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JOHN F. MIZNER, ESQ.  
ROBERT E. NYCE, EXECUTIVE DIRECTOR  
MARY S. WYATTE, CHIEF COUNSEL

PHONE: (717) 783-5417  
FAX: (717) 783-2664  
irrc@irrc.state.pa.us  
<http://www.irrc.state.pa.us>

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

February 24, 2002

Veasey B. Cullen, Jr., D.M.D., Chairman  
State Board of Dentistry  
116 Pine Street  
Harrisburg, PA 17105

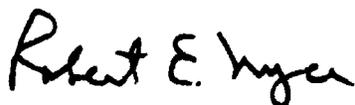
Re: Regulation #16A-4613 (IRRC #2307)  
State Board of Dentistry  
Sexual Misconduct

Dear Chairman Cullen:

Enclosed are the Commission's Comments that include objections and recommendations 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

wbg

Enclosure

cc: Honorable Mario J. Civera, Jr., Majority Chairman, House Professional Licensure Committee  
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee  
Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Benjamin Ramos, Acting Secretary, Department of State

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

**on**

## **State Board of Dentistry Regulation No. 16A-4613**

### **Sexual Misconduct**

**February 24, 2003**

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 Dentistry (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.

#### **Section 33.211a. Sexual Misconduct. – Clarity.**

##### *General.*

As proposed, Section 33.211a contains both definitions and substantive regulatory provisions. In order to be consistent with regulatory framework existing in Chapter 33, the Board should create two separate sections. The definitions should remain in Section 33.211a. The substantive provisions should be placed in a separate section following the definitions.

The terms “sexual misconduct” and “sexual exploitation” are used interchangeably in the regulation. The regulation should use one term consistently.

##### *Subsection (1) Definitions.*

There are two concerns.

First, the definition of “sexual exploitation” is vague. In its comments dated February 12, 2003, the House Professional Licensure Committee expressed concern with this definition. The regulation should include a greater level of specificity in its definition of “sexual exploitation” or include examples of exploitation.

Second, the definition of “sexual behavior” uses the phrase “any sexual conduct that has no diagnostic or therapeutic purpose.” It is unclear what types of dental practice would have a diagnostic or therapeutic purpose and also be sexual in nature. If the Board cannot identify any examples of diagnostic or therapeutic procedures within the scope of dental practice that could also be sexual in nature, then this phrase should be deleted from the definition.

*Subsection (2) Disciplinary action.*

This subsection states that sexual misconduct will subject a practitioner to “disciplinary action.” For clarity, cross-references to the appropriate provisions for disciplinary action and penalties should be provided in this subsection. For example, it should reference disciplinary action and civil penalties in Sections 4.1(a)(8) and 10.1 of the Dental Law (63 P. S. § 123.1(a)(8) and 129.1).

*Subsection (5) Exclusion.*

The exclusion indicates that the regulation does not apply to a “spouse or equivalent domestic partner.” However, there is no definition of “equivalent domestic partner.”

The House Professional Licensure Committee also expressed concern related to “significant others” who become patients of practitioners. Is the intent to exclude spouses and people who live together on a permanent basis, or are more casual relationships also excluded? The regulation should clarify the types of relationships covered by this exclusion.