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From: Marisa Fenice [msf@padental.org]
Sent: Thursday, October 09, 2008 3:24 PM
To: IRRC
Cc: ckc; sbgrater; twgamba
Subject: PDA's Comments to IRRC Re: Regulation 16A-4618
Attachments: IRRChearing_testimony.doc

Dear Commission members and staff:

Please find attached comments from the Pennsylvania Dental Association regarding the State Board of Dentistry's final-form regulations on sexual misconduct (16A-4618).

Please contact me or Dr. Gamba directly if you have any questions or concerns.

Thank you,

Marisa Fenice
Director of Legislative Affairs
Pennsylvania Dental Association
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2008 OCT -9 PM 3:35
INDEPENDENT REGULATORY
REVIEW COMMISSION

#2573



October 9, 2008

Mr. Arthur Coccodrilli, Commissioner
Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

Re: Regulation 16A-4618

Dear Commissioner Coccodrilli:

On behalf of the more than 5,700 members of the Pennsylvania Dental Association (PDA), I am writing to express PDA's opposition to the State Board of Dentistry's final-form rulemaking on sexual misconduct regulations. PDA respectfully requests that the Independent Regulatory Review Commission (IRRC) vote in opposition to these regulations.

PDA has taken every opportunity to comment on the proposed regulations since their inception and still has significant concerns about their implication for dentists and other members of the dental team. PDA strongly believes the current regulations pertaining to professional misconduct provide sufficient protection for dental patients. The SBOD's overly broad definition of sexual misconduct does not appropriately limit its authority to prosecute sexual exploitation while implicating all potentially romantic activity.

PDA requests that IRRC consider the following points as it deliberates over the draft regulations:

- **Consent is not a defense:** Although it is recognized that an individual seeking psychiatric or psychological care may suffer from a mental impairment that renders consent invalid, the same does not hold true for dental patients. There have been no conclusive studies that support the proposition that an individual who obtains regular dental care is incapable of providing informed consent when engaging in a personal relationship. Furthermore, PDA believes that the United States Constitution protection of an individual's right to free association also applies to dentists, dental hygienists and expanded function dental assistants (EFDAs).

PDA would like for the regulations to allow for consent as a defense and that the SBOD place the burden on the licensee or certificate holder to establish the fact that consent was obtained and that it was voluntary. PDA believes this is more reasonable than a blanket prohibition, and that it does not violate an individual's right to free association.

- **Religious Discrimination**: PDA believes that the regulations could potentially discriminate against dental professionals and patients whose religious convictions preclude them from cohabitating to continuing an existing relationship, while those who feel free to cohabitate are able to do so.
- **Discrimination Against Young Dentists**: PDA believes that the regulations could potentially discriminate against newly graduated dentists, many of whom are unmarried and are more apt to seek personal relationships. PDA is concerned that overly burdensome misconduct regulations may make Pennsylvania an unfriendly practice environment for young dentists. This could potentially decrease the number of dentists practicing in the state and impact patients' ability to access care.
- **Definition of "current patient"**: PDA believes the definition of "current patient" is confusing and unrealistic given the typical operation of a dental office. The draft regulations imply that between six-month cleanings, a licensee may have a personal relationship with a patient during the last three months of the period, as long as they discontinued their personal relationship before treatment and did not resume their relationship for another three months after such treatment. This certainly illustrates the difficulty in regulating conduct when patients usually visit the dental office twice a year, and in regulating morality in general.
- **Regulating dental hygienists and EFDAs**: PDA remains concerned about how these regulations may impact dentists' responsibility over their staffs' personal relationships and ability to provide timely care to patients. PDA understands that each licensee and certificate holder will be held responsible for their behavior. However, PDA believes there will be many instances where dentists will be placed in untenable positions. For instance, a hygienist dating a patient must refer that patient to the dentist or another hygienist for treatment. This could prove a hardship for dentists who depend on hygienists for their patients' continuing care.

PDA also is concerned that the regulations do not provide enough protection for those dentists who employ an associate and the legal implications that may arise should the employing dentist become aware that the associate is engaging in a personal relationship with a patient.

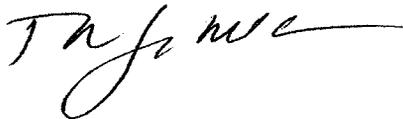
- **Barrier to accessing dental care**: PDA remains concerned that these regulations could prove burdensome for dentists residing in rural areas who will have to choose between discontinuing a patient's treatment, not date the patient or refer the patient to another dentist whose practice is located a significant distance away.

Considering the shortage of dentists in rural areas, PDA cautions that new dentists may be less apt to practice in rural areas knowing that they could be subjected to sanctions if it proves to difficult to comply with the regulations.

PDA would like to reiterate that the current regulatory provisions for professional misconduct adequately protect patients and discipline licensees who commit infractions. PDA encourages the SBOD to keep the regulations as they currently read. The SBOD justifies its regulations by indicating its need to prevent licensees' exploitation of patients. The proposed regulations, with their blanket prohibition of any interaction that could be construed as sexual in nature, go far beyond the intended target of exploitation. The regulations neglect common decency and attempt to regulate the morality of intelligent adults.

PDA appreciates your attention to this important issue and your careful consideration of our concerns as IRRC considers Regulation 16A-4618. Please do not hesitate to contact me directly or PDA's government relations staff at (717) 234-5941, if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Gamba', with a long horizontal flourish extending to the right.

Thomas W. Gamba, DDS
President
(215) 546-2311
twgamba@mac.com