

Barbara J. Hart Justice Center



a project of the women's resource center

2577

Gerald Radke
Bureau of Licensing and Certification
Department of Health
Room 932
Health and Welfare Building
7th and Forrester Street
Harrisburg, PA 17210

RE: Comments and Changes to Proposed Rulemaking

Dear Mr. Radke:

I have enclosed our Comments and Changes to Proposed Rulemaking for your review.

If you should have any questions or wish to discuss this matter further please do not hesitate to contact me.

Respectfully,

Romilda P. Crocarno, Esquire

RPC/pac
enclosure

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Women Resource Center, Inc.
Comments and Changes to Proposed Rulemaking
Department of Health
28 PA. Code Chs. 101 and 117
Sexual Assault Victim Emergency Services
36 Pa.B. 6403
Saturday, October 21, 2006

Shortly after 9 p.m. on April 18, 1989, a young woman, out for her run in New York's Central Park, was bludgeoned, raped, sodomized, and beaten so savagely that doctors despaired for her life and a horrified nation cried out in pain and outrage.¹

What if she became pregnant?

Section 117.57 Religious and Moral Exemptions

The Women's Resource Center, Inc. support the efforts of the Department of Health in assisting victims of sexual assault when seeking emergency treatment. However, we strongly oppose Section 117.57 Religious and Moral Exemptions. These exemptions, which admittedly accommodate the United States Conference of Catholic Bishops and the Pennsylvania Catholic Conference, would allow a broad range of health care entities to refuse to comply with the requirements of providing emergency contraception for women who are raped. Ultimately, the question that must be addressed is whether a hospital's freedom trump all other freedoms?

The WRC believes that this refusal clause which permits an entity to refuse to provide emergency contraception to rape victims, as all refusal clauses as it relates to reproductive health services, should be tested against two questions: (1) To what extent does the clause protecting religious refusals place a burden on the people, in this case exclusively women and girls who have been raped, who do not share the beliefs that motivate the refusal; and (2) To what extent does the clause protect entities engaged in primarily religious worship or instruction, or instead exempts institutions engaged in a secular pursuit in the public sphere.

Although there is no precedential case which requires such an analysis, the WRC believes that as proposed the requirements place institutional protections over those of the individual.² The United States Conference of Catholic Bishops nor in the Pennsylvania

¹ Meile, Trisha. *I am the Central Park Jogger*, Scribner: New York (2003).

² It should be noted that recently the New York Court of Appeals, New York's highest court, rejected the claim that organization affiliated with religious entities have a constitutional right to be exempt from a generally-applicable New York law, the Women's Health and Wellness Act (WHWA). The particular provision challenged stated that if an employer health insurance plan "provides coverage for prescription drugs" it must "include coverage for the cost of contraceptive drugs or devices." Organizations affiliated

Catholic Conference, in their respective directives, acknowledges the conscience of the patient nor do they seek a way to honor it. As written these exemptions seem unconcerned about the women's consciences and their health. A highly probable scenario would be a woman who has been raped holds a conscience that tells her that emergency contraception is morally acceptable option. Indeed, no bishop or nor hospital should be allowed to replace his own conscience for that of a woman who has been raped.

The practical effects of the refusal clause amounts to a broad noncompliance permit for "religious" or "moral" entities that employ and serve people of all faiths, that perform a variety of public functions, and accept federal, state and local financial support.

The provision requiring the exempt hospitals to provide information that the woman, who has just been transported to an emergency room because she has been attacked and raped, be given the opportunity to be transferred to a hospital that does provide emergency contraception ignores the trauma and humiliation that rape victims must endure. Some women in rural areas would have to be transported hours away, thus further traumatizing and humiliating her.

Section 117.51 Principle

Initially, the exemption relating to "religious³ or moral" beliefs is broad and overly vague. Unlike the provisions in states that have enacted regulations concerning emergency contraception, the proposed regulations do not define "religious" beliefs nor what constitutes a "religious organization." If an exemption for religious beliefs is to be included, and it is the WRC's position that it should not, "religious" hospital should be specifically and narrowly defined. No exemption should be made for religiously affiliated institutions nor for those that have merely a connection to a religious organization. Included in the definition is that the religious organization's primary purpose is to inculcate religious values, that the employees for the most part share the particular religious tenets of the organization, and the population served is primarily those of the same faith. To allow otherwise will allow for thousands of rape victims seeking emergency medical services from a hospital that is allowed not providing all of the available emergency services. Such a broad exemption-which no doubt will save exempt-hospitals money-would be ripe for abuse.

Moreover, to allow for a "moral" exemption expands the reasons *ad infinitum*. Moral are not synonymous with religious beliefs nor should it be. "Moral" is defined as: (1) pertaining to or concerned with right conduct or the distinction between right or wrong; (2) concerned with the principles or rules of right conduct; (3) founded on the

with the Catholic Church and the Baptist Bible Fellowship argues that because their precepts forbid contraception, following the law would infringe their right to the free exercise of religion.

³The Establishment clause issues will not be addressed in these comments for the sake of brevity. However, it appears that the religious exemption was drafted to conform with Catholic tenets and thus, appears to be a state endorsement of the Catholic tenets.

fundamental principle of right conduct rather than the enactment or custom.⁴ It seems then, every institution has "morals." What is moral about not providing emergency contraception to a woman that has been raped? Arguably, the only "moral" thing to do *is* to provide emergency contraception.

Section 117.52 Minimum Requirements for Sexual Assault Emergency Services

As written the requirements seem to apply to only those hospitals that provide "sexual assault emergency services," and not those that are exempt. As such, the exempt hospital may choose not to advise the rape victim that she has the opportunity to consult with a rape crisis center. The language should read:

(a) Promptly upon a sexual assault victim's presenting to a hospital that provides sexual assault emergency services, including hospital that are exemption from providing emergency contraception . . ."

Section 117.55 Emergency Contraception Informational Materials

Any and all information, whether distributed by complying and exempt hospitals should be consistent and uniform throughout the Commonwealth. Therefore, the Federal Food and Drug Administration should review and approve the information dealing with medications.

Section 117.53 Emergency Contraception

Paragraph (3)(b) allowing a hospital to require the victim to submit to a pregnancy test is simply NOT based on scientific or medical research. Using emergency contraception does not cause abortions or otherwise terminate a pregnancy. Women are admitted into emergency rooms throughout the Commonwealth for a variety of reasons and prior to administering various diagnostic test or medications the woman is simply asked if she is pregnant without requiring a pregnancy test. Requiring a pregnancy test will have one affect: to further traumatize and humiliate a woman who has been raped.

CONCLUSION

There is no doubt that the interests that must be protected by these regulations belong to the women who are sexually assaulted.

The Women's Resource Center, Inc.



⁴ See The American College Dictionary, (Random House 1998).