

# Regulatory Analysis Form

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INDEPENDENT REGULATORY  
INVESTIGATION

(1) Agency

Department of State, Bureau of Professional and Occupational Affairs, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors

(2) I.D. Number (Governor's Office Use)

16A-691

IRRC Number: 2419

(3) Short Title

Sexual Misconduct

(4) PA Code Cite

49 Pa. Code §§ 47.1, 47.61-47.65, 48.1, 48.21-48.25, 49.1 and 49.21-49.25

(5) Agency Contacts & Telephone Numbers

Primary Contact: Beth Sender Michlovitz (717) 783-7200  
Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors  
Secondary Contact: Joyce McKeever (717) 783-7200

(6) Type of Rulemaking (check one)

Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

This regulation prohibits sexual misconduct committed by licensees in the context of the practitioners' professional relationship with a patient. The regulation defines prohibited sexual contact and conduct between licensees and their clients/patients or family members and deems such acts as unprofessional conduct subject to discipline by the Board.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P.S. §1906(2)).

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

**The rulemaking was developed against a background of increasing complaints of sexual misconduct against health care licensees received by the Department of State, Bureau of Professional and Occupational Affairs. There is no current regulation of the Board that explicitly prohibits sexual misconduct or that defines the period of the professional relationship or sexual improprieties or violations. This rulemaking puts licensees on notice that sexual improprieties and violations constitute unprofessional conduct.**

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

**Absent specific regulations, consumers of social work, clinical social work, marriage and family therapy and professional counseling services will be dependent on court decisions to address, on a case-by-case basis, the specific issues which the regulations seek to clarify.**

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

**Consumers of social work, clinical social work, marriage and family therapy and professional counseling services and the professions of social work, clinical social work, marriage and family therapy and professional counseling as a whole will benefit from the guidance to be provided by these regulations. There are 6,183 licensed social workers, 2,861 licensed clinical social workers, 300 licensed marriage and family therapists and 2,812 licensed professional counselors who will benefit from the regulation.**

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

**There are no perceived people or groups of people who would be adversely affected by this regulation.**

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

**All licensed social workers, clinical social workers, marriage and family therapists and professional counselors in the Commonwealth will be required to comply with the regulation. Pennsylvania has 6,092 social workers, 2,831 clinical social workers, 296 marriage and family therapists and 2,783 professional counselors who are licensed with the Board.**

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

**Input was sought and obtained from the professional associations, colleges and universities and individuals who indicated an interest in having predraft input in rulemaking.**

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures, which may be required.

**There will be no costs or savings associated with complying with this regulation. The regulation should reduce the cost of decision-making on a case-by-case basis in disciplinary matters by establishing uniform standards of conduct and procedural rules.**

### **Regulatory Analysis Form**

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures, which may be required.

**No costs or savings are generated by this regulation.**

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures, which may be required.

**There are no costs to state government in implementing these regulations. As stated in Item 17, the cost of conducting disciplinary proceedings may be reduced by adopting standard rules.**

### Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

|                             | Current | FY +1  | FY +2  | FY +3  | FY +4  | FY +5  |
|-----------------------------|---------|--------|--------|--------|--------|--------|
| <b>SAVINGS:</b>             | \$ N/A  | \$ N/A | \$ N/A | \$ N/A | \$ N/A | \$ N/A |
| Regulated Community         |         |        |        |        |        |        |
| Local Government            |         |        |        |        |        |        |
| State Government            |         |        |        |        |        |        |
| <b>Total Savings</b>        |         |        |        |        |        |        |
| <b>COSTS:</b>               | \$ N/A  | \$ N/A | \$ N/A | \$ N/A | \$ N/A | \$ N/A |
| Regulated Community         |         |        |        |        |        |        |
| Local Government            |         |        |        |        |        |        |
| State Government            |         |        |        |        |        |        |
| <b>Total Costs</b>          |         |        |        |        |        |        |
| <b>REVENUE LOSSES:</b>      | \$ N/A  | \$ N/A | \$ N/A | \$ N/A | \$ N/A | \$ N/A |
| Regulated Community         |         |        |        |        |        |        |
| Local Government            |         |        |        |        |        |        |
| State Government            |         |        |        |        |        |        |
| <b>Total Revenue Losses</b> |         |        |        |        |        |        |

(20a) Explain how the cost estimates listed above were derived.

N/A

### Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

| Program  | FY-3<br>02 - 03     | FY-2<br>03 - 04     | FY-1<br>04 - 05     | Current FY<br>05 - 06 |
|--|---------------------|---------------------|---------------------|-----------------------|
|  |                     |                     |                     |                       |
| <b>State Board of Social Workers,<br/>Marriage and Family<br/>Therapists and Professional<br/>Counselors</b> | <b>\$349,932.98</b> | <b>\$389,900.13</b> | <b>\$475,000.00</b> | <b>\$490,000.00</b>   |
|  |                     |                     |                     |                       |

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

**There is no adverse effects and costs associated with compliance with the regulation. The benefits of the regulation are described in paragraphs 11 & 13 above.**

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

**Nonregulatory alternatives were not considered by the Board for two reasons: (1) A policy statement on the issue of sexual misconduct would not have the force of regulation; (2) Waiting for court decisions to address the issues addressed by the regulation will benefit neither consumers nor the social work, clinical social work, marriage and family therapy and professional counseling professions.**

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

**No other regulatory schemes were considered.**

### Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

**This regulation is consistent with other states. All states were surveyed. Out of 36 states which responded to the survey, 28 have regulations specifically prohibiting social workers, marriage and family therapists and counselors from engaging in sexual misconduct. These states are: Colorado, Florida, Indiana, Kentucky, Nebraska, New Mexico, Ohio, Texas, Virginia, New Jersey, California, Delaware, Iowa, Rhode Island, South Carolina, Maryland, Massachusetts, Maine, Arizona, North Carolina, Nevada, Utah, Oregon, Missouri, Minnesota, Georgia, Wyoming, and New Hampshire. The regulation will not put Pennsylvania at a competitive disadvantage with other states.**

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

**The Board meets in public session on the second Wednesday of every month at which time information relative to all rulemaking is discussed. Meetings are held at the Board's offices at 2601 North 3rd Street, Harrisburg PA. A schedule of Board meeting dates is available on the Department of State's website at [www.dos.state.pa.us/bpoa](http://www.dos.state.pa.us/bpoa). Comments from the public are always welcome.**

### Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

**No.**

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

**The Board is aware of no special needs of any subset or group which should be excepted.**

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

**The regulation will be effective on publication as final rulemaking. Compliance will be required as of that date.**

(31) Provide the schedule for continual review of the regulation.

**The Board continuously reviews its regulations, periodically communicates with licensees through newsletters and obtains information and feedback from its licensees on a frequent basis.**



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STATE OF PENNSYLVANIA

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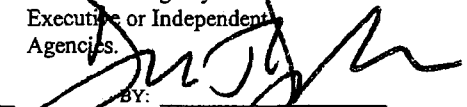
Copy below is hereby approved as to form and legality. Attorney General

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BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

**State Board of Social Workers,  
Marriage and Family Therapists  
and Professional Counselors**  
\_\_\_\_\_  
(AGENCY)

BY:   
DAVID J. DEVRIES

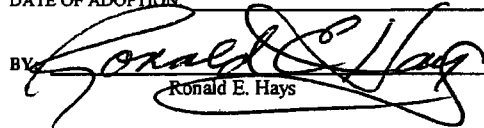
DOCUMENT/FISCAL NOTE NO. 16A-691

MAY 05 2006

\_\_\_\_\_  
DATE OF APPROVAL

DATE OF ADOPTION: \_\_\_\_\_

\_\_\_\_\_  
DATE OF APPROVAL

BY:   
Ronald E. Hays

EXECUTIVE  
(Deputy General Counsel  
(Strike inapplicable title))

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR CHAIRPERSON)

[ ] Check if applicable  
Copy not approved.  
Objections attached.

[ ] Check if applicable. No  
Attorney General approval or  
objection within 30 day after  
submission.

FINAL RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF SOCIAL WORKERS, MARRIAGE  
AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS  
49 PA. CODE, CHAPTERS  
47, 48, & 49  
SEXUAL MISCONDUCT

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) hereby adopts §§47.61-47.66, 48.21-48.26 and 49.21-49.26 regarding sexual misconduct committed by licensed social workers, marriage and family therapists and professional counselors to read as set forth in Annex A.

**A. Effective date**

The amendments take effect upon publication of the final-form rulemaking in the Pennsylvania Bulletin.

**B. Statutory Authority**

The amendments are authorized under section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P.S. §1906(2)).

