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Kenneth S. Ramsey, Ph.D.
President and Chief Executive Officer

INDEPENDENT REGULATORY
REVIEW COMMISSION

January 29, 2008

Mr. Scott Schalles
Regulatory Analyst
Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17104

Dear Mr. Schalles:

On behalf of the Pennsylvania Advisory Council on Drug and Alcohol Abuse to the Department of Health, we are writing to ensure that our opposition to the Department's proposed regulations regarding confidentiality of addiction treatment records is known to you. (Department of Health, Proposed Regulation No. 10-186)

The Pennsylvania Advisory Council on Drug and Alcohol Abuse was established by Act 63 of 1972 and according to the Act, "The Department of Health shall seek the written advice and consultation of the council . . ." on five different matters, including "The promulgation by the Department of Health of any regulations necessary to carry out the purpose of this Act." (Section 3(e) and Section (3)(e)(2), Act 63 of 1972)

Despite the clear language of the Act, the Department of Health has never sought our "written advice and consultation" on this critically important issue that is in fact, a foundation of addiction treatment.

The Department's response to item 16 on the Independent Regulatory Review Commission's Regulatory Analysis Form implies that consultation with the Council occurred. This is misleading. No such consultation occurred. The Department of Health told us nothing and we were forced to learn of the original rescission proposal from the public. Health agreed to share the rescission proposal with us and the treatment and recovery groups only after we voted to oppose it. Later, the Department developed a whole new approach and once again, we were not permitted an opportunity for serious review nor was our written advice sought before the regulations were published in the Pennsylvania Bulletin.

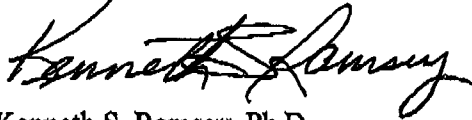
In fact, as you will see from the attached time line, we voted against any changes to the state confidentiality protections on three separate occasions.

Letter: January 29, 2008
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In closing, we remain steadfast in our opposition to Proposed Regulation No. 10-186 that will significantly weaken the privacy protections of 4 PA Code Section 255.5.

We are also greatly disturbed by the Department's failure to honor the statutory requirements of Act 63 of 1972 to seek out our written advice. In addition, despite our direct request, the Department failed to forward our prior motions of opposition to the Governor, the Department of Health, the Independent Regulatory Review Commission and the House and Senate Committees of jurisdiction.

Sincerely,



Kenneth S. Ramsey, Ph.D.
President and CEO

Member: The Pennsylvania Advisory Council on Drug and Alcohol Abuse

Attachments: Time Line
Council Meeting Minutes (January 2007, April 2007)

Time Line on Actions by the PA Advisory Council on Drug and Alcohol Abuse

January 2007 – The Advisory Council learned that the Department of Health was preparing for regulations for publication in the Pennsylvania Bulletin that would rescind the existing state confidentiality protections. The Council learned about these regulations – not from the Department of Health – but from the audience in attendance at the meeting.

The Council voted immediately to oppose any changes to the state confidentiality rules and directed that this motion be forwarded by the Department to: the Secretary of Health, the Governor, the House Health and Human Services Committee, the Senate Public Health and Welfare Committee and the Independent Regulatory Review Commission.

Only after the motion passed the Advisory Council, did the Department of Health offer to share the proposed regulations with the Council, the effected field and consumer groups.

April 2007 – The Council learned that the motion to oppose was never forwarded to any of the parties listed in the motion. In response, the Council voted again to oppose any changes in the state rules protecting the privacy of records and directed that the motion be sent out within 72 hours of that vote.

June and August 2007 – The Council meetings were cancelled.

October 2007 – No materials on confidentiality were provided for review prior to the October meeting. Council members remember no discussion at the meeting or got the impression that the Department was still reviewing comments on the proposed rescission. At no point did the Department ask for the “written advice” of the Council.

November 2007 – The Department sent a new and different set of regulations to the Pennsylvania Bulletin for publication – again, without seeking the written advice of the Council.

January 2008 – The Council discovered that the Department moved forward without our advice and that our prior motions still had not been forwarded to the appropriate parties.

For the third time, we voted to oppose any changes to the state confidentiality protections and decided to prepare a letter of opposition and ensure its delivery to the Governor, the Department of Health, the House Health and Human Services Committee, the Senate Public Health and Welfare Committee, the Independent Regulatory Review Commission and others.

**THE PENNSYLVANIA ADVISORY COUNCIL
ON DRUG AND ALCOHOL ABUSE**

DATE: January 25, 2007

MEETING MINUTES

In Attendance

Dr. Calvin B. Johnson, Secretary of Health; Gene R. Boyle, Director, Bureau of Drug and Alcohol Programs (BDAP); and BDAP staff Maureen A. Cleaver; Jackie Spaid; Robin L. Rothermel; Hector L. Gonzalez; Ronald A. Kauffman; and Janet Musser.

Members Present

George W. Dowdall, Ph.D.; Trusandra Taylor, M.D.; Peter Wambach; A. Thomas McLellan, Ph.D.; Carlos E. Graupera; and Marlene Burks.

Absent

Guy Diamond, Ph.D. and Kenneth S. Ramsey, Ph.D.

