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## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 20, 2006

Susan E. Calderbank, D.M.D., Chairperson  
State Board of Dentistry  
2601 North 3rd Street  
Harrisburg, PA 17110

Re: Regulation #16A-4618 (IRRC #2573)  
State Board of Dentistry  
Sexual Misconduct

Dear Chairperson Calderbank:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). We will send a copy to the standing committees when they are designated.

If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman  
Executive Director

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Enclosure

cc: Honorable Pedro A. Cortes, Secretary, Department of State

# Comments of the Independent Regulatory Review Commission

on

## State Board of Dentistry Regulation #16A-4618 (IRRC #2573)

### Sexual Misconduct

December 20, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the October 21, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Dentistry (Board) to respond to all comments received from us or any other source.

#### **Section 33.211a. Sexual misconduct. – Protection of the public health and safety; Reasonableness; Clarity.**

We have four concerns with the regulation.

First, this section should not include both definitions and substantive regulatory provisions. In order to be consistent with the regulatory framework in Chapter 33, the Board should create two separate sections or move the definitions to Section 33.1 (relating to Definitions).

Second, the definition of “Sexual misconduct” contains two variations of the same word. “Sexual misconduct” is defined as “sexual conduct.” For clarity, we suggest that the body of the definition be revised to refer to actions of a sexual nature or sexual behavior instead of sexual conduct.

Third, the term “practitioner” is used throughout this regulation instead of “board regulated practitioner” as defined in 49 Pa. Code § 33.1 (relating to Definitions). We recommend that the Board use the defined term in the final-form regulation.

Finally, we question whether these provisions apply to “auxiliary personnel.” We note that “auxiliary personnel” are included under the definition of “board regulated practitioner.” The final-form regulation should clearly indicate whether “auxiliary personnel” must comply with this regulation. If the Board intends to exclude “auxiliary personnel,” it needs to explain how excluding these practitioners protects the public health and safety.

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**Facsimile Cover Sheet**

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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
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**To:** Tom Blackburn  
Cynthia Montgomery  
**Agency:** Department of State  
Licensing Boards and Commissions  
**Phone:** 7-2628  
**Fax:** 7-0251  
**Date:** December 20, 2006  
**Pages:** 3

**Comments:** We are submitting the Independent Regulatory Review Commission's comments the State Board of Dentistry's regulation #16A-4618 (IRRC #2573). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Cynthia K. Montgomery Date: 12/20/06