**C. Background and Purpose**

These regulations were developed in order to address increasing complaints of sexual misconduct against health care professionals who are licensed by the Department of State, Bureau of Professional and Occupational Affairs. These regulations address issues concerning sexual misconduct in the context of the provision of social work, clinical social work, marriage and family therapy and professional counseling services.

**D. Summary of Comments and Responses on Proposed Rulemaking**

Notice of the proposed rulemaking was published at 34 Pa.B. 4908 (September 4, 2004). Publication was followed by a 30-day public comment period during which the Board received comments from the Pennsylvania Chapter of the National Association of Social Workers (NASW-PA) and the Pennsylvania Catholic Conference.

Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment. The following is a response to the comments and a description of changes in final rulemaking.

**General Public comments**

The Pennsylvania Catholic Conference noted that the Social Workers, Marriage and Family Therapists and Professional Counselors Act defines the terms “licensed clinical social worker,” “licensed marriage and family therapist,” “licensed professional counselor” and “licensed social worker.” However, the proposed rulemaking did not use the term “licensed” and recommended that the Board insert the term “licensed” before all references to these professional throughout the rulemaking to be consistent with the terminology used in the statute. The Board agreed with this recommendation and makes these amendments throughout its final rulemaking.

NASW-PA wrote in support of the regulations. It asked whether a professional who has a sexual addiction problem could be able to disclose that problem to the impaired professional program and receive assistance if the professional was not otherwise subject to disciplinary or corrective action. The Board notes that the impaired professional program is unable to effectively monitor professionals who have a sexual addiction problem. Accordingly, the program is not currently utilized for sexual addiction problems.

Sections 47.61, 48.21 and 49.21 (relating to definitions).

The definitions in proposed §§ 47.61, 48.21 and 49.21 have been moved to §§ 47.1, 48.1 and 49.1 (relating to general definitions). The Board intends to propose, in the near future, rulemaking pertaining to codes of ethics and professional standards of conduct that will use the same definitions. Accordingly, it is advantageous for the Board to move its definitions so that the definitions will apply to other future provisions that also use the defined terms. As a result of this change, all remaining sections have been renumbered.

In the definition of “client/patient”, the HPLC and IRRC recommended that the word “individual” replace “person.” In addition, IRRC suggested that “person” also be changed to “individual” in §§ 47.63, 48.23 and 49.23 (relating to former sexual partners as client/patients). The Board agreed with these recommendations and amended the sections accordingly. The HPLC and IRRC also asked for clarification regarding the type of decisions a legal guardian can make for a minor or an incapacitated adult. The Board will defer consideration of this comment. This language has been removed in final rulemaking because the Board intends to deal with this issue in proposed regulations pertaining to codes of ethics and standards of professional practice. HPLC and IRRC also asked for clarification of the term “other exploitive dual relationships” found in the proposed definition of “client/patient.” Because this term will apply to the future rulemaking, the Board has deleted this reference in the final rulemaking.

With respect to the definition of “immediate family member,” the HPLC recommended that the Board review and perhaps borrow language from the definition of “family or household members” found in the Protection From Abuse Act (23 Pa.C.S. §6102). However, the Board notes that the proposed definition is consistent with other licensing boards’ definitions within the Department of State. See regulations of the State Board of Psychology at 49 Pa. Code §41.1 (relating to definitions). The Board believes that this definition is appropriate for setting a professional standard of conduct for licensees and should remain as proposed for internal consistency.

With respect to the proposed definition of “sexual intimacies”, the HPLC recommended that the Board add language similar to that of the State Board of Nursing that states that licensees have a duty to safeguard the client/patient’s dignity and privacy with respect to sexual matters. The Board is in the process of drafting regulations regarding codes of ethics and professional standards that will include the suggested language. Accordingly, the Board has decided not to include that language in this final rulemaking. The HPLC also recommended that the Board add language so that the definition of “sexual intimacies” includes some of the prohibitions contained in the regulations of the State Board of Nursing with respect to inappropriate touching and inappropriate sexual comments. The Board notes that the proposed definition includes “non

therapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature” and “touching, physical contact or self-disclosure of a sexual or erotic nature.” The Board believes that inappropriate touching and inappropriate sexual comments are already included in the language of this definition.

The IRRC and the NASW-PA suggested that the Board amend the definition of “sexual intimacies” to clarify that nonsexual physical conduct or self-disclosure does not fall under the definition of “sexual intimacies,” and therefore, is not prohibited behavior. The Board considered this suggestion but believes that the definition refers to physical conduct or self-disclosure that is of a sexual or erotic nature and, therefore, prohibited. For this reason, the Board does not believe that a provision describing permitted conduct is necessary.

The HPLC asked the Board to consider whether other acts should be described as specifically prohibited, such as involuntary deviate sexual intercourse, aggravated indecent assault and indecent assault. The Board believes that this conduct is encompassed in the revised definition of “sexual intimacies” at subsection (vi).

Both the HPLC and IRRC commented that the definition of “sexual intimacies” prohibits a licensee from soliciting a date from a client/patient, but does not prohibit a licensee from accepting a date from a client/patient. The HPLC suggested expanding the language to prohibit a licensee from accepting a date. The Board has agreed with this suggestion and amended the language in final rulemaking by expanding the definition to include soliciting or accepting a date from a client/patient.

The HPLC noted that the term “exposure” was used in the proposed definition and asked whether the Board intended to refer to “indecent exposure.” The Board has amended this language to include “indecent exposure” rather than “exposure” in the definition of “sexual intimacies.” The HPLC also noted that part of the definition was in parentheses and recommended that the parentheses be removed. The Board agreed with this suggestion and has removed the parenthesis in the definition.

Renumbered sections 47.61, 48.21 and 49.21 (relating to prohibited conduct).

The HPLC recommended that the regulation specifically provide that engaging in conduct that is prohibited by the rulemaking is unprofessional conduct and will subject the licensee to disciplinary proceedings. The Board agrees and has added a new provision to sections 47.64, 48.24 and 49.24 (relating to disciplinary proceedings).

Renumbered sections 47.63, 48.23 and 49.23 (relating to sexual intimacies with a former client/patient or an immediate family member of a former client/patient).

The HPLC questioned whether the language regarding sexual intimacies between a licensee and a former client/patient or immediate family member violates the Due Process Clause of the U.S. Constitution. As an example, the HPLC noted that the language prohibits sexual intimacies for at least 7 years following the termination of the professional relationship and “then only under limited circumstances.” The HPLC questioned whether this language puts licensees on

sufficient notice as to what conduct is prohibited, as required by the Due Process Clause. The HPLC recommended that the Board consider using language which states the general rule that sexual conduct is prohibited for 7 years and, that after 7 years, sexual conduct violates the regulations if certain conditions are present. The Board has agreed with this suggestion and has amended its language accordingly.

The HPLC also noted that language regarding sexual intimacies with a former client/patient or an immediate family member of a former client/patient contained no legal standard for the Board to apply with respect to initiating disciplinary action. The HPLC suggested that the Board provide for language that would state that after 7 years, a licensee may engage in sexual conduct which is not exploitive. The Board agreed with this suggestion and has amended the language in subsection (b) accordingly.

The IRRC requested that the Board explain the relevant factors that support a 7-year time period after termination of the professional relationship during which sexual intimacies between a licensee and a client/patient are prohibited. The Board researched the different mental health professional associations related to its licensees and found that there were many positions on the subject. For example, the National Association of Social Workers (NASW) believes that sexual conduct between a social worker and former client/patient is never appropriate. The position of the American Association for Marriage and Family Therapy (AAMFT) is that sexual conduct between a marriage and family therapist and former client/patient would be appropriate in some circumstances after a period of 2 years after the termination of the professional relationship. The National Federation of Societies for Clinical Social Work, Inc. believes there should never be sexual contact between a clinical social worker and a former client/patient. Based upon this research, the Board believes that a 7-year prohibition is an appropriate compromise.

Renumbered sections 47.64, 48.24 and 49.24 (relating to disciplinary proceedings).

The HPLC and IRRC expressed their understanding that the Board believes the language in subsection (c) is a legal standard to impose disciplinary action and that the HPLC and IRRC understands the language to be rather a burden of proof. The HPLC asked whether this shifting of the burden of proof to the licensee is constitutional. The Board agrees with the concerns raised and has decided to amend the language so that it requires that in disciplinary proceedings, the Board will consider whether there has been exploitation of the client/patient.

The HPLC also recommended that the language "may not be a defense" relating to disciplinary proceedings in subsections (a) be changed to "shall not be a defense." The Board considered this suggestion and changed the language to "is not a defense."

