

ARTHUR COCCODRILLI, CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
DAVID M. BARASCH, ESQ.
DAVID J. DEVRIES, ESQ.
JOHN F. MIZNER, ESQ.
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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

February 5, 2007

Honorable Robert M. Tomlinson, Chairman
Senate Consumer Protection and Professional Licensure Committee
362 Main Capitol
Harrisburg, PA 17120

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

Dear Senator Tomlinson:

On December 20, 2006, we delivered our comments on the above-captioned regulation to Susan E. Calderbank, D.M.D., Chairperson, State Board of Dentistry. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

Enclosed is a copy of our comments. If you have any questions, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

ARTHUR COCCODRILLI, CHAIRMAN
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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

February 5, 2007

Honorable Lisa M. Boscola, Minority Chairman
Senate Consumer Protection and Professional Licensure Committee
458 Main Capitol
Harrisburg, PA 17120

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

Dear Senator Boscola:

On December 20, 2006, we issued comments on the above-captioned regulation and delivered our comments to Susan E. Calderbank, D.M.D., Chairperson, State Board of Dentistry. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

February 5, 2007

Honorable P. Michael Sturla, Majority Chairman
House Professional Licensure Committee
332 Main Capitol
Harrisburg, PA 17120

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

Dear Representative Sturla:

On December 20, 2006, we issued comments on the above-captioned regulation and delivered our comments to Susan E. Calderbank, D.M.D., Chairperson, State Board of Dentistry. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

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INDEPENDENT REGULATORY REVIEW COMMISSION

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

February 5, 2007

Honorable William Adolph, Jr., Minority Chairman
House Professional Licensure Committee
110 Ryan Office Building
Harrisburg, PA 17120

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

Dear Representative Adolph:

On December 20, 2006, we issued comments on the above-captioned regulation and delivered our comments to Susan E. Calderbank, D.M.D., Chairperson, State Board of Dentistry. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

Enclosed is a copy of our comments. If you have any questions, please contact me.

Sincerely,

Kim Kaufman
Executive Director
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Enclosure

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.