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**FAX**

**Pennsylvania Dental Association**

3501 North Front Street

PO Box 3341

Harrisburg, PA 17105

**Date:** November 20, 2006  
 Number of pages including cover sheet (3)

**To:** Ms. Cynthia Montgomery  
 Esquire

**From:** Marisa S. Fenice  
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CC:

**REMARKS:**

Urgent     For your review     Reply ASAP     Please comment

Dear Ms. Montgomery:

Please find attached the Pennsylvania Dental Association's comments regarding the State Board of Dentistry's proposed rulemaking on sexual misconduct, 16A-4618. I will also send a hard copy of PDA's comments in the mail.

Please call me if you have any questions. Thank you and have a nice Thanksgiving.

Sincerely,

Marisa Fenice  
 Director of Legislative Affairs  
 Pennsylvania Dental Association

Dear Cynthia

I apologize - I saw this morning that the fax I tried to send yesterday failed to go through. Please let me know if you have any questions or concerns.

Thank you!

Marisa

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November 20, 2006

Ms. Cynthia Montgomery, Esquire  
 Board Counsel  
 State Board of Dentistry  
 P.O. Box 2649  
 Harrisburg, PA 17105-2649

Re: Section 33.211a (relating to sexual misconduct)

Dear Ms. Montgomery:

On behalf of the more than 5,700 members of the Pennsylvania Dental Association (PDA), I would like to thank you for the opportunity to comment on the State Board of Dentistry's (SBOD) proposed regulatory change to Section 33.211a, relating to sexual misconduct, dated October 21, 2006.

PDA appreciates consideration of the following concerns regarding the draft regulations:

- The draft regulations would drastically change the supervisory responsibilities a dentist must have over a hygienist or EFDA. These regulations would force a dentist to supervise the private relationships of his or her auxiliary. Dentists may be forced to terminate an employee and risk legal action in response, or terminate the patient, which may result in abandonment or other ethical issues. Further, there does not appear to be a legitimate rationale for including the auxiliary personal in this prohibition. PDA strongly recommends that the regulations for sexual misconduct do not include auxiliary staff.
- In place of the clause that eliminates consent as a defense, the PDA would prefer a provision that would require a higher standard of proof to show that the relationship was undertaken with consent from both parties. The PDA believes that a clause eliminating consent as a consideration potentially violates a provider's and the patient's constitutional rights to free association. While it could be argued that a licensed professional may waive this right as a requirement for his or her licensure, the patient does not waive this right, and therefore should not be denied the right to a consensual relationship.
- PDA believes that the draft regulations, if enacted, may leave a practitioner liable for patient abandonment. In the current regulations, Section 33.211(a)(4) defines unprofessional conduct as, "Withdrawing dental services after a dentist-patient relationship has been established so that the patient is unable to obtain necessary dental care in a timely manner." If a dentist refers a patient to another practitioner because of a consensual relationship, or if he or she refuses to treat the patient altogether, it is not unreasonable to expect a vindictive patient to hold a dentist liable for unprofessional conduct under Section 33.211(a)(4). The PDA believes that these provisions, both of which would be enumerated under unprofessional conduct, are contradictory.

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See your PDA member dentist regularly.

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Additionally, while it may be relatively easy for a dentist in a heavily populated area to refer a patient to a colleague in the immediate vicinity, it may be nearly impossible for a dentist in rural Pennsylvania to refer. In such areas of the state, it is not uncommon for the nearest dentist to be located over fifty miles away.

In addition, we believe the requirement to transfer care to another dental office as provide in subsection (ii) of section (a) needs to be clarified. As written it is unclear whether dentists who practice through separate corporate structures but share office space would constitute a permissible transfer.

Once again, thank you for the opportunity to comment on the SBOD's proposed regulatory change. Please do not hesitate to contact the PDA Government Relations Department at (717) 234-5941 should you have any questions or concerns.

Sincerely,



Linda K. Himmelberger, DMD  
President

cc: Independent Regulatory Review Commission  
House Professional Licensure Committee  
Senate Consumer Protection and Professional Licensure Committee



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FAX TRANSMITTAL

DATE: 11/21/06  
TO: Barb Harr  
FROM: Karen Hollern  
FAX NUMBER: 772-9892

NUMBER OF PAGES INCLUDING COVER 4

COMMENTS: Comments on ~~1000~~ Dental Bd.  
Sexual Misconduct Regulation.  
We just received this comment  
around 4pm today. Sorry for any  
inconvenience.

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