The HPLC and IRRC also noted that the blanket prohibition against engaging in sexual intimacies is inconsistent with the language in subsection (c) which provides that in disciplinary proceedings, licensees have the burden of demonstrating there has been no exploitation of the client/patient in light of all of the relevant factors enumerated under §§ 47.64(b)(1)-(7), 48.24(b)(1)-(7) and 49.24(b)(1)-(7) respectively. The Board agreed with IRRC in that the only situation in which evidence that the relationship was not exploitive is relevant is when the sexual conduct occurs more than 7 years after termination of the professional relationship. The

Board, therefore, agreed with IRRC's recommendation that references to §§ 47.62-47.63, 48.22-48.23 and 49.22-49.24 be deleted from subsection (c). The Board has revised these references in final rulemaking.

**E. Fiscal Impact and Paperwork Requirements**

This regulation will have no fiscal impact and will not impose additional paperwork requirements on the private sector, the general public or the Commonwealth and its political subdivisions.

**F. Sunset Date**

The Board continually monitors the effectiveness of its regulations through communication with the regulated population. Accordingly, no sunset date has been assigned.

**G. Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on August 23, 2004, the Board submitted copies of the notice of proposed rulemaking, published at 34 Pa.B. 4908, to IRRC and the chairpersons of the SCP/PLC and HPLC for review and comment.

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Board also provided IRRC, SCP/PLC, and HPLC with copies of comments received as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, HPLC, and the public. The Board did not receive comments from the SCP/PLC.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), this final-form regulation was approved by the HPLC on \_\_\_\_\_ and deemed approved by SCP/PLC on \_\_\_\_\_. Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on \_\_\_\_\_ and approved the final-form rulemaking.

**H. Contact Person**

Further information may be obtained by contacting Sandra Matter, Administrative Assistant, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P.O. Box 2649, Harrisburg, Pennsylvania 17105-2649, (717) 783-1389.

**I. Findings**

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments to this final-form rulemaking do not enlarge the purpose of proposed rulemaking published at 34 Pa.B. 4908.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in Part B of this Preamble.

**J. Order**

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapters 47, 48, and 49 are amended by amending §§ 47.1, 48.1 and 49.1 and by adding §§ 47.61-47.65, 48.21-48.25 and 49.21-49.25 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the Pennsylvania Bulletin.

RONALD E. HAYS, CHAIRMAN

**ANNEX A**  
**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**  
**PART I. DEPARTMENT OF STATE**  
**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**  
**CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY**  
**THERAPISTS AND PROFESSIONAL COUNSELORS**  
**GENERAL PROVISIONS**

**§47.1. Definitions.**

The following words and terms, when used in this chapter have the following meanings, unless the context clearly indicates otherwise:

\* \* \*

*CLIENT/PATIENT* – AN INDIVIDUAL, GROUP OR FAMILY FOR WHOM A LICENSED SOCIAL WORKER OR LICENSED CLINICAL SOCIAL WORKER PROVIDES SOCIAL WORK SERVICES OR CLINICAL SOCIAL WORK SERVICES. IN THE CASE OF AN INDIVIDUAL WITH A LEGAL GUARDIAN, SUCH AS A MINOR OR LEGALLY INCAPACITATED ADULT, THE INDIVIDUAL IS THE CLIENT/PATIENT.

*IMMEDIATE FAMILY MEMBER* – A PARENT/GUARDIAN, CHILD, SIBLING, SPOUSE OR OTHER FAMILY MEMBER WITH WHOM THE CLIENT/PATIENT RESIDES.

\* \* \*

*PROFESSIONAL RELATIONSHIP* – A THERAPEUTIC RELATIONSHIP WHICH IS DEEMED TO EXIST FOR THE PERIOD OF TIME BEGINNING WITH THE FIRST PROFESSIONAL CONTACT OR CONSULTATION BETWEEN A LICENSED SOCIAL WORKER OR LICENSED CLINICAL SOCIAL WORKER AND A CLIENT/PATIENT AND CONTINUING THEREAFTER UNTIL THE LAST DATE OF A PROFESSIONAL SERVICE. IF A LICENSED SOCIAL WORKER OR LICENSED CLINICAL SOCIAL WORKER SEES A CLIENT/PATIENT ON AN INTERMITTENT BASIS, THE PROFESSIONAL



RELATIONSHIP IS DEEMED TO START ANEW ON EACH DATE THAT THE LICENSED SOCIAL WORKER OR LICENSED CLINICAL SOCIAL WORKER PROVIDES A PROFESSIONAL SERVICE TO THE CLIENT/PATIENT.

\* \* \*

*SEXUAL INTIMACIES* – ROMANTIC, SEXUALLY SUGGESTIVE, SEXUALLY DEMEANING OR EROTIC BEHAVIOR. EXAMPLES OF THIS BEHAVIOR INCLUDE THE FOLLOWING:

- (i) SEXUAL INTERCOURSE, OR ANY TOUCHING OF THE SEXUAL OR INTIMATE PARTS OF THE PERSON FOR THE PURPOSE OF AROUSING OR GRATIFYING SEXUAL DESIRE IN EITHER PERSON.
- (ii) NONTHERAPEUTIC VERBAL COMMUNICATION OR INAPPROPRIATE NONVERBAL COMMUNICATION OF A SEXUAL OR ROMANTIC NATURE.
- (iii) SEXUAL INVITATIONS.
- (iv) SOLICITING OR ACCEPTING A DATE FROM A CLIENT/PATIENT.
- (v) MASTURBATING IN THE PRESENCE OF A CLIENT/PATIENT OR ENCOURAGING A CLIENT/PATIENT TO MASTURBATE IN THE PRESENCE OF THE LICENSED SOCIAL WORKER OR LICENSED CLINICAL SOCIAL WORKER.
- (vi) INDECENT EXPOSURE, KISSING, HUGGING, TOUCHING, PHYSICAL CONTACT OR SELF-DISCLOSURE OF A SEXUAL OR EROTIC NATURE.

\* \* \*

## SEXUAL MISCONDUCT

### §47.61. Definitions

The following words and terms, when used in this section and §§47.62-47.66, have the following meanings, unless the context clearly indicates otherwise:

*Client/patient* — A person, group or family for whom a social worker or clinical social worker provides social work services or clinical social work services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships.

*Immediate family member* — A Parent/guardian, child, sibling, spouse or other family member with whom the client/patient lives.

*Professional relationship* — A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a social worker or clinical social worker and a client/patient and continuing thereafter until the last date of a professional service. If a social worker or clinical social worker sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the social worker or clinical social worker provides a professional service to the client/patient.

~~Sexual intimacies — Romantic, sexually suggestive, sexually demeaning or erotic behavior.~~

~~Examples of this behavior include the following:~~

~~(i) Sexual intercourse.~~

~~(ii) Nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature.~~

~~(iii) Sexual invitations.~~

~~(iv) Soliciting a date from a client/patient.~~

~~(v) Masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the social worker or clinical social worker).~~

~~(vi) Exposure, kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.~~

**§47.62 47.61. Prohibited conduct.**

Sexual intimacies between a LICENSED social worker or LICENSED clinical social worker and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

**§47.63 47.62. Former sexual partners as client/patients.**

Social LICENSED SOCIAL workers and LICENSED clinical social workers may not accept as client/patients persons-INDIVIDUALS with whom they have engaged in sexual intimacies.

**§47.64 47.63. Sexual intimacies with a former client/patient or an immediate family member of a former client/patient.**

- (a) Sexual intimacies between a LICENSED social worker or LICENSED clinical social worker and a former client/patient, or an immediate family member of a former client/patient are prohibited for at least 7 years following the termination of the professional relationship, and then only under very limited circumstances.
- (b) Following the passage of the 7-year period, LICENSED social workers and LICENSED clinical social workers who MAY engage in sexual intimacies CONDUCT with a former client/patient, or an immediate family member of a former client/patient shall have the burden of demonstrating that there has been no exploitation of the client/patient in light of all relevant factors, including: WHICH IS NOT EXPLOITIVE. IN DETERMINING WHETHER THE CONDUCT IS EXPLOITIVE, THE LICENSED SOCIAL WORKER OR LICENSED CLINICAL SOCIAL WORKER SHALL CONSIDER ALL OF THE FOLLOWING:
- (1) The amount of time that has passed since the professional relationship terminated.
  - (2) The nature and duration of the therapy.
  - (3) The circumstances of termination.
  - (4) The client/patient's personal history - for example, unique vulnerabilities.
  - (5) The client/patient's current mental status.
  - (6) Statements or actions made by the LICENSED social worker or LICENSED clinical social worker during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.
  - (7) The likelihood of adverse impact on the client/patient and immediate family members of the client/patient.

