

HUMAN SERVICES COMMITTEE

TESTIMONY OF BARRY FELDMAN

March 13, 2007

My name is Barry Feldman. I am Senior Vice President - General Counsel of Saint Francis Hospital and Medical Center in Hartford, and I am here today to testify on behalf of the Connecticut Catholic Hospitals Council comprising Saint Francis and the other Catholic hospitals in Connecticut, including Hospital of Saint Raphael, St. Vincent's Medical Center, and St. Mary's Hospital, regarding Raised S.B. 1343, An Act Concerning Compassionate Care for Victims of Sexual Assault.

Insofar as the Bill before the Committee deals with what is truly "emergency contraception," the Catholic hospitals are not in disagreement. In fact, the Sexual Assault Protocol for Connecticut Catholic Hospitals permits Catholic hospitals to provide hormonal medication when that medication can actually act to prevent conception.

However, insofar as the Bill requires the administration of hormonal medication at a time in the woman's cycle when that medication cannot act to prevent contraception but can only act as an abortifacient, then the Bill as written would require Catholic hospitals to perform abortions, which are contrary to Catholic religious and moral teachings.

Catholic moral teachings and the Ethical and Religious Directives for Catholic Health Care Services require that Catholic hospitals care for victims of sexual assault in a caring and compassionate manner.

In particular, the Sexual Assault Protocol for Connecticut Catholic Hospitals (the "Protocol") requires that Catholic hospitals:

1. facilitate prompt, compassionate examination and treatment to victims of sexual assault;
2. provide emergency contraception ("Plan B") when the woman in the phase of her cycle in which Plan B can have a contraceptive effect by preventing ovulation;
3. in the extremely rare cases in which the woman is already in the ovulation stage of her cycle so that Plan B cannot have a contraceptive effect, inform the woman of the reasons why the Catholic Hospital cannot provide Plan B;
4. inform the woman of other sites in the community that may offer Plan B;

5. provide the woman with such clinical, technical or factual information that the patient requests or may need to make a decision whether to continue to receive treatment at the Catholic hospital; and
6. facilitate the transfer of the patient if the patient requests.

The Protocol requires that a pregnancy test be administered to all women who are the victims of sexual assault.

If the pregnancy test indicates that the woman is pregnant, then hormonal medications would not be administered by a Catholic hospital (nor would they be administered by any other hospital) because it is obviously too late for their anovulatory effect. These tests only provide evidence of a pregnancy that was already in existence at the time of the sexual assault.

This policy is consistent with the policies of both Catholic and non-Catholic hospitals, in Connecticut and elsewhere.

If the pregnancy test does not indicate that the woman is pregnant, and if the medical history of the woman indicates that she may be in the ovulating stage of her cycle, then the Catholic hospital will conduct a luteinizing hormone urine dip test (LH Test) to determine if the woman is about to ovulate or has already ovulated. The LH Test gives an immediate positive or negative indication, and is a scientifically reliable test for determining whether a woman is in the ovulation stage of her cycle. Another test previously used, a progesterone blood level test, is less precise and takes more time, and therefore is not recommended.

The LH Test is given to determine whether the administration of Plan B would have a contraceptive effect.

If the LH Test indicates that the woman is not in the ovulation stage of her cycle, then Plan B can act as a contraceptive by preventing ovulation, and Catholic hospitals will provide Plan B in such cases.

If the LH test indicates that the woman is already in the ovulation stage of her cycle, then Plan B cannot have a contraceptive effect. In these extremely rare cases, the only objective of administering Plan B is to impede the implantation of a fertilized ovum, which is abortion that the Catholic hospital cannot morally perform directly or in cooperation with others.

The mechanism of Plan B that prevents the implantation of a fertilized ovum, which is abortion, is confirmed on the manufacturer's web site that says, "Plan B® may also work by preventing it (the fertilized egg) from attaching to the uterus (womb)."

Catholic hospitals in other states, such as Pennsylvania and Illinois, follow a protocol similar to Connecticut's. In fact, the protocol followed by Connecticut's Catholic hospitals is endorsed by the National Catholic Bioethics Center and is becoming the mainline standard for Catholic health care nationally. A national standard was still under review, and not in place, when New York and New Jersey adopted legislation concerning the distribution of Plan B to rape victims.

Legislation adopted in Pennsylvania recognizes and respects the religious beliefs of Catholic hospitals by exempting those hospitals from requirements to provide hormonal medications to victims of sexual assault. Legislation adopted in Illinois does not require hospitals to provide emergency contraception, but does require all hospitals to follow a protocol similar to that of Connecticut's Catholic hospitals that ensures that victims of sexual assault receive accurate information regarding the indications, counter-indications and availability of emergency contraception.

The Protocol followed by Connecticut's Catholic hospitals is the result of a thoughtful and discerning process that reflects a desire to provide compassionate care and treatment to victims of sexual assault in conformance with the limits imposed by Catholic religious and moral beliefs.

Catholic religious and moral beliefs hