

Original: 2230

KALOGREDIS, SANSWEET, DEARDEN AND BURKE, LTD.

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DEC 26 2001

DOS LEGAL COUNSEL

December 14, 2001

Ms. Cindy Warner
Health Licensing Division
Bureau of Professional and Occupational Affairs
P.O. Box 2649
Harrisburg, PA 17105

Re: Sexual Misconduct

Dear Ms. Warner:

I reviewed the State Board of Medicine's proposed addition to Title 49 in the November 24, 2001 Pennsylvania Bulletin, Volume 31 No. 47.

Our office has been involved in health care for many years and we represent many physicians and other professionals in the Commonwealth of Pennsylvania. Therefore, we deem ourselves to be interested persons and we write to provide our suggestions concerning the proposed regulations.

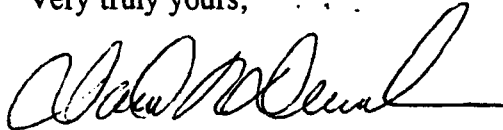
Section 16.110(e) - We believe that this proposed regulatory provision is ill advised. The explanatory comment indicate that the impaired professional program is unable to effectively monitor board regulated petitioners who have engaged in sexual misconduct.

I do not believe that that is the view of the physician health program in Pennsylvania. In fact, we believe that the impaired professional program would otherwise agree to monitor physicians depending upon the circumstances concerning the offense. Numerous psychologists and psychiatrists who are involved in treating professionals who are involved with sexual misconduct have arranged monitoring programs that allow the physician to continue to practice with appropriate monitoring guidelines in place. Physicians can be prohibited from seeing

certain types of patients, physicians can be required to have a neutral observer present when examining patients, physicians can ask their colleagues, partners, supervisors and so forth to submit monthly reports concerning their conduct. There are many creative way of allowing physicians to rehabilitate themselves from isolated instances of sexual misconduct. This regulation is too restrictive and should not be part of the law in Pennsylvania.

Thank you for considering our comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "David R. Dearden", written in a cursive style.

David R. Dearden

DRD:jm



Pennsylvania MEDICAL SOCIETY

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DOS LEGAL COUNSEL

November 29, 2001

HOWARD A. RICHTER, MD
President

EDWARD H. DENCH JR., MD
President Elect

JITENDRA M. DESAI, MD
Vice President

MICHAEL J. PRENDERGAST, MD
Chair

GEORGE F. BUERGER, JR., MD
Secretary

ROGER F. MECUM
Executive Vice President

Amy L. Nelson
Counsel, State Board of Medicine
116 Pine Street
P.O. Box 2649
Harrisburg, PA 17105-2649

Dear Ms. Nelson:

We reviewed the Medical Board's recently published draft regulations (Chapter 16, Subchapter H, 16.110 Sexual Misconduct) and have the following comments.

First, please understand that the Pennsylvania Medical Society does not in any way condone sexual advances by any physician toward a patient. We abhor such behavior and strongly condemn any physician who disgraces the profession in this way. However, the Medical Society does have concerns about the language of these regulations.

The Society objected to earlier versions of these regulations because they were too vague. We are now convinced that it is impossible to write regulations for sexual misconduct that clearly define prohibited behavior without also creating the possibility of prosecution for innocent behavior. The Society is aware that the Medical Board attempted to address the concerns we've expressed previously but we still see problems. This leads one to conclude that these regulations are more problematic than helpful. The Medical Board does currently prosecute physicians for sexual misconduct so one wonders what purpose these regulations serve if they create ambiguities rather than resolving them.. Therefore, we believe that the Medical Board should abandon the attempt to pass these regulations.

The Medical Society perceives several scenarios that illustrate our concerns about the regulations. At (b), the regulations prohibit sexual exploitation of a patient or immediate family member. This may appear reasonable until one reads the definition of "sexual exploitation" and note that it includes the use of any knowledge derived from the professional relationship. Imagine the scenario where a patient believes that the physician would get along well with the patient's sibling who resides with the patient and gives the physician the telephone number. The physician derived that information from the professional relationship so if he or she develops a romantic relationship with the patient's sibling, he or she violates the law.

Section (d) deals with creating a two-year period during which the physician cannot establish a sexual relationship with a former patient if he or she provided mental health services. How are mental health services defined? Mental health services could be counseling provided by a psychiatrist but they could also be less clear. Would the family practice physician who treats a patient for a painful condition be included if he or she wrote a prescription for an antidepressant to help the patient deal with the pain? This section provides little guidance to physicians in this situation.

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We are told that the Board hopes the regulations will provide guidance to practitioners about exactly what behavior is forbidden. However, we fear they create questions instead of providing guidance. If they don't serve to provide guidance and are not needed to prosecute physicians who exploit patients, they serve no purpose and the Medical Board should abandon the attempt to promulgate the regulations.

Sincerely,

A handwritten signature in cursive script that reads "Howard A. Richter MD". The signature is written in black ink and is positioned above the typed name.

Howard A. Richter, MD
President

Original: 2230

Barbara A. Francis
40 Birch Tree Lane
Altoona, Pa. 16601
(814) 944-8484

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DEC 26 2001

DOS LEGAL COUNSEL

Dear Ms Nelson,

I read the article in the local newspaper regarding Sexual Misconduct by Doctors and other licensed professionals.

This article means a lot to me because I live with my own pain everyday because I was sexually assaulted by a doctor that I was sent to for an IME. But for this state it comes down to who is the liar and who sleeps with the politicians. The state does not care about the people who are hard working tax payers. They are concerned about pushing all the dirt under the rug so their stats look good. We all know the game they are playing. There has been so many more incidents of doctors assaulting patients since my complaint. Since my complaint was made known, 2 other people have had similar complaints, (same professional?) I was not the first, but they allow him to practice. Oh, He made all kind of lies and accusations saying the motive was financial gain----never. It was pay back----never. His actions were so unbecoming as a professional, no one would believe or could believe his actions towards a 4 year old child in a public place.

Our state must look into the possibility that there are unstable professionals taking care of innocent people; These patients are @ the mercy of these professionals, if you will, who has entrusted their lives to them. And these patients should be treated with the utmost dignity and respect the profession can give and has to offer. Professionalism is the key word here. Integrity is also another virtue that must be bestowed upon our medical students. Also it is time the medical schools do a better screening of those who are granted priviledges to study @ their institutions and work @ their facilities. You see I'm a nurse and I know the difference between palpating and indecent touching and guilty behavior such as cracking the door (out of guilt) to see if any one person saw him doing an unprofessional act. I'll never forget him peeking out the door and looking through the slit of the door. Just as guilty as can be.

Feel free to contact me @ any time. I only want to make certain this never happens to another person. No person should ever be demoralized ever again. Not in the state of Pennsylvania or any other state in our country. Our country is hurting enough. God Bless You and God Bless America.

Sincerely,


Barbara A. Francis

P.S. Another (so called) DR. gave me a
Blood clot in my leg & caused the
STATE waste money with Diagnostic
TESTING - VERY UNSKILLED W/ WORKERS. (not
Doctors)