

#2577

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*House of Representatives*

COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

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October 16, 2007

Arthur Coccodrilli, Chair  
Independent Regulatory Review Commission  
Harristown 2, Floor 14  
333 Market Street  
Harrisburg, PA 17101

Mr. Coccodrilli:

I write to express my disapproval of DOH Regulation 10-182.

The proposed regulation expands the definition of "contraceptives" to include any drug that stops the implantation of the fertilized ovum. While this definition may be consistent with a portion of the Abortion Control Act, it is not consistent with the conscience clause provisions of the Act.

The Act, in Section 3203, defines "pregnancy" as beginning with fertilization, and defines "unborn child" as an individual whose life begins at fertilization. Therefore, any drug or device which interferes with implantation is not a contraceptive, but an abortifacient.

The Act, in Section 3213(d), provides that:

No medical personnel or medical facility, nor any employee, agent or student thereof, shall be required against his or its conscience to aid, abet, or facilitate performance of an abortion or dispensing of an abortifacient and failure or refusal to do so shall not be a basis for any civil, criminal, administrative or disciplinary action, penalty or proceeding, nor may it be the basis for refusing to hire or admit anyone.

Because this conscience clause includes both the word "abortion" as defined in 3203, and the term "dispensing of an abortifacient," it covers more than simply abortion. In other words, the conscience clause is written in broader language than other sections of the Act and protects an individual's or an institution's right to not "dispense an abortifacient" with the conscience clause provisions of the Act.

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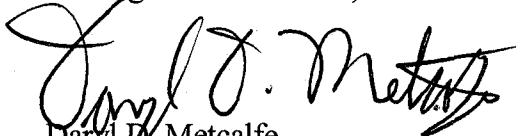
As currently written, the proposed regulation is in direct conflict with the conscience clause protection provided for under the Abortion Control Act and therefore would be in violation of existing statutory law.

Further, the proposed regulation is inconsistent with the provisions of Section 3202 of the Abortion Control Act. Section 3202 manifests a clear legislative intent that physicians be held to precise standards of care when their actions may result in the death of an unborn child, since, as explained in the same sentence of the Act, the Commonwealth "places a supreme value upon protecting human life."

Additionally, the legislature stipulates in that same section of the Act that an unborn child is to be extended equal protection of the law. Since the Act, as noted above, defines an unborn child as an individual who comes into existence at the moment of fertilization, the proposed regulation is in direct conflict with the public policy underpinnings of the Abortion Control Act.

Therefore, I ask that you disapprove this regulation since its provisions are preempted by conflict with statute.

Serving the 12<sup>th</sup> District,

A handwritten signature in black ink, appearing to read "Daryl D. Metcalfe", written in a cursive style.

Daryl D. Metcalfe  
State Representative

DDM:ajd