**§47.65 47.64. Disciplinary proceedings.**

- (a) (a) A VIOLATION OF SECTIONS 47.61, 47.62 AND 47.63 SHALL BE DEEMED UNPROFESSIONAL CONDUCT AND WILL SUBJECT THE LICENSED SOCIAL WORKER OR LICENSED CLINICAL SOCIAL WORKER TO DISCIPLINE UNDER § 11(a)(2) OF THE ACT (63 P.S. § 1911(a)(2)).
- (b) The consent of a former client/patient or immediate family member of a former client/patient to engage in sexual intimacies with the LICENSED social worker or LICENSED clinical social worker may IS not be a defense in any disciplinary action brought under §§47.62-47.64 47.61-47.63 (relating to prohibited conduct; former sexual partners as client/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient).
- (b)(c) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a former client/patient, or immediate family member of a former client/patient may be admissible in a disciplinary action brought under §§47.62-47.64 47.61-57.63.
- (e)(d) In a disciplinary proceeding brought under §§47.62-47.64 47.63(b), the social worker or clinical social worker shall have the burden of proving that there has been no THE BOARD WILL CONSIDER WHETHER THERE HAS BEEN exploitation of the client/patient in light of all of the relevant factors enumerated under §47.64 47.63(b)(1)-(7).

**§47.66 47.65. Impaired professional program.**

When the Board takes disciplinary or corrective action against a LICENSED social worker or LICENSED clinical social worker under section 11(a) of the act (63 P.S. §1911(a)), for conduct prohibited by §§47.62-47.64 47.61-47.63(relating to prohibited conduct; former sexual partners as clients/patients; and sexual intimacies with a former client/patient, or an immediate family member of a former client/patient) the LICENSED social worker or LICENSED clinical social worker will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

\* \* \*

**CHAPTER 48. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS – LICENSURE OF MARRIAGE AND FAMILY THERAPISTS**

\* \* \*

**GENERAL PROVISIONS**

**§ 48.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \*

*CLIENT/PATIENT* – AN INDIVIDUAL, GROUP OR FAMILY FOR WHOM A LICENSED MARRIAGE AND FAMILY THERAPIST PROVIDES MARRIAGE AND FAMILY THERAPY SERVICES. IN THE CASE OF AN INDIVIDUAL WITH A LEGAL GUARDIAN, SUCH AS A MINOR OR LEGALLY INCAPACITATED ADULT, THE INDIVIDUAL IS THE CLIENT/PATIENT.

\* \* \*

*IMMEDIATE FAMILY MEMBER* – A PARENT/GUARDIAN, CHILD, SIBLING, SPOUSE OR OTHER FAMILY MEMBER WITH WHOM THE CLIENT/PATIENT RESIDES.

\* \* \*

*PROFESSIONAL RELATIONSHIP* – A THERAPEUTIC RELATIONSHIP WHICH IS DEEMED TO EXIST FOR THE PERIOD OF TIME BEGINNING WITH THE FIRST PROFESSIONAL CONTACT OR CONSULTATION BETWEEN A LICENSED MARRIAGE AND FAMILY THERAPIST AND A CLIENT/PATIENT AND CONTINUING THEREAFTER UNTIL THE LAST DATE OF A PROFESSIONAL SERVICE. IF A LICENSED MARRIAGE AND FAMILY THERAPIST SEES A CLIENT/PATIENT ON AN INTERMITTENT BASIS, THE PROFESSIONAL RELATIONSHIP IS DEEMED TO START

ANew ON EACH DATE THAT THE LICENSED MARRIAGE AND FAMILY THERAPIST PROVIDES A PROFESSIONAL SERVICE TO THE CLIENT/PATIENT.

\* \* \*

*SEXUAL INTIMACIES* – ROMANTIC, SEXUALLY SUGGESTIVE, SEXUALLY DEMEANING OR EROTIC BEHAVIOR. EXAMPLES OF THIS BEHAVIOR INCLUDE THE FOLLOWING:

- (i) SEXUAL INTERCOURSE, OR ANY TOUCHING OF THE SEXUAL OR INTIMATE PARTS OF THE PERSON FOR THE PURPOSE OF AROUSING OR GRATIFYING SEXUAL DESIRE IN EITHER PERSON.
- (ii) NONTHERAPEUTIC VERBAL COMMUNICATION OR INAPPROPRIATE NONVERBAL COMMUNICATION OF A SEXUAL OR ROMANTIC NATURE.
- (iii) SEXUAL INVITATIONS.
- (iv) SOLICITING OR ACCEPTING A DATE FROM A CLIENT/PATIENT.
- (v) MASTURBATING IN THE PRESENCE OF A CLIENT/PATIENT OR ENCOURAGING A CLIENT/PATIENT TO MASTURBATE IN THE PRESENCE OF THE LICENSED MARRIAGE AND FAMILY THERAPIST.
- (vi) INDECENT EXPOSURE, KISSING, HUGGING, TOUCHING, PHYSICAL CONTACT OR SELF-DISCLOSURE OF A SEXUAL OR EROTIC NATURE.

\* \* \*

## **SEXUAL MISCONDUCT**

### **§48.21. Definitions**



The following words and terms, when used in this section and §§48.22-48.26, have the following meanings, unless the context clearly indicates otherwise:

*Client/patient* — A person, group or family for whom a marriage and family therapist provides marriage and family therapy services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships.

*Immediate family member* — A Parent/guardian, child, sibling, spouse or other family member with whom the client/patient lives.

*Professional relationship* — A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a marriage and family therapist and a client/patient and continuing thereafter until the last date of a professional service. If a marriage and family therapist sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the marriage and family therapist provides a professional service to the client/patient.

*Sexual intimacies* — Romantic, sexually suggestive, sexually demeaning or erotic behavior.

Examples of this behavior include the following:

- (i) Sexual intercourse.

~~(ii) Nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature.~~

~~(iii) Sexual invitations.~~

~~(iv) Soliciting a date from a client/patient.~~

~~(v) Masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the marriage and family therapist).~~

~~(vi) Exposure, kissing, hugging, touching, physical contact or self disclosure of a sexual or erotic nature.~~

**§48.22 48.21. Prohibited conduct.**

Sexual intimacies between a LICENSED marriage and family therapist and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

**§48.23 48.22. Former sexual partners as client/patients.**

Marriage LICENSED MARRIAGE and family therapists may not accept as client/patients persons INDIVIDUALS with whom they have engaged in sexual intimacies.

**§48.24 48.23. Sexual intimacies with a former client/patient or an immediate family member of a former client/patient.**

(a) Sexual intimacies between a LICENSED marriage and family therapist and a former client/patient, or an immediate family member of a former client/patient are prohibited for at least 7 years following the termination of the professional relationship, and then only under very limited circumstances.

- (b) Following the passage of the 7-year period, LICENSED marriage and family therapists  
who MAY engage in sexual intimacies CONDUCT with a former client/patient, or an  
immediate family member of a former client/patient shall have the burden of  
demonstrating that there has been no exploitation of the client/patient in light of all  
relevant factors, including: WHICH IS NOT EXPLOITIVE. IN DETERMINING  
WHETHER THE CONDUCT IS EXPLOITIVE, THE LICENSED MARRIAGE AND  
FAMILY THERAPIST SHALL CONSIDER ALL OF THE FOLLOWING:
- (1) The amount of time that has passed since the professional relationship terminated.
  - (2) The nature and duration of the therapy.
  - (3) The circumstances of termination.
  - (4) The client/patient's personal history, for example, unique vulnerabilities.
  - (5) The client/patient's current mental status.
  - (6) Statements or actions made by the LICENSED marriage and family therapist  
during the course of therapy suggesting or inviting the possibility of a posttermination  
sexual or romantic relationship with the client/patient.
  - (7) The likelihood of adverse impact on the client/patient and immediate family  
members of the client/patient.

**§48.25 48.24. Disciplinary proceedings.**

- (a) (a) A VIOLATION OF SECTIONS 48.21, 48.22 AND 48.23 SHALL BE DEEMED  
UNPROFESSIONAL CONDUCT AND WILL SUBJECT THE LICENSED  
MARRIAGE AND FAMILY THERAPIST TO DISCIPLINE UNDER §11(a)(2) OF  
THE ACT (63 P.S. §1911(a)(2)).

(b) The consent of a former client/patient or immediate family member of a former client/patient to engage in sexual intimacies with the LICENSED marriage and family therapist ~~may~~ IS not be a defense in any disciplinary action brought under §§~~48.22-48.24~~ 48.21-48.23 (relating to prohibited conduct; former sexual partners as client/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient).

