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RULE ADOPTION
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

STATE BOARD OF PHYSICAL THERAPY
SEXUAL MISCONDUCT

Additions to proposals are indicated by <<+ Text +>>; deletions from proposals are indicated by <<- Text ->>. Changes in tables are made but not highlighted.

Adopted New Rule: N.J.A.C. 13:39A-3.10

Proposed: October 18, 1999 at 31 N.J.R. 3045(a).

Adopted: December 21, 1999 by the New Jersey State Board of Physical Therapy, Nancy Kirsch, President.

Filed: October 18, 2000 as R.2000 d.458, without change.

Authority: N.J.S.A. 45:9-37.18.

Effective Date: **November 20, 2000.**

Expiration Date: July 15, 2001.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rule does not exceed Federal standards or requirements. There are no Federal standards or requirements applicable to the subject matter of the adopted new rule.

Full text of the adoption follows:

13:39A-3.10

<< NJ ADC 13:39A-3.10 >>

13:39A-3.10 Sexual misconduct

(a) The purpose of this section is to identify for licensees of the State Board of Physical Therapy conduct which shall be deemed sexual misconduct.

(b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

"Licensee" means any person licensed to engage in practice as a physical therapist or physical therapist assistant as regulated by the State Board of Physical Therapy.

"Patient" means any person who is the recipient of physical therapy evaluation, instruction or treatment rendered by a licensee.

"Patient-therapist relationship" means a relationship between a physical therapist or a physical therapist assistant and a patient wherein the licensee owes a continuing duty to the patient to render physical therapy services consistent with his or her training and experience.

"Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes, but is not limited to, the imposition of a part of the licensee's body upon a part of the patient's body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or patient's body into or near the genital, anal or other opening of the other person's body. "Sexual contact" does not include the touching of a patient's body which is necessary during the performance of a generally accepted and recognized physical therapy procedure.

"Sexual harassment" means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, and which occurs in connection with a licensee's activities or role as a provider of physical therapy services, and that either: is unwelcome, is offensive to a reasonable person, or creates a hostile workplace environment, and the licensee knows, should know, or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. "Sexual harassment" may consist of a single extreme or severe act or of multiple acts and may include, but is not limited to, conduct of a licensee with a patient, co-worker, employee, student or supervisee whether or not such individual is in a subordinate position to the licensee.

"Spouse" means the husband, wife or fiancée of the licensee or an individual involved in a long-term committed relationship with the licensee. For purposes of the definition of "spouse," a long-term committed relationship means a relationship which is at least six months in duration.

(c) A licensee shall not engage in sexual contact with a patient with whom he or she has a patient-therapist relationship. The patient-therapist relationship is ongoing for purposes of this section, unless:

1. Physical therapy is terminated by way of written notice to the patient and is documented in the patient record; or
2. The last physical therapy was rendered more than three months ago.

(d) A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-therapist relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a patient, unless that discussion is directly related to a proper physical therapy purpose. Such discussion shall not include disclosure by the licensee of his or her own sexual relationships.

(f) A licensee shall provide privacy and examination conditions which prevent the exposure of the unclothed body of the patient. Appropriate draping measures shall be employed to protect patient privacy.

(g) A licensee shall not engage in sexual harassment either within or outside of the professional setting.

(h) A licensee shall not engage in any other activity which would lead a reasonable person to believe that the activity serves the licensee's personal prurient interests or which is for the sexual arousal, or sexual gratification of the licensee or patient or which constitutes an act of sexual abuse.

(i) Violation of any of the prohibitions or directives set forth in (c) through (h) above shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(j) Nothing in this section shall be construed to prevent a licensee from rendering physical therapy to a spouse, providing that the rendering of such physical therapy is consistent with accepted standards of physical therapy and that the performance of physical therapy is not utilized to exploit the patient spouse for the sexual arousal or sexual gratification of the licensee.

(k) It shall not be a defense to any action under this section that:

1. The patient solicited or consented to sexual contact with the licensee; or
2. The licensee is in love with or held affection for the patient.