

# 2577

Commonwealth of Pennsylvania



Department of Health

HARRISBURG

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OCT 17 2007

October 17, 2007

Leslie A. Lewis Johnson, Esq.  
Chief Counsel  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, 333 Market Street  
Harrisburg, PA 17101

Re: Department of Health – Final Regulations No. 10-182  
Sexual Assault Victim Emergency Services

Dear Ms. Lewis Johnson:

The Department of Health has reviewed the letters issued by some Honorable members of the Pennsylvania House of Representatives, and respectfully disagrees with the analyses of the regulation relating to sexual assault victim emergency services included in those letters. The Department disagrees that the regulation expands the definition of "contraception," as the letters contend. An "abortifacient" is something that is intended to induce an abortion. As defined in the Abortion Control Act (ACA), 18 Pa.C.S. § 3203, the use of a drug to prevent the implantation of a fertilized ovum within the uterus is not an abortion. The regulation requires the offering of a drug to inhibit or prevent ovulation, fertilization or implantation, not to induce abortion.

Further, the prevention or termination of a pregnancy is also not an abortion unless the pregnancy is clinically diagnosable, which doubtfully can occur within the timeframe covered by the regulation. Regardless, the dispensing of a drug to prevent the implantation of a fertilized ovum within the uterus is not done for the purpose of inducing an abortion and is not the dispensing of an abortifacient.

The legislative intent argument set out in the letters also fails. While the legislature has articulated its intent to place "a supreme value on protecting human life," it has also articulated its intent to protect "the right of women voluntarily to decide to submit to an abortion." This necessarily implies that the Legislature also seeks to protect the right of a woman to prevent her pregnancy or to terminate it before the pregnancy becomes clinically diagnosable. Moreover, as determined by the Supreme Court of the United States, the right of a woman to terminate even a clinically diagnosable pregnancy takes precedence over protection of the life of the unborn child until the child is viable.

As to the argument that physicians be held to precise standards of care to protect the life of the

unborn child, the ACA details the standards of care to which a physician is to adhere to protect the life of an unborn child, and it does not preclude a physician from dispensing a drug to prevent the implantation of a fertilized egg within a woman's uterus.

As pointed out in the letters, 18 Pa.C.S. § 3213(d) addresses not only the performance of an abortion, but also the dispensing of an abortifacient. But, once again, the dispensing of medication to prevent the implantation of a fertilized ovum within the uterus is not the dispensing of an abortifacient because it is not dispensed to cause an "abortion" as that term is defined in 18 Pa.C.S. § 3203. Therefore, it is not conduct covered by 18 Pa.C.S. § 3213(d). Many provisions of the ACA speak not only to the performance of an abortion, but also to inducing an abortion. See, for example, 18 Pa.C.S. § 3214(a). The dispensing of an abortifacient is part of the process of inducing an abortion. 18 Pa.C.S. § 3213(d) protects the conscience objector from not only participating in an abortion, but from engaging in conduct that induces an abortion. In this case, the intent of the regulation is neither to cause an abortion, nor to create conduct inducing an abortion.

For the reasons above, the definition of emergency contraception in the Department's regulations is consistent with the ACA in its entirety and the arguments presented by the Honorable members of the Pennsylvania House of Representatives should be rejected.

Sincerely,



Robert T. Datorre  
Assistant Counsel

cc: Joanne Grossi, Department of Health  
Kim Kaufman, IRRC  
Scott R. Schalles, IRRC