~~(b)(c)~~ With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a former client/patient or immediate family member of a former client/patient may be admissible in a disciplinary action brought under §§~~48.22-48.24~~ 48.21-48.23.

~~(e)(d)~~ In a disciplinary proceeding brought under §§~~48.22-48.24~~ 48.23(b), ~~the marriage and family therapist shall have the burden of proving that there has been no~~ THE BOARD WILL CONSIDER WHETHER THERE HAS BEEN exploitation of the client/patient in light of all of the relevant factors enumerated under §~~48.24~~ 48.23(b)(1)-(7).

**§~~48.26~~ 48.25. Impaired professional program.**

When the Board takes disciplinary or corrective action against a LICENSED marriage and family therapist under section 11(a) of the act (63 P.S. §1911(a)), for conduct prohibited by §§~~48.22-48.24~~ 48.21-48.23 (relating to prohibited conduct; former sexual partners as clients/patients; and sexual intimacies with a former client/patient, or an immediate family member of a former client/ patient) the LICENSED marriage and family therapist will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

\* \* \*

**CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY  
THERAPISTS AND PROFESSIONAL COUNSELORS – LICENSURE OF  
PROFESSIONAL COUNSELORS**

\* \* \*

**GENERAL PROVISIONS**

**§49.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \*

*CLIENT/PATIENT* – AN INDIVIDUAL, GROUP OR FAMILY FOR WHOM A LICENSED PROFESSIONAL COUNSELOR PROVIDES PROFESSIONAL COUNSELING SERVICES. IN THE CASE OF AN INDIVIDUAL WITH A LEGAL GUARDIAN SUCH AS A MINOR OR LEGALLY INCAPACITATED ADULT, THE INDIVIDUAL IS THE CLIENT/PATIENT.

\* \* \*

*IMMEDIATE FAMILY MEMBER* – A PARENT/GUARDIAN, CHILD, SIBLING, SPOUSE OR OTHER FAMILY MEMBER WITH WHOM THE CLIENT/PATIENT RESIDES.

\* \* \*

*PROFESSIONAL RELATIONSHIP* – A THERAPEUTIC RELATIONSHIP WHICH IS DEEMED TO EXIST FOR THE PERIOD OF TIME BEGINNING WITH THE FIRST PROFESSIONAL CONTACT OR CONSULTATION BETWEEN A LICENSED PROFESSIONAL COUNSELOR AND A CLIENT/PATIENT AND CONTINUING THEREAFTER UNTIL THE LAST DATE OF A PROFESSIONAL SERVICE. IF A LICENSED PROFESSIONAL COUNSELOR SEES A CLIENT/PATIENT ON AN INTERMITTENT BASIS, THE PROFESSIONAL RELATIONSHIP IS DEEMED TO START ANEW ON EACH DATE THAT THE LICENSED PROFESSIONAL COUNSELOR PROVIDES A PROFESSIONAL SERVICE TO THE CLIENT/PATIENT.

\* \* \*

*SEXUAL INTIMACIES* – ROMANTIC, SEXUALLY SUGGESTIVE, SEXUALLY DemeanING OR EROTIC BEHAVIOR. EXAMPLES OF THIS BEHAVIOR INCLUDE THE FOLLOWING:

- (i) SEXUAL INTERCOURSE, OR ANY TOUCHING OF THE SEXUAL OR INTIMATE PARTS OF THE PERSON FOR THE PURPOSE OF AROUSING OR GRATIFYING SEXUAL DESIRE IN EITHER PERSON.
- (ii) NONTHERAPEUTIC VERBAL COMMUNICATION OR INAPPROPRIATE NONVERBAL COMMUNICATION OF A SEXUAL OR ROMANTIC NATURE.
- (iii) SEXUAL INVITATIONS.
- (iv) SOLICITING OR ACCEPTING A DATE FROM A CLIENT/PATIENT.
- (v) MASTURBATING IN THE PRESENCE OF A CLIENT/PATIENT OR ENCOURAGING A CLIENT/PATIENT TO MASTURBATE IN THE PRESENCE OF THE LICENSED PROFESSIONAL COUNSELOR.
- (vi) INDECENT EXPOSURE, KISSING, HUGGING, TOUCHING, PHYSICAL CONTACT OR SELF-DISCLOSURE OF A SEXUAL OR EROTIC NATURE.

\* \* \*

## SEXUAL MISCONDUCT

### §49.21. Definitions

The following words and terms, when used in this section and §§49.22-49.26, have the following meanings, unless the context clearly indicates otherwise:

~~*Client/patient* — A person, group or family for whom a professional counselor provides professional counseling services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships.~~

~~*Immediate family member* — A Parent/guardian, child, sibling, spouse or other family member with whom the client/patient lives.~~

~~*Professional relationship* — A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a professional counselor and a client/patient and continuing thereafter until the last date of a professional service. If a professional counselor sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the professional counselor provides a professional service to the client/patient.~~

~~*Sexual intimacies* — Romantic, sexually suggestive, sexually demeaning or erotic behavior.~~

~~Examples of this behavior include the following:~~

- ~~(i) — Sexual intercourse.~~
- ~~(ii) — Nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature.~~

- ~~(iii) Sexual invitations.~~
- ~~(iv) Soliciting a date from a client/patient.~~
- ~~(v) Masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the professional counselor).~~
- ~~(vi) Exposure, kissing, hugging, touching, physical contact or self disclosure of a sexual or erotic nature.~~

~~§49.22~~ **49.21. Prohibited conduct.**

Sexual intimacies between a LICENSED professional counselor and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

~~§49.23~~ **49.22. Former sexual partners as client/patients.**

Professional LICENSED PROFESSIONAL counselors may not accept as client/patients persons INDIVIDUALS with whom they have engaged in sexual intimacies.

~~§49.24~~ **49.23. Sexual intimacies with a former client/patient or an immediate family member of a former client/patient.**

(a) Sexual intimacies between a LICENSED professional counselor and a former client/patient, or an immediate family member of a former client/patient are prohibited for at least 7 years following the termination of the professional relationship, and then only under very limited circumstances.

(b) Following the passage of the 7-year period, LICENSED professional counselors who MAY engage in sexual intimacies CONDUCT with a former client/patient, or an



~~immediate family member of a former client/patient shall have the burden of demonstrating that there has been no exploitation of the client/patient in light of all relevant factors, including:~~ WHICH IS NOT EXPLOITIVE. IN DETERMINING WHETHER THE CONDUCT IS EXPLOITIVE, THE LICENSED PROFESSIONAL COUNSELOR SHALL CONSIDER ALL OF THE FOLLOWING:

- (1) The amount of time that has passed since the professional relationship terminated.
- (2) The nature and duration of the therapy.
- (3) The circumstances of termination.
- (4) The client/patient's personal history, for example, unique vulnerabilities.
- (5) The client/patient's current mental status.
- (6) Statements or actions made by the LICENSED professional counselor during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.
- (7) The likelihood of adverse impact on the client/patient and immediate family members of the client/patient.

**§49.25 49.24. Disciplinary proceedings.**

- (a) (a) A VIOLATION OF SECTION 49.21, 49.22 AND 49.23 SHALL BE DEEMED UNPROFESSIONAL CONDUCT AND WILL SUBJECT THE LICENSED PROFESSIONAL COUNSELOR TO DISCIPLINE UNDER §1911(a)(2).
- (b) The consent of a former client/patient or immediate family member of a former client/patient to engage in sexual intimacies with the LICENSED professional counselor may IS not be a defense in any disciplinary action brought under §§49.22-49.24 49.21-49.23 (relating to prohibited conduct; former sexual partners as client/patients; and sexual

intimacies with a former client/patient or an immediate family member of a former client/patient).

~~(b)~~ (c) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a former client/patient or immediate family member of a former client/patient may be admissible in a disciplinary action brought under §§49.22-49.24 49.21-49.23.

~~(e)~~ (d) In a disciplinary proceeding brought under §§49.22-49.24 49.23(b), the professional counselor shall have the burden of proving that there has been no THE BOARD WILL CONSIDER WHETHER THERE HAS BEEN exploitation of the client/patient in light of all of the relevant factors enumerated under §49.24 49.23(b)(1)-(7).

