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Pennsylvania Academy of
FAMILY PHYSICIANS

April 26, 2004

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Joanne Troutman
Health Licensing Division
Bureau of Professional and Occupational Affairs
PO Box 2649
Harrisburg, PA 17105-2649

Re: Regulation #16A-4918 - Disciplinary Process and Procedure

Dear Ms. Troutman:

On behalf of the over 4,700 members of the Pennsylvania Academy of Family Physicians (PAFP), I submit these comments on the State Board of Medicine's Proposed Regulation #16A-4918, titled Disciplinary Process and Procedure. Although the stated purpose of the Board's proposed regulations is to codify existing procedures, the PAFP has identified certain substantive provisions contained in the regulations that cause us concern.

Proposed § 16.55(c) includes the following sentence: "A person who has investigated or has access to or custody of documents, materials or information which are confidential and privileged under this subsection will not be required to testify in any judicial or administrative proceeding without the written consent of the Board." The PAFP has been unable to find any applicable statute which authorizes the State Board of Medicine to control who may testify in any judicial or administrative proceeding not under the Board's jurisdiction. Respectfully, the PAFP believes that the sentence provision may exceed the Board's regulatory authority and should be deleted.

Proposed § 16.55(d) concerns confidential negotiations between a prosecuting attorney for the Board and a physician respondent that may or may not lead to a final consent agreement resolving a Board disciplinary matter. Subsection (d)(5) provides: "This subsection does not preclude the Board prosecutor from offering, at a formal disciplinary hearing, other evidence to prove factual matters disclosed during the negotiation process." This provision is contradictory to the relevant rules governing confidentiality of settlement negotiations and also raises constitutional due process concerns. In addition, the provision would likely inhibit the speedy and cost-effective resolution of disciplinary cases. For these reasons, the PAFP believes that this provision also should be deleted.

The PAFP appreciates the Board's consideration of our concerns as you prepare the final regulation. Should you have questions or concerns, please do not hesitate to contact PAFP Director of Governmental Affairs Andrew Sandusky at asandusky@pafp.com or 717-564-5365.

Sincerely,

Wanda D. Filer, MD

Wanda D. Filer, MD
President

WDF/alm

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