting sexual misconduct cases but they were caused by unfortunate decisions by Commonwealth Court, not a deficiency in the regulations. We believe that the Medical Board cannot escape the responsibility to determine when sexual exploitation occurs on a case-by-case basis.

The Pennsylvania Medical Society therefore requests that the proposed regulations not be approved.

Sincerely,

A handwritten signature in black ink, appearing to read "Jitendra M. Desai". The signature is stylized, with a large loop for the first letter and a horizontal line at the end.

Jitendra M. Desai, MD
President

Cc: Majority and Minority Chairs, Senate Consumer Protection and Professional Committee
Majority and Minority Chairs, House Professional Licensure Committee
Chair, State Board of Medicine