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ACLU

AMERICAN CIVIL LIBERTIES UNION
of PENNSYLVANIA

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HEALTH

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November 16, 2006

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Dear Mr. Radke:

On behalf of the American Civil Liberties Union of Pennsylvania, we would like to commend the Pennsylvania Department of Health on its commitment to ensuring that hospitals meet the needs of sexual assault patients and its effort to expedite the process of publishing the proposed "Sexual Assault Victim Emergency Services" regulations [28 PA. Code Chapters. 101 and 117]. These proposed regulations have the potential to greatly improve emergency services provided to sexual assault patients in Pennsylvania hospitals. The ACLU offers several recommendations so that the Department can fulfill its important goal.

The majority of hospitals in Pennsylvania currently fail to provide comprehensive treatment to sexual assault patients. Over the past six years, the ACLU has conducted three surveys (2000, 2002, and 2006) of Pennsylvania hospitals to determine whether their emergency departments offer emergency contraception when treating sexual assault patients. In the ACLU's latest study, which was completed in September 2006, we were disappointed to find that over fifty percent of hospitals surveyed do not consistently offer emergency contraception as a standard of care to sexual assault patients. These latest findings reflect little change from those of previous years and highlight how hospitals across Pennsylvania continue to neglect the needs of their patients in this area. Our survey results are available online at <http://www.aclupa.org/hospitalsurvey>.

Women who seek medical treatment in a hospital emergency department after a sexual assault should be provided with medically accurate information about all available treatment options, including emergency contraception. All sexual assault patients should be offered and, if requested, provided with emergency contraception, regardless of the hospital in which she receives treatment.

INDEPENDENT REGULATORY
REVIEW COMMISSION

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Hospitals Should Provide Medically Accurate Information to Sexual Assault Patients

In order to ensure that sexual assault patients have medically accurate information about emergency contraception, the Department should explicitly require that all information given to patients about the pregnancy prevention drug be medically and factually accurate, as well as objective. Sections 117.53(a)(1) and 117.55(a) address this issue in part by requiring the written informational materials given to victims to be “medically and factually accurate.” To ensure that victims receive unbiased and accurate information, we recommend that sections 117.53(a)(1) and 117.55(a) require the written informational materials be “objective.” In furtherance of this goal, we also recommend that the Department should require the oral information about emergency contraception that section 117.53(a)(2) requires to be “medically and factually accurate, as well as objective.”

In section 117.55 of the proposed regulations, the Department requires hospitals to create informational materials to ensure that victims are “fully aware of the use of emergency contraception in order to make an informed decision on whether taking the medication is desired.” In order to make sure that patients at all hospitals receive medically and factually accurate, comprehensive, and objective information, even in those hospitals that have stated a religious or moral objection to the provision of emergency contraception, the Department itself should create and distribute these materials. In the event that the Department does not amend the proposed regulations in this manner, the ACLU suggests that section 117.55 be amended to require the Department to review and approve each hospital’s informational materials for medical accuracy and objectiveness.

Protecting Patients in Hospitals that Refuse to Provide Emergency Contraception.

The ACLU commends the Department for ensuring that all sexual assault patients have the opportunity to receive emergency contraception as part of their treatment, regardless of which hospital they receive care. A rape victim is often taken to a hospital by the police or emergency medical technicians, not by her choice. Under these conditions, most women lack the time, information, or opportunity to assess a given hospital’s policy and ask to be taken to a hospital that provides emergency contraception.

The ACLU firmly believes that all hospitals, religious or not, operate within the public sphere and that they should be expected to provide medically accurate information and comprehensive treatment to their patients. Sexual assault patients—women in their most vulnerable states—should be provided the opportunity to consider and receive all available treatment options, including emergency contraception.

The Department has cited the Health Care Facilities Act as protecting the religious or moral refusal of hospitals to provide emergency contraception. The Department has ensured that even those hospitals that object to providing this service must take steps to ensure that the sexual assault patient can receive the medication elsewhere. Under the proposed regulations, the hospital must provide written and oral notification to the patient of the hospital’s refusal, provide written informational materials to the patient, and arrange for the immediate transfer of the patient to a nearby hospital at no cost. To further ensure that sexual assault patients receive

emergency contraception promptly, we recommend that the refusing hospital have the responsibility to transport the patient to the closest hospital that provides the service. Limiting the transfer to a hospital in close proximity could leave the patient without any options. A woman who has just survived rape is already in crisis and should not have to track down emergency contraception on her own. In addition to the emotional burden of having to seek additional medical care, the patient faces an increased risk of pregnancy because the delay inherent in having to locate a pharmacy that has emergency contraception in stock. Only by adopting regulations that put sexual assault patients' needs first will the Department of Health be able to prevent this situation.

In addition, we recommend that section 117.57 include an exception for situations where the patient is not medically stable and can not be transferred to another hospital that would provide emergency contraception. A victim of sexual assault may have suffered other serious injuries (such as a head injury) that would make a transfer to another hospital dangerous. We fear that some patients will be denied complete and comprehensive care simply because they cannot be taken to another hospital.

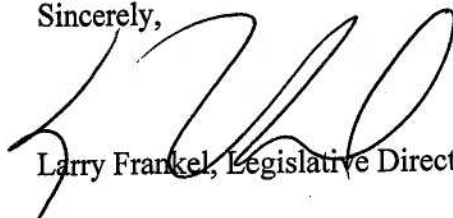
Pregnancy Test is Unnecessary and May Delay Provision of Emergency Contraception

Section 117.53(b) of the proposed regulations permits hospitals to require a sexual assault patient to submit to a pregnancy test and, if the pregnancy test is positive, allows hospitals to refuse to provide emergency contraception. Such a test is not necessary before a woman takes emergency contraception, as emergency contraception has no effect on an existing pregnancy. We recommend that section 117.5 of the proposed regulations be omitted.

In the event that the Department does not amend the regulations in this manner, we recommend that the Department clarify the hospital's obligation in this circumstance. A hospital that requires the patient to submit to a pregnancy test in order to receive emergency contraception has no obligation under section 117.53(b) to provide emergency contraception if the pregnancy test is negative. We recommend that the Department amend the proposed rules to specifically require hospitals to provide emergency contraception to patients who have requested the drug and have a negative result on a required pregnancy test. If a patient complies with the hospital's unnecessary medical testing, the hospital should have an obligation to provide her with the requested medication to prevent pregnancy from a rape.

By incorporating our recommended changes, the Department can address the needs of sexual assault patients in Pennsylvania. We hope the Department will revise these regulations so that the standard of care for sexual assault patients will be raised in emergency departments across the state. We thank the Department for the opportunity to comment on these proposed regulations, as well as for its longstanding commitment to the health needs of its citizens.

Sincerely,


Larry Frankel, Legislative Director


Julie Petrella, Interim Director
Clara Bell Duvall Reproductive Freedom Project