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

January 24, 2002

Charles D. Hummer, Jr., M.D., Chairman  
State Board of Medicine  
116 Pine Street  
Harrisburg, PA 17105

Re: Regulation #16A-497 (IRRC #2230)  
State Board of Medicine  
Sexual Misconduct

Dear Chairman Hummer:

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,

Robert E. Nyce  
Executive Director

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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 and Professional Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Kim Pizzingrilli, Secretary, Department of State

# **Comments of the Independent Regulatory Review Commission**

**on**

## **State Board of Medicine Regulation No. 16A-497**

### **Sexual Misconduct**

**January 24, 2002**

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 Medicine (the Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by December 24, 2003, the regulation will be deemed withdrawn.

#### **1. Section 16.110. Sexual Misconduct. - Clarity.**

##### *General*

As proposed, Section 16.110 contains both definitions and substantive regulatory provisions. In order to be consistent with regulatory framework existing in Chapter 16, the Board should create two separate sections. The definitions should remain in Section 16.110. The substantive provisions should be placed in a separate section following the definitions.

##### *Subsection (a)*

This subsection defines "immediate family member." It is unclear if the phrase "other family member" contained in the definition includes a relationship by blood and by marriage or law. In addition, the inclusion of the phrase, "with whom a patient resides" in the definition limits the scope of this regulation. Finally, the definition does not address a patient's relationships with non-family members such as "significant others."

##### *Subsection (b)*

This subsection refers to "Board regulated practitioner." The Board should define "Board regulated practitioner" by adding the term to the definitions section and referencing Section 422.2 of the Medical Practice Act (63 P.S. § 422.2).

##### *Subsections (b), (c), and (d)*

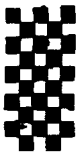
These subsections include the phrase "and subjects the practitioner to disciplinary action." Where can the disciplinary action be found? A cross-reference to the appropriate citation for disciplinary action should be provided in the subsections.

*Subsection (d)*

The Board uses the phrase “mental health disorder” in this subsection. The meaning of this phrase is vague. The regulation should either define or reference the categories of mental health disorders. For instance, the Board could refer to patients who are diagnosed under the Diagnostic and Statistical Manual of Mental Disorders – IV (DSM-IV) or subsequent publications.

**2. Behavioral examples. - Clarity.**

A commentator noted that the proposed regulation is too vague and provided several scenarios in which innocent behavior would be in violation of the regulation. Given this possibility, has the Board considered providing examples of the type of behavior it considers inappropriate?



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# INDEPENDENT REGULATORY REVIEW COMMISSION

**To:** Suzanne Hoy  
**Agency:** Department of State  
Licensing Boards and Commissions  
**Phone:** 7-2628  
**Fax:** 7-0251

**From:** Kristine M. Shomper  
Administrative Officer  
**Company:** Independent Regulatory Review  
Commission  
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**Date:** January 24, 2002  
**# of Pages:** 4

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the State Board of Medicine's regulation #16A-497 (#2230). 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 J. Hoy* Date: 1/24/02