**§49.26 49.25. Impaired professional program.**

When the Board takes disciplinary or corrective action against a LICENSED professional counselor under section 11(a) of the act (63 P.S. §1911(a)), for conduct prohibited by §§49.22-49.24 49.21-49.23 (relating to prohibited conduct; former sexual partners as clients/patients; and sexual intimacies with a former client/patient, or an immediate family member of a former client/patient) the LICENSED professional counselor will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

Comments received by the individuals or institutions concerning 16A-691 Sexual Misconduct are as followed:

1. Rebecca S. Myers, LSW  
Executive Director  
National Association of Social Workers, Pennsylvania Chapter  
2001 North Front Street, Suite 321  
Harrisburg, PA 17102  
717-232-4125
2. Francis J. Viglietta  
Director, Social Concerns Department  
Pennsylvania Catholic Conference  
223 North Street  
Box 2835  
Harrisburg, PA 17105  
717-238-9613

stances and with the approval of the Board. The applicant shall specify the exceptional circumstances in a written request to the Board. The Board will evaluate each request and each applicant's situation on a case-by-case basis. The granting of the request shall be at the Board's discretion ] by completing a respecialization program accredited by the APA or the CPA or designated by ASPPB.

[ (5) ] (4) First-time applicants who were enrolled in a doctoral degree program prior to [ March 23, 1991 ] \_\_\_\_\_ (Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposal rulemaking.), will [ have their education credentials ] be evaluated under regulations in effect [ at that time ] on \_\_\_\_\_. (Editor's Note: The blank refers to a date the effective date of the adoption of this proposed rulemaking.) Reapplicants under subsection (a)(1) or § 41.42(b) (relating to reexamination) will be evaluated under regulations in effect at the time of reapplication.

\* \* \* \* \*

[Pa.B. Doc. No. 04-1639. Filed for public inspection September 3, 2004, 9:00 a.m.]

## STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

[49 PA. CODE CHS. 47—49]

### Sexual Misconduct

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to adopt regulations regarding sexual misconduct committed by licensed social workers, licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors by adding §§ 47.61—47.66, 48.21—48.26 and 49.21—49.26 to read as set forth in Annex A.

#### Effective Date

The proposed rulemaking will be effective upon publication of final-form regulations in the *Pennsylvania Bulletin*.

#### Statutory Authority

The Board is authorized to adopt regulations necessary for the administration of its enabling statute under section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P. S. § 1906(2)).

#### Background and Purpose

This proposed rulemaking was developed as a result of increasing complaints of sexual misconduct against health care professionals who are licensed by the Department of State, Bureau of Professional and Occupational Affairs. In this proposal, the Board addresses issues concerning

sexual misconduct in the context of the provision of social work, clinical social work, marriage and family therapy and professional counseling services.

The proposed rulemaking seeks to better protect consumers of social work, marriage and family therapy and professional counseling services and to provide guidance to the licensees by defining terms such as "client/patient," "immediate family member," "professional relationship" and "sexual intimacies." The proposed rulemaking guides licensees by informing them that sexual intimacies between a social worker, clinical social worker, marriage and family therapist or professional counselor and a client or patient is prohibited. The proposed rulemaking guides social workers, clinical social workers, marriage and family therapists and professional counselors by informing them that their professional relationship with a client/patient exists for a time period beginning with the first professional contact or consultation and ends upon the last date of a professional service. The proposed rulemaking notifies social workers, clinical social workers, marriage and family therapists and professional counselors that the consent of an individual to engage in sexual intimacies cannot be a defense in a disciplinary proceeding before the Board and that a social worker, clinical social worker, marriage and family therapist and professional counselor who engages in conduct prohibited by the amendments will not be eligible for placement into an impaired professional program under the act.

Prior to drafting this proposed rulemaking, the Board invited interested associations, colleges and universities and individuals to comment on a preliminary draft. The Board reviewed and considered all comments and suggestions received by interested parties during the regulatory development process. The interested associations, colleges and universities, and individuals included the following: National Association of Social Workers, Association of Social Work Boards, Pennsylvania Alliance of Counseling Professionals, Council on Social Work Education, Pennsylvania Society for Clinical Social Work, University of Scranton, University of Southern Maine, American Association of State Counseling Boards, American Association of Marriage and Family Therapy, Pennsylvania Social Work Coalition, Pennsylvania Catholic Conference, California University of Pennsylvania, Indiana University of Pennsylvania, Millersville University of Pennsylvania, Shippensburg University of Pennsylvania, Slippery Rock University of Pennsylvania, West Chester University of Pennsylvania, Pennsylvania State University, University of Pittsburgh, Drexel University, University of Pennsylvania, Beaver College, Bucknell University, Eastern College, Gwynedd-Mercy College, Immaculata College, Lehigh University, Marywood University, Philadelphia College of Bible, Philadelphia University, University of Scranton, Villanova University, Westminster College, Duquesne University and Society for Social Work Leadership in Health Care.

#### Description of Proposed Rulemaking

Sections 47.61, 48.21 and 49.21 (relating to definitions) define "client/patient," "immediate family member," "professional relationship" and "sexual intimacies."

The term "client/patient" is defined to mean a person, group or family for whom a social worker, clinical social worker, marriage and family therapist or professional counselor provides professional services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian is the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually re-

ceiving the service is the client/patient for issues specifically reserved to the individual such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual such as sexual or other exploitive dual relationships.

The term "immediate family member" is defined to mean a parent or guardian, child, sibling, spouse or other family member with whom the client/patient lives.

The term "professional relationship" is defined as a therapeutic relationship which is deemed to exist for a period of time beginning with the first professional contact or consultations between a social worker, clinical social worker, marriage and family therapist or professional counselor and a client/patient and continuing thereafter until the last date of a professional service. If a social worker, clinical social worker, marriage and family therapist or professional counselor sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the social worker, clinical social worker, marriage and family therapist or professional counselor provides a professional service to the client/patient.

The term "sexual intimacies" is defined as any behavior of a romantic, sexually suggestive, sexually demeaning or erotic nature. Examples of this behavior include: sexual intercourse, nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature; sexual invitations; soliciting a date from a client/patient, masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the social worker, clinical social worker, marriage and family therapist and professional counselor); or exposure, kissing or hugging, touching, physical contact or self-disclosure of a sexual or erotic nature. In drafting this definition, the Board seeks to insure that nonsexual hugging, touching, physical contact or self-disclosure are excluded from the definition. The Board notes that authorities agree that nonsexual physical conduct or self-disclosure may be appropriate. That conduct can be healing and supportive to many clients/patients and some nonerotic self-disclosure may create trust and facilitate a therapeutic alliance particularly with children, the physically and mentally disabled and the elderly. Through this definition, the Board is only intending to prohibit kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

Sections 47.62, 48.22 and 49.22 (relating to prohibited conduct) state the general principle that sexual intimacies between a social worker, clinical social worker, marriage and family therapist or professional counselor and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

Sections 47.63, 48.23 and 49.23 (relating to former sexual partners as client/patients) state the proposition that social workers, clinical social workers, marriage and family therapists and professional counselors may not accept as client/patients persons with whom they have engaged in sexual intimacies.

Sections 47.64(a), 48.24(a) and 49.24(a) (relating to sexual intimacies with a former client/patient or an immediate family member of a former client/patient) would prohibit sexual intimacies between a social worker, clinical social worker, marriage and family therapist or professional counselor and a former client/patient, or an immediate family member of a former client/patient, for at least 7 years following the termination of the profes-

sional relationship and then only if certain conditions are precedent. In determining that 7 years should be the threshold period in which to bar sexual intimacies, the Board reviewed codes of ethics of many professional associations. In particular, the Commission on Rehabilitation Counseling Certification prohibits sexual intimacies for 5 years, the National Association of Social Workers prohibits sexual intimacies indefinitely, the Pennsylvania Certification Board prohibits sexual intimacies indefinitely and the American Association of Marriage and Family Therapy prohibits it for 2 years. The Board believes that 7 years should be the threshold to bar sexual intimacies based on its view that a substantial period of time is required before the bonds of the therapeutic relationship are actually broken. The 7-year period is viewed by the Board as a compromise between a 5-year prohibition and an indefinite prohibition.

Sections 47.64(b), 48.24(b) and 49.24(b) define the criteria to determine if a personal relationship is exploitative of the therapeutic relationship. These criteria/factors include: the amount of time that has passed since the professional relationship terminated; the nature and duration of the therapy; the circumstances of termination; the client/patient's personal history or vulnerabilities; the client/patient's current mental status; statements or actions made by the social worker, clinical social worker, marriage and family therapist or professional counselor during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.

