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LEGISLATIVE TESTIMONY

TO: Joint Committee on Health Care
FROM: Maria Parker, M.B.A., Associate Director for Public Policy
RE: Emergency Contraception Access Act, H. 2438/S. 546
DATE: June 11, 2003

The Massachusetts Catholic Conference supports the compassionate care of rape victims. Catholic medical facilities in the Commonwealth provide a full range of services responding to sexual assault. Catholic moral principles allow for rape treatments that prevent fertilization but this same teaching prohibits the use of abortifacients.

The Conference opposes the proposed Emergency Contraception Access Act (ECAA). It will force Catholic medical personnel to distribute contraceptives even in cases involving the risk of early abortion. It also furthers a national strategy ultimately directed towards coercing Catholic facilities to provide insurance coverage for, and to perform, abortions.

Overview of Catholic Teaching on Rape and Contraception

Catholic teaching on rape treatment cannot be understood without reference to its teaching on sexuality, procreation and marriage. The Catholic Church affirms that "marriage and married love are by their character ordained to the procreation and the bringing up of children" (*Humanae Vitae*, no. 9). However, "to force the use of marriage on one's partner without regard to his or her condition or personal and reasonable wishes in that matter, is no true act of love, and therefore offends the moral order" (*Humanae Vitae*, no. 13).

Likewise, as the Catholic Catechism recognizes when discussing offenses against the 6th commandment, rape "is the forcible violation of the sexual intimacy of another person" and "an intrinsically evil act" (no. 2356). This means that sexual assault lacks the moral character of being ordained to the procreation of children.

Thus, according to the U.S. Catholic Bishops in their Ethical and Religious Directives for Catholic Health Care Services, a woman "who has been raped should be able to defend herself against a potential conception from the sexual assault" (Directive 36).¹ She is not obliged when raped, as would be the case in consensual relations, to accommodate the natural potential for conception. The forced introduction of sperm is an act of aggression she may resist even through

¹ U.S. Conference of Catholic Bishops, Ethical and Religious Directives for Catholic Health Care Services (2001), <<http://www.usccb.org/bishops/directives.htm>> [hereinafter "Ethical & Religious Directives"].
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means that prevent the creation of new life. That explains why Catholic hospitals may distribute contraceptives in some rape cases, particularly within 24 hours after the assault.

However, if it is determined that a particular rape treatment would "have as [its] purpose or direct effect the removal, destruction, or interference with the implantation" of an embryo (Directive 36), a Catholic facility cannot offer it. A human life conceived by rape is not an act of aggression but a new person innocent of any wrongdoing. Depending on the timing of their administration during a woman's cycle, some contraceptives may act as abortifacients by allowing "breakthrough" fertilization but then preventing implantation of the newly fertilized human being. According to the Food and Drug Administration, two common forms of emergency contraception, Preven and Plan B, may "prevent implantation" in some cases.²

Forcing Catholic hospitals to offer contraceptives in rape cases when an early abortion may result conflicts with the religious and ethical duty to do no harm. Thus Catholic hospitals cannot offer or distribute contraceptives in a rape case involving the possibility of fertilization and early abortion.

A national strategy seeks to force Catholic hospitals to participate in procedures contrary to their religious and moral principles

ECAA represents the second prong in a three part national legal strategy to force dramatic changes in the Catholic vision of health care. Spearheaded by the Abortion Access Project (AAP), based in Cambridge, MA, this national strategy promotes the enactment of laws mandating insurance coverage for contraception, requiring contraceptives to be included as a standard of care in rape treatment protocols, and forcing insurance providers to cover abortions, and hospitals to perform them. AAP works closely with the organizations listed as part of the "Coalition for Choice" supporting ECAA.

