

SENATE BOX 202024
 172 MAIN CAPITOL BUILDING
 THE STATE CAPITOL
 HARRISBURG, PA 17120-3024
 (717) 787-3110 • FAX: (717) 787-8004
 E-MAIL: rwonderling@pasen.gov
 WEBSITE: www.senatorwonderling.com
 427 WEST MAIN STREET
 LANSDALE, PA 19446-2007
 (215) 268-1500 • FAX (215) 560-4886
 1245 CHESTNUT STREET, UNIT #5,
 EMMAUS, PA 18049
 (610) 965-1466 • FAX (610) 967-2586
 1701 WASHINGTON BLVD.
 EASTON, PA 18042
 (610) 250-5624 • FAX (610) 250-5628
 312 W. BROAD STREET
 QUAKERTOWN, PA 18951
 (215) 528-1215 • FAX (215) 528-1218

24th District
 Robert C. Wonderling



Senate of Pennsylvania

2577

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October 17, 2007

The Honorable Arthur Coccodrilli, Chair
 Independent Regulatory Review Commission
 333 Market Street
 14th Floor
 Harrisburg, PA 17101

Re: Department of Health Regulation 10-182

Dear Sir:

I write to express my disapproval of DOH Regulation 10-182 because it conflicts with existing statute in several areas.

First, the regulation conflicts with the Health Care Facilities Act. Sections 117.52 and 117.53 require the administration of a drug or device after intercourse even if such drug or device would prevent the implantation of a fertilized ovum in the uterus. Such a requirement is in direct conflict with the deeply held moral and religious beliefs of many religious institutions and health care workers. The creation of such a conflict is a direct violation of the Health Care Facilities Act itself.

Section 448.902(a) of the Act specifically provides:

No health care provider shall be required by any provisions of this act or rules and regulations promulgated thereunder, to provide facilities or render services contrary to the stated religious or moral beliefs of the provider, nor shall any applicant be denied a certificate of need or the right to apply for or receive public funds on the grounds he will not provide the facilities or render the services for such reasons.

Providing the emergency contraception as it is defined in the regulation on site or providing transportation for its administration off site would be a "service" as that term is used in Section 448.902(a), the Health Care Facilities Act, quoted above. Therefore, these regulations are in direct violation with the very statute they were created to implement.

INDEPENDENT REGULATORY
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Second, the proposed regulation is in conflict with the Abortion Control Act. The regulation, in Section 101.4, expands the definition of "contraceptives" to include any drug, drug regime or device which is used after intercourse to inhibit or prevent the implantation of the fertilized ovum in the uterus. 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 an 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 protection includes both the term "abortion" as defined in 3203, and the term "dispensing of an abortifacient", it covers more than simply abortion. In other words, the conscience clause protection 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" or to aid, abet or facilitate dispensing an abortifacient. As currently written, the proposed regulation is in direct conflict with the conscience clause protection provided for under the Abortion Control Act and thus is again in violation of existing statutory law.

Finally, 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."

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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.

I ask that you disapprove this proposed regulation since its provisions are preempted by conflicts with statute.

Sincerely yours,



Robert C. Wonderling
Pennsylvania State Senator