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**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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March 31, 2004

Jeffrey S. Gerland, D.P.M., Chairman
State Board of Podiatry
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-448 (IRRC #2381)
State Board of Podiatry
Sexual Misconduct

Dear Chairman Gerland:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulation review criteria that have not been met.

The comments will be available on our website at 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

sfn

Enclosure

cc: Honorable Thomas P. Gannon, 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 Pedro A. Cortes, Secretary, Department of State

Comments of the Independent Regulatory Review Commission

on

State Board of Podiatry Regulation No. 16A-448

Sexual Misconduct

March 31, 2004

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The State Board of Podiatry (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on March 1, 2004. 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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Section 29.21a. Sexual Misconduct. – Protection of the public health, safety and welfare; Reasonableness.

Paragraph (1)(ii) prohibits sexual exploitation of a current patient by a podiatrist. This prohibition, however, does not include former patients or immediate family members of current or former patients.

In its comments, the House Professional Licensure Committee (Committee) recommended that the Board adopt sexual misconduct regulations that are similar to those adopted by the State Board of Medicine (49 P.S. § 16.110). The Committee notes that those regulations address situations involving immediate family members of patients and former patients.

The provision in the State Board of Medicine's regulations regarding sexual exploitation (49 P.S. § 16.110(a)) addresses family members of patients. We agree with the Committee that the approach adopted by the State Board of Medicine regarding sexual exploitation is more protective of the public health, safety and welfare than a prohibition that applies solely to current patients. Therefore, we suggest that the Board amend Paragraph (1)(ii) to prohibit sexual exploitation of current and former patients, as well as their immediate family members.

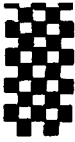
2. Section 29.1. Definitions. – Clarity.

Sexual exploitation

If the Board agrees with our suggestion to apply the prohibition on sexual exploitation to current and former patients, as well as their immediate family members, then it should amend the definition of "sexual exploitation." Specifically, the phrase "with a current patient" should be deleted.

Immediate family member

If the Board applies the prohibition on sexual exploitation to immediate family members of patients, then the term "immediate family member" should be defined in the final-form regulation. We suggest that the Board adopt the definition found in the State Board of Medicine's regulations at 49 Pa. Code § 16.1 which reads, "A parent or guardian, child, sibling, spouse, or other family member, whether related by blood or marriage, with whom a patient resides."



Facsimile Cover Sheet

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To: Suzanne Hoy
Agency: Department of State
Licensing Boards and Commissions
Phone: 7-2628
Fax: 7-0251
Date: 03/31/04
Pages: 3

COMMUNICATIONS SECTION
MARCH 31 2004

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Podiatry regulation #16A-448 (IRRC #2381). 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:** 3/31/04