As explained on their website, AAP views women's "sexual freedom" as "a major source of the feminist reproductive rights movement's support for abortion rights". Women should be able to "choose to be heterosexually active . . . without fear of undesired pregnancy. We advocate contraception for this reason; we support abortion as a backup for contraceptive failure."³ AAP complains that Catholic hospitals in particular, in refusing to provide contraceptives, condoms, in vitro fertilization, sterilization, and abortion, "deny to women many fundamental aspects of reproductive health care."⁴

The Catholic vision of health care and service to women differs radically from any ideology holding that the root of feminism is sexual license, that the ability to conceive new life and pregnancy itself are diseases to be cured, and that abortion as birth control is essential to a woman's dignity.

² FDA Notice, 62 Federal Register 861 (Feb 25, 1997).

³ Abortion Access Project, "Common Ground" or Losing Ground?, <http://www.repro-activist.org/AAP/publica_resources/commentaries/commonground.htm> (visited June 10, 2003).

⁴ Abortion Access Project, Catholic Hospitals and the Charity Myth, <http://www.abortionaccess.org/AAP/publica_resources/fact_sheets/catholic.htm> (visited June 10, 2003).

Catholic health care calls for compassionate approaches to women's well-being that serve, rather than deny, the gifts of life, femininity, and sexuality understood in the context of marriage and family. "Catholic health care ministry is rooted in a commitment to promote and defend human dignity; this is the foundation of its concern to respect the sacredness of every human life from the moment of conception until death."⁵ Though the Church's philosophy of care can be understood and appreciated regardless of one's religious persuasion, Catholic health care institutions conform their mission to the Church's overall religious identity—"to see Christian love as the animating principle of health care; to see healing and compassion as a continuation of Christ's mission".⁶

ECAA follows on the heels of legislation enacted in 2002 compelling insurance providers to include contraceptive coverage in all Massachusetts plans, including those sold to Catholic institutions. The bill opens the way to legislation like that introduced this year in New York to add abortion coverage to that state's contraceptive mandate.⁷ The national strategy of implementing intrusive mandates in general, and ECAA in particular, threatens direct interference with the faith-based mission of Catholic institutions.

What's at stake: the religious freedom and integrity of faith-based institutions

The Catholic Health Association, the representative of Catholic providers of health care throughout the United States, warns that mandates such as ECAA will "force Catholic hospitals to close or substantially reduce their services to the community, rather than violate their conscience."⁸ This imperils the "historic role of Catholic health care providers to serve the common good in a manner consistent with their institutional conscience."⁹

In response to the introduction of a similar bill in Illinois, Francis Cardinal George of Chicago got to the heart of the matter in a letter to the Illinois senate:

The controversy over this bill is not about offering contraceptive interventions after a rape. Such intervention is morally acceptable if ovulation has not occurred. Nor is this a question about treating victimized women with dignity, compassion and respect, something that Catholic medical care tries to ensure. This is, rather, a question of the State . . . definitively coming down on one side of a hotly debated national issue by requiring everyone in health care to act as though life does not begin at conception. . . .

Catholic institutions cannot agree to facilitate abortions and remain Catholic. To do so would be to undermine the very purpose of Catholic health care, which is organized around a core belief in the dignity of each and every human life . . .

⁵ Ethical & Religious Directives, Introduction to Directive 36.

⁶ Ethical & Religious Directives, General Introduction.

⁷ A.B. 2611, 226th Leg., 1st Sess. (N.Y. 2003) (requiring inclusion of coverage for "pregnancy termination procedures" in all insurance plans).

⁸ Catholic Health Association, Issue Brief: Ethical Integrity and Conscience Clause Legislation (March 2003).

⁹ *Id.*

[This legislation is an] extreme step in systematically dismantling Catholic health care's ability to be guided by a profound respect for the dignity and sanctity of all human beings. Our hospitals cannot and will not comply with this law.¹⁰

For all of these reasons, the Massachusetts Catholic Conference urges the Joint Committee on Health Care to give ECAA an unfavorable recommendation.

¹⁰ Letter to Illinois State Senators from Francis Cardinal George, Archdiocese of Chicago (Apr. 6, 2000).