Sections 47.65, 48.25 and 49.25 (relating to disciplinary proceedings) address disciplinary matters before the Board which involve sexual intimacies. Subsection (a) would put all licensees on notice that the consent of a former client/patient or immediate family member of a former client/patient to engage in sexual intimacies shall not be a defense in any disciplinary action brought under §§ 47.62—47.64, §§ 48.22—48.24 or §§ 49.22—49.24. Subsection (b) would put all licensees on notice that neither evidence of specific instances, opinion evidence nor reputation evidence of past sexual conduct of a former client/patient or immediate family member of a former client/patient is admissible in proceedings alleging conduct which constitutes a sexual impropriety or violation. Subsection (c) would put all licensees on notice that in a disciplinary proceeding brought for sexual impropriety, the social worker, clinical social worker, marriage and family therapist and professional counselor has the burden of proving that there has been no exploitation of the client/patient in light of all of the factors enumerated under §§ 47.64 (b)(1)—(7), §§ 48.24(b)(1)—(7) or §§ 49.24(b)(1)—(7).

Sections 47.66, 48.26 and 49.26 (relating to impaired professional program) would inform licensees that a licensee subject to disciplinary action for a sexual impropriety or violation will not be eligible for an impaired professional program under the act.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking should have no fiscal impact and will not impose additional paperwork on the private sector, the general public and the Commonwealth and its political subdivisions.

#### *Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Beth Sender Michlovitz, Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of the proposed rulemaking in the *Pennsylvania Bulletin*. Reference (16A-691) Sexual Misconduct when submitting comments.

RONALD E. HAYS,  
*Chairperson*

**Fiscal Note:** 16A-691. No fiscal impact; (8) recommends adoption.

## Annex A

## TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

## PART I. DEPARTMENT OF STATE

## Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

## CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

## SEXUAL MISCONDUCT

## § 47.61. Definitions.

The following words and terms, when used in this section and §§ 47.62—47.66, have the following meanings, unless the context clearly indicates otherwise:

*Client/patient*—A person, group or family for whom a social worker or clinical social worker provides social work services or clinical social work services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships.

*Immediate family member*—A parent/guardian, child, sibling, spouse or other family member with whom the client/patient lives.

*Professional relationship*—A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a social worker or clinical social worker and a client/patient and continuing thereafter until the last date of a professional service. If a social worker or clinical social worker sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the social worker or clinical social worker provides a professional service to the client/patient.

*Sexual intimacies*—Romantic, sexually suggestive, sexually demeaning or erotic behavior. Examples of this behavior include the following:

- (i) Sexual intercourse.
- (ii) Nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature.
- (iii) Sexual invitations.
- (iv) Soliciting a date from a client/patient.
- (v) Masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the social worker or clinical social worker).
- (vi) Exposure, kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

## § 47.62. Prohibited conduct.

Sexual intimacies between a social worker or clinical social worker and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

## § 47.63. Former sexual partners as client/patients.

Social workers and clinical social workers may not accept as clients/patients persons with whom they have engaged in sexual intimacies.

## § 47.64. Sexual intimacies with a former client/patient or an immediate family member of a former client/patient.

(a) Sexual intimacies between a social worker or clinical social worker and a former client/patient, or an immediate family member of a former client/patient, are prohibited for at least 7 years following the termination of the professional relationship, and then only under very limited circumstances.

(b) Following the passage of the 7-year period, social workers and clinical social workers who engage in sexual intimacies with a former client/patient, or an immediate family member of a former client/patient, shall have the burden of demonstrating that there has been no exploitation of the client/patient in light of all relevant factors, including:

- (1) The amount of time that has passed since the professional relationship terminated.
- (2) The nature and duration of the therapy.
- (3) The circumstances of termination.
- (4) The client/patient's personal history—for example, unique vulnerabilities.
- (5) The client/patient's current mental status.
- (6) Statements or actions made by the social worker or clinical social worker during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.

(7) The likelihood of adverse impact on the client/patient and immediate family members of the client/patient.

**§ 47.65. Disciplinary proceedings.**

(a) The consent of a former client/patient or immediate family member of the former client/patient to engage in sexual intimacies with the social worker or clinical social worker may not be a defense in any disciplinary action brought under §§ 47.62—47.64 (relating to prohibited conduct; former sexual partners as client/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient).

(b) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a former client/patient, or immediate family member of a former client/patient, may be admissible in a disciplinary action brought under §§ 47.62—47.64.

(c) In a disciplinary proceeding brought under §§ 47.62—47.64, the social worker or clinical social worker shall have the burden of proving that there has been no exploitation of the client/patient in light of all of the relevant factors enumerated under § 47.64(b)(1)—(7).

**§ 47.66. Impaired professional program.**

When the Board takes disciplinary or corrective action against a social worker or clinical social worker under section 11(a) of the act (63 P.S. § 1911(a)) for conduct prohibited by §§ 47.62—47.64 (relating to prohibited conduct; former sexual partners as clients/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient), the social worker or clinical social worker will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

**CHAPTER 48. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS- LICENSURE OF MARRIAGE AND FAMILY THERAPISTS  
SEXUAL MISCONDUCT**

**§ 48.21. Definitions**

The following words and terms, when used in this section and §§ 48.22—48.26, have the following meanings, unless the context clearly indicates otherwise:

*Client/patient*—A person, group or family for whom a marriage and family therapist provides marriage and family therapy services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships.

*Immediate family member*—A parent/guardian, child, sibling, spouse or other family member with whom the client/patient lives.

*Professional relationship*—A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a marriage and family therapist and a client/patient and continuing thereafter until the last date of a professional service. If a marriage and family therapist sees a client/patient on an intermittent basis,

the professional relationship shall be deemed to start anew on each date that the marriage and family therapist provides a professional service to the client/patient.

*Sexual intimacies*—Romantic, sexually suggestive, sexually demeaning or erotic behavior. Examples of this behavior include the following:

- (i) Sexual intercourse.
- (ii) Nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature.
- (iii) Sexual invitations.
- (iv) Soliciting a date from a client/patient.
- (v) Masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the marriage and family therapist).
- (vi) Exposure, kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

**§ 48.22. Prohibited conduct.**

Sexual intimacies between a marriage and family therapist and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

**§ 48.23. Former sexual partners as client/patients.**

Marriage and family therapists may not accept as client/patients persons with whom they have engaged in sexual intimacies.

**§ 48.24. Sexual intimacies with a former client/patient or an immediate family member of a former client/patient.**

(a) Sexual intimacies between a marriage and family therapist and a former client/patient, or an immediate family member of a former client/patient are prohibited for at least 7 years following the termination of the professional relationship, and then only under very limited circumstances.

(b) Following the passage of the 7-year period, marriage and family therapists who engage in sexual intimacies with a former client/patient, or an immediate family member of a former client/patient, shall have the burden of demonstrating that there has been no exploitation of the client/patient in light of all relevant factors, including:

- (1) The amount of time that has passed since the professional relationship terminated.
- (2) The nature and duration of the therapy.
- (3) The circumstances of termination.
- (4) The client/patient's personal history, for example, unique vulnerabilities.
- (5) The client/patient's current mental status.
- (6) Statements or actions made by the marriage and family therapist during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.

(7) The likelihood of adverse impact on the client/patient and immediate family members of the client/patient.

**§ 48.25. Disciplinary proceedings.**

(a) The consent of a former client/patient or immediate family member of a former client/patient to engage in sexual intimacies with the marriage and family therapist may not be a defense in any disciplinary action brought under §§ 48.22—48.24 (relating to prohibited conduct;

former sexual partners as client/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient).

(b) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a former client/patient, or immediate family member of a former client/patient, may be admissible in a disciplinary action brought under §§ 48.22—48.24.

(c) In a disciplinary proceeding brought under §§ 48.22—48.24, the marriage and family therapist shall have the burden of proving that there has been no exploitation of the client/patient in light of all of the relevant factors enumerated under § 48.24(b)(1)—(7).

#### § 48.26. Impaired professional program.

When the Board takes disciplinary or corrective action against a marriage and family therapist under section 11(a) of the act (63 P. S. § 1911(a)) for conduct prohibited by §§ 48.22—48.24 (relating to prohibited conduct; former sexual partners as clients/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient), the marriage and family therapist will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

### CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS- LICENSURE OF PROFESSIONAL COUNSELORS

#### SEXUAL MISCONDUCT

##### § 49.21. Definitions

The following words and terms, when used in this section and §§ 49.22—49.26, have the following meanings, unless the context clearly indicates otherwise:

*Client/patient*—A person, group or family for whom a professional counselor provides professional counseling services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships.

*Immediate family member*—A parent/guardian, child, sibling, spouse or other family member with whom the client/patient lives.

