

Original: 2262

IRRC

From: Linda Lindrose [ljilindrose@hotmail.com]
Sent: Sunday, June 23, 2002 8:33 PM
To: IRRC
Subject: Regulation #16A-539 (IRRC #2262)

As an interested party and concerned citizen of the Commonwealth, I would like to comment on Regulation #16A-539 (IRRC #2262) State Board of Osteopathic Medicine Sexual Misconduct.

I realize that I have missed the date of the public comment period, however I respectfully request that the following comments be made a matter of public record.

The Board should consider providing guidelines for appropriate behavior in the area of sexuality such as:

- 1) The patient be provided privacy to disrobe and provided appropriate covering such as sheet or gown.
- 2) The patient be offered a chaperone when sensitive areas of the body are to be examined such as breasts, pelvic, rectal area.
- 3) The patient be given a full explanation as to the reason for doing a particular exam when the exam will involve the touching of breasts, pelvic, or rectal area.

Thank you for your time and consideration.

Linda Lindrose

2002 JUN 21 PM 0:28
STATE BOARD OF OSTEOPATHIC MEDICINE
SECRETARY'S OFFICE

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Pennsylvania MEDICAL SOCIETY®

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2002 APR 15 PM 8:51
INDEPENDENT REVIEW COMMISSION

April 12, 2002

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

Dear Ms. Nelson:

The Pennsylvania Medical Society reviewed the proposed rulemaking by the State Board of Osteopathic Medicine concerning sexual misconduct [49 PA Code CH. 25] [32 Pa.B 1734]. In the proposal, the Board cites the intention to adopt 25.215 relating to sexual misconduct.

You may recall that we wrote to you expressing a number of concerns when the State Board of Medicine published a similar proposal several months ago. In order to refresh your memory, we've attached a copy of that letter.

We noted with dismay that the same problems we cited with the Board of Medicine's proposed regulations in our letter in November of 2001 exist in this proposal by the State Board of Osteopathic Medicine. It was our conclusion then that these regulations serve no purpose since they do not provide guidance. They actually create more questions. In addition, we fail to see why they are necessary for prosecution since physicians who exploit patients are already subject to disciplinary action.

Sincerely,

777 East Park Drive

P.O. Box 8820

Harrisburg, PA 17105-8820

Howard A. Richter, MD
President

Attachment

CC: Daniel D. Dowd, Jr., DO
Charles D. Hummer, Jr., MD
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2002 APR 15 AM 8:52
INDEPENDENT REGULATORY
REVIEW COMMISSION

November 29, 2001

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.

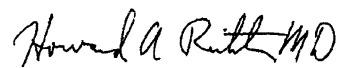
The Society objected to earlier versions of these regulations because they were too vague. We are now convinced that it is impossible to write regulations for sexual misconduct that clearly define prohibited behavior without also creating the possibility of prosecution for innocent behavior. The Society 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.

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