Guests in Attendance

Arvida Wanner, Division of Drug and Alcohol Program Licensure (DAPL); Deborah Graeff, DAPL; Andrea Robertson, Reckitt Benckiser; Terri Wray, Pennsylvania Certification Board (PCB); Mark Sarneso, CRC and Drug and Alcohol Service Providers of Pennsylvania (DASPOP); Deb Beck, DASPOP; Beth Pickering, Community Care Behavioral Health; Charles Morgan, M.D., Parkside/NHS Human Services; Berenth Irwin, New Directions in Frankford; Randolph Clark, Parkside Recovery Center; Cheryl Floyd, Pennsylvania Recovery Organizations Alliance (PRO-A); Michael Flaherty, Ph.D., Institute On Research, Education and Training in Addictions (IRETA); Sue Duff, BDAP; Dan Klarsch, BDAP; and Robert Rounce, BDAP.

Welcome and Introductions

Secretary Johnson welcomed the Council members and guests to the meeting and introductions were provided.

Mr. Boyle asked that the October 25, 2006 minutes be accepted by the Council. There was a motion made and seconded to accept the minutes.

Public Comment

Deb Beck asked the Council to intercede in the confidentiality regulation rescission package that is being proposed for the Commonwealth. She is concerned because the administration is allowing third party insurers access to patients' medical histories. She is afraid that patients will not want to go for treatment because their past would be revealed.

Mr. Wambach was concerned as this issue was never brought to the attention of the Council. He also commented that the insurers have become a barrier to treatment. He made the following motion:

I would like to make a motion that a letter be sent from the Advisory Council to the Secretary of Health, the Governor, the House Health and Human Services Committee, the Senate Public Health and Welfare Committee, and the Independent Regulatory Review Commission stating opposition to any changes to the confidentiality regulations of the Commonwealth.

Mr. Graupera seconded the motion and it was carried five to one.

Mr. Graupera suggested that the Council have a thorough discussion regarding confidentiality in the near future.

Other Business

None

The next Advisory Council meeting will be on April 11, 2007 from 2:00-4:00 P.M. at the Regional Training Institute-Inn at Reading, Wyomissing, PA.

A motion was made and seconded calling for adjournment.

Respectfully submitted,

Janet I. Musser

**THE PENNSYLVANIA ADVISORY COUNCIL
ON DRUG AND ALCOHOL ABUSE**

DATE: April 11, 2007

MEETING MINUTES

In Attendance

Gene R. Boyle, Director, Bureau of Drug and Alcohol Programs (BDAP); and BDAP staff; Maureen A. Cleaver; Robin L. Rothermel; Hector L. Gonzalez; Joseph W. Powell; Terry W. Matulevich; and Ron A. Kauffman.

Members Present

George W. Dowdall, Ph.D.; Trusandra Taylor, M.D.; Peter Wambach; Carlos E. Graupera; Kenneth S. Ramsey, Ph.D.; and Marlene Burks.

Absent

Guy Diamond, Ph.D. and A. Thomas McLellan, Ph.D.

Guests in Attendance

Gail Scott, Reckitt Benckiser; Mark Sarneso, Drug and Alcohol Service Providers of Pennsylvania (DASPOP); Cheryl Floyd, Pennsylvania Recovery Organizations Alliance (PRO-A); Michael Flaherty, Ph.D., Institute On Research, Education and Training in Addictions (IRETA); Dona Dmitrovic and Denise Francis, RASE Project; Joanne Komnier, Alkermes; George Danielle, St. Joseph's University in Philadelphia; Grace Schuyler, Legal Counsel for the Division of Drug and Alcohol Program Licensure (DAPL); and Keith Fickel, Legal Counsel for BDAP.

Welcome and Introductions

Mr. Boyle welcomed the Council members and guests to the meeting and introductions were provided.

Mr. Boyle asked that the January 25, 2007 minutes be accepted by the Council. There was a motion made, seconded and carried to accept the minutes.

Bureau of Drug and Alcohol Programs (BDAP) Update

Mr. Boyle reviewed the previous Council meeting. He reported on meetings he had with Secretary Johnson and Deputy Secretary Grossi. Secretary Johnson requested that Mr. Boyle set up a workgroup that would consist of members of the Council, providers, licensing, legal counsel and researchers in the field. Secretary Johnson wants the committee to address all the issues and barriers brought up by Council. Mr. Boyle stated that he plans to have the committee together by the second week in May. Mr. Boyle expressed the desire to have Council members Thomas McLellan, Trusandra Taylor and Kenneth Ramsey to be a part of the committee. They agreed to do so, along with DOH legal counselors Keith Fickel and Grace Schuyler. As everyone is in agreement that Buprenorphine should be used for treatment, the committee's agenda will include: 1) *How do we make Buprenorphine available?* 2) *What are the barriers that stop us from making it available?* 3) *How do we remove those barriers?*

The Department, at Secretary Johnson's request, placed the proposed confidentiality changes on the Department webpage, BDAP's webpage and also notified the field with a hard copy. Comments to the proposed regulations were due by March 23, 2007. There were 31 individual comments received on the proposed changes. Program and Licensing staff are presently reviewing these comments.

Mr. Boyle reported that Secretary Johnson brought to the attention of the Governor's Office the motion by Mr. Wambach. Mr. Boyle pointed out that this was the first step in this process and all concerns would be addressed. After challenging the previous motion, Mr. Wambach asked for a *new motion* in the following words:

"I motion that the Secretary of Health send a letter (in 72 hours) to the Governor, Department of Health, the House Health and Human Services Committee, the Senate Public Health and Welfare Committee and the Independent Regulatory Review Commission, stating opposition to any changes to the confidentiality regulations of the Commonwealth."

The new motion was unanimously voted by present members and passed.

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Executive Offices

FACSIMILE COVER SHEET

DATE:	1/29/08	TIME:		NUMBER OF PAGES:	9
(Including this sheet)					

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 REVIEW COMMISSION

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