*Professional relationship*—A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a professional counselor and a client/patient and continuing thereafter until the last date of a professional service. If a professional counselor sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the professional counselor provides a professional service to the client/patient.

*Sexual intimacies*—Romantic, sexually suggestive, sexually demeaning or erotic behavior. Examples of this behavior include the following:

- (i) Sexual intercourse.
- (ii) Nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature.
- (iii) Sexual invitations.
- (iv) Soliciting a date from a client/patient.
- (v) Masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the professional counselor).
- (vi) Exposure, kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

##### § 49.22. Prohibited conduct.

Sexual intimacies between a professional counselor and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

##### § 49.23. Former sexual partners as client/patients.

Professional counselors may not accept as client/patients persons with whom they have engaged in sexual intimacies.

##### § 49.24. Sexual intimacies with a former client/patient or an immediate family member of a former client/patient.

(a) Sexual intimacies between a professional counselor and a former client/patient, or an immediate family member of a former client/patient, are prohibited for at least 7 years following the termination of the professional relationship, and then only under very limited circumstances.

(b) Following the passage of the 7-year period, professional counselors who engage in sexual intimacies with a former client/patient, or an immediate family member of a former client/patient, shall have the burden of demonstrating that there has been no exploitation of the client/patient in light of all relevant factors, including:

- (1) The amount of time that has passed since the professional relationship terminated.
- (2) The nature and duration of the therapy.
- (3) The circumstances of termination.
- (4) The client/patient's personal history, for example, unique vulnerabilities.
- (5) The client/patient's current mental status.
- (6) Statements or actions made by the professional counselor during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.
- (7) The likelihood of adverse impact on the client/patient and immediate family members of the client/patient.

##### § 49.25. Disciplinary proceedings.

(a) The consent of a former client/patient or immediate family member of a former client/patient to engage in sexual intimacies with the professional counselor may not be a defense in any disciplinary action brought under §§ 49.22—49.24 (relating to prohibited conduct; former sexual partners as client/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient).

(b) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a former client/patient, or immediate family member of



a former client/patient, may be admissible in a disciplinary action brought under §§ 49.22—49.24.

(c) In a disciplinary proceeding brought under §§ 49.22—49.24, the professional counselor shall have the burden of proving that there has been no exploitation of the client/patient in light of all of the relevant factors enumerated under § 49.24(b)(1)—(7).

#### § 49.26. Impaired professional program.

When the Board takes disciplinary or corrective action against a professional counselor under section 11(a) of the act (63 P. S. § 1911(a)) for conduct prohibited by §§ 49.22—49.24 (relating to prohibited conduct; former sexual partners as clients/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient), the professional counselor will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

[Pa.B. Doc. No. 04-1640. Filed for public inspection September 3, 2004, 9:00 a.m.]

## STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

### Reciprocal License

The State Real Estate Commission (Commission) proposes to amend Chapter 35 (relating to State Real Estate Commission) to read as set forth in Annex A.

#### A. Effective Date

This proposed rulemaking will be effective upon publication of the final-form regulations in the *Pennsylvania Bulletin*.

#### B. Statutory Authority

This rulemaking is proposed under the authority of sections 201, 501, 601, 602 and 604 of the Real Estate Licensing and Registration Act (RELRA) (63 P. S. §§ 455.201, 455.501, 455.601, 455.602 and 455.604).

#### C. Background and Purpose

This proposal implements the act of December 30, 2003 (P. L. 418, No. 58) (Act 58), which amended the RELRA to provide for requirements for the issuance of a reciprocal license. Act 58 authorizes the Commission to issue and adopt regulations concerning reciprocal licenses to licensees of other states whose standards are substantially comparable to those in this Commonwealth and who agree to afford an opportunity to licensees from this Commonwealth. In addition, Act 58 authorized the Commission to enter into reciprocal agreements.

Act 58 requires that:

- Licensees whose principal place of business is outside of this Commonwealth be classified as "reciprocal licensees" and all other licensees in this Commonwealth be classified as "standard licensees."

- Reciprocal licensees obtain standard licenses when their principal place of business moves to this Commonwealth or when their licenses in their principal places of business are no longer current.

- Reciprocal licensees maintain current licensure in another state to renew.

- Reciprocal licensees either maintain an office in this Commonwealth or in the state where the licensee holds the equivalent of a standard license.

- Both reciprocal and standard licensees other than brokers be employed and supervised by brokers.

- Applicants for reciprocal licenses be licensed in a state that has standards which are substantially comparable to those in this Commonwealth and that agrees to afford this opportunity to licensees of this Commonwealth.

- Applicants for reciprocal licenses verify that:

- (1) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another jurisdiction.

- (2) The applicant has reviewed and is familiar with the RELRA and the regulations and agrees to be bound by the RELRA and regulations.

- (3) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any jurisdiction in which the applicant is or has been licensed.

- (4) The applicant consents to service of process as described in § 35.221(3) (related to general requirements).

- The state where the applicant holds the equivalent of a standard license:

- (1) Certifies that the license is active and in good standing.

- (2) Describes any past disciplinary action taken by the licensing authority against the applicant.

- (3) Lists the applicant's office address and the name of the applicant's employing broker.

- The Commission publish a list of states with which the Commission has signed reciprocal agreements.

- Reciprocal licensees pay the same fees and have the same rights and responsibilities as standard licensees.

#### D. Description of Proposed Rulemaking

##### § 35.201. Definitions.

The Commission is proposing to amend the definitions of "broker," "builder-owner salesperson," "campground membership salesperson," "cemetery broker," "cemetery salesperson," "licensee" and "salesperson" in § 35.201 to include both standard and reciprocal licenses in accordance with section 602(a) of the RELRA.

The Commission is also proposing to add definitions for "branch office," "main office" and "principal place of business." Currently, the Commission registers and inspects main and branch offices. Both are tied to the fixed location of the broker of record or broker who is a sole proprietor. The definition for "main office" addresses the office requirements in §§ 35.241, 35.242 and 35.244—35.246. The definition for "branch office" addresses the licensure, supervision and operation and inspection of branch office requirements in §§ 35.243—35.246.

The definition of "principal place of business" addresses the requirement in section 602(a) of the RELRA that the reciprocal licensee's principal place of business must be outside of this Commonwealth. For licensing purposes, the main office of a reciprocal broker would be that



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF SOCIAL WORKERS,  
MARRIAGE AND FAMILY THERAPISTS AND  
PROFESSIONAL COUNSELORS

Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-1389

May 25, 2006

The Honorable Alvin C. Bush, Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harrisstown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Final Regulation  
State Board of Social Workers, Marriage and  
Family Therapists and Professional Counselors  
16A-691:Sexual Misconduct

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Social Workers, Marriage and Family Therapists and Professional Counselors pertaining to Sexual Misconduct.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink that reads "Ronald E. Hayes".

Ronald E. Hayes, Chairperson  
State Board of Social Workers, Marriage and Family  
Therapists and Professional Counselors

REH/BSM:klh  
Enclosure

cc: Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Albert H. Masland, Chief Counsel  
Department of State

Joyce McKeever, Deputy Chief Counsel

Department of State

Cynthia Montgomery, Regulatory Counsel

Department of State

Herbert Abramson, Senior Counsel in Charge

Department of State

Beth Sender Michlovitz, Counsel

State Board of Social Workers, Marriage

and Family Therapists and Professional Counselors

State Board of Social Workers, Marriage and Family Therapists and Professional Counselors

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 16A-691  
SUBJECT: State Board of Social Workers, Marriage & Family Therapists & Professional Counselors: Sexual Misconduct  
AGENCY: DEPARTMENT OF STATE

2006 MAY 25 AM 11:56  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

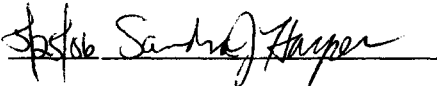

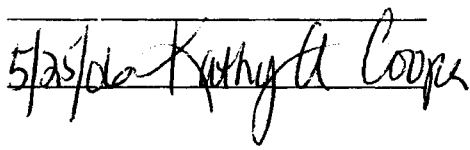
120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions b. Without Revisions

FILING OF REGULATION

| DATE    | SIGNATURE   | DESIGNATION  |
|---------|---|--|
| 5/25/06 |  | HOUSE COMMITTEE ON PROFESSIONAL LICENSURE                        |
| 5/25/06 |  | SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE |
| 5/25/06 |  | INDEPENDENT REGULATORY REVIEW COMMISSION                         |
|         |   | ATTORNEY GENERAL (for Final Omitted only)                        |
|         |   | LEGISLATIVE REFERENCE BUREAU (for Proposed only)                 |

May 8, 2006