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

June 7, 2002

Daniel D. Dowd, Jr., D.O., Chairman  
State Board of Osteopathic Medicine  
116 Pine Street  
Harrisburg, PA 17105

Re: Regulation #16A-539 (IRRC #2262)  
State Board of Osteopathic Medicine  
Sexual Misconduct

Dear Chairman Dowd:

Enclosed are the Commission's Comments which list objections and suggestions for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval; however, they specify the regulatory criteria which have not been met.

The Comments will soon be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, 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 Michael C. Weaver, Acting Secretary, Department of State

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

**on**

### **State Board of Osteopathic Medicine Regulation No. 16A-539**

#### **Sexual Misconduct**

**June 7, 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 Osteopathic Medicine (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

We note that this regulation is identical to the State Board of Medicine's Regulation #16A-497 relating to sexual misconduct. We continue to have concerns with the same issues and as a result, our comments on the proposed regulations are similar.

#### **1. Section 25.215. Sexual misconduct. - Clarity.**

##### *General*

As proposed, Section 25.215 contains both definitions and substantive regulatory provisions. In order to be consistent with regulatory framework existing in Chapter 25, the Board should create two separate sections. The definitions should remain in Section 25.215. 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, 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.

##### *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 271.2 of the Osteopathic Medical Practice Act (63 P.S. § 271.2).

*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 regulations proposed by the State Board of Medicine and the State Board of Osteopathic Medicine were too vague and provided several scenarios in which innocent behavior would be in violation of the regulation. Given this possibility, the Board should consider providing examples of the type of behavior it considers inappropriate.