

Regulatory Analysis Form

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REVIEW COMMISSION

(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 §§47.61-47.66, 48.21-48.26, 49.21-49.26

(5) Agency Contacts & Telephone Numbers

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

Secondary Contact: Joyce McKeever, Deputy Chief
Counsel, Regulatory Review (717)783-1088

(6) Type of Rulemaking (check one)

Proposed Rulemaking
 Final Order Adopting Regulation
 Final, Proposed 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.

The regulation proposes to better protect consumers of social work, clinical social work, marriage and family therapy and professional counseling services and provide guidance to the profession by establishing prohibitions against enumerated sexual misconduct committed by licensees in the context of the practitioners' professional relationship with a patient. The regulations define the period of the professional relationship for social workers, clinical social workers, marriage and family therapists and professional counselors and sexual intimacies; identify prohibited conduct; preclude a defense of patient consent to charges of sexual misconduct; preclude evidence of the patient's past sexual conduct in proceedings alleging sexual misconduct; and inform licensees that a social worker, clinical social worker, marriage and family therapist or professional counselor who has engaged in sexual misconduct will not be eligible for placement into an impaired professional program.

(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, Act of December 21, 1998, P.L. 1017, as amended, 63 P.S. §1906(2).

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(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?

This proposed 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 currently no language in the regulations of the Board that explicitly prohibits sexual misconduct or that defines the period of the professional relationship or sexual improprieties or violations. This rulemaking will put licensees on notice that sexual improprieties and violations constitute intolerable 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 proposed 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 profession 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 the proposed regulations. Currently, there are 6,183 Social Workers, 2,861 Clinical Social Workers, 300 Marriage and Family Therapists and 2,812 Professional Counselors who will benefit from the regulation.

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(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.

Prior to drafting this proposed regulation, the Board invited interested associations and colleges and universities 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 and colleges and universities included the following: National Association of Social Workers; Association of Social Work Boards; PA Alliance of Counseling Professionals; Council on Social Work Education; Pa 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; and Villanova University.

(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 should be no costs or savings associated with complying with this regulation. The regulations 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. At the present time it is not possible to estimate or quantify any savings.

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(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.

There are no costs or savings to local governments resulting from the regulations.

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(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.

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(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 Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	SN/A	SN/A	SN/A	SN/A	SN/A	SN/A
Regulated						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

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

See items 17, 18 and 19.

Regulatory Analysis Form

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

Program	FY -3	FY -2	FY -1	Current FY
State Board of Social Workers, Marriage and Family Therapists and Professional Counselors	\$257,057.21	\$305,871.61	\$309,899.38	\$308,000.00
				7

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

There should be no adverse effects and costs associated with compliance with the regulation. See, paragraphs (11) and (13) for benefits.

(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 would 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.

See paragraph 22 above.

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(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.

N/A

(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.

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

This regulation will not affect existing or proposed regulations of the Board or other agencies.

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

In light of extensive public outreach already conducted, the Board has scheduled no public hearings or informational meetings regarding this regulation.

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(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 upon publication of final rulemaking in the Pennsylvania Bulletin. 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 feed-back from its licensees on a frequent basis.

FACE SHEET
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#2419

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

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies.

[Signature]
BY: _____
(DEPUTY ATTORNEY GENERAL)

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

(AGENCY)

[Signature]
BY: _____

DOCUMENT/FISCAL NOTE NO. 16A-691

JUL 08 2004
DATE OF APPROVAL

DATE OF ADOPTION: _____

BY: *[Signature]*
Ronald Hays

DATE OF APPROVAL
6/9/04
(Deputy General Counsel
~~Chief Counsel~~,
Independent Agency
Strike inapplicable
title)

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- [] Check if applicable
Copy not approved.
Objections attached.
- [] Check if applicable. No Attorney
General approval or
objection within 30 day
after submission.

Proposed Rule making
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, CHAPTER 47,
AND CHAPTER 48 & 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 amendments 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 (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 regulations seek to better protect consumers of social work, marriage and family therapy and professional counseling services and to provide guidance to the licensees by defining such terms as “client/patient,” “immediate family member,” “professional relationship,” and “sexual intimacies.” The proposed regulations guide 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 regulations guide 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 regulations notify 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 Social Workers, Marriage and Family Therapists and Professional Counselors Act.

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

In compliance with Executive Order 1996-1, prior to drafting this proposed regulation, 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 Amendments

§§47.61, 48.21 and 49.21 (relating to definitions):

The proposed amendments 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 receiving 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, but are not limited to, sexual intercourse, non-therapeutic 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 non-sexual hugging, touching, physical contact or self-disclosure are excluded from the definition. The Board notes that authorities agree that non-sexual physical conduct or self-disclosure may be appropriate. Such conduct can be healing and supportive to many clients/patients and some non-erotic 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.

Subsections 47.64(a), 48.24(a) and 49.24(a) 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 professional 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.

Subsections 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 sections 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, nor 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 sections 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 the 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 Social Workers, Marriage and Family Therapists, and Professional Counselors Act.

Fiscal Impact and Paperwork Requirements

The proposed amendments 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/Commission, 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 regulation to Beth Sender Michlovitz, Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P.O. Box 2649, Harrisburg, Pennsylvania 17105-2649 within thirty (30) days following publication of the proposed regulation in the Pennsylvania Bulletin. Please reference (16A-691) Sexual Misconduct, when submitting comments.

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

ANNEX A
PENNSYLVANIA ADMINISTRATIVE CODE
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 §§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 – 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, but are not limited to, sexual intercourse; non-therapeutic 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 or clinical social worker); or 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 client/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 §§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 – 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, but are not limited to, sexual intercourse; non-therapeutic

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 marriage and

family therapist); or 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 §§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 – 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, but are not limited to, sexual intercourse; non-therapeutic 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 professional counselor); or 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.



**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**

August 23, 2004

The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed 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 proposed 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. Hays".

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

REH/BSM/:law
Enclosure

c: Linda C. Barrett, Chief Counsel
Department of State
Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia K. 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**

I.D. NUMBER: 16A-691
 SUBJECT: Sexual Misconduct
 AGENCY: DEPARTMENT OF STATE # 2419

TYPE OF REGULATION

- X Proposed Regulation
- 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

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 DEPARTMENT OF STATE

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8/23	<i>Sandra J. Harper</i>	HOUSE COMMITTEE ON STATE GOVERNMENT Professional Licensure
	<i>Alan Cleaves</i>	SENATE COMMITTEE ON STATE GOVERNMENT Consumer Prot. & Prof. Licensure
8/23/04	<i>Steph J. H.</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
8/23	<i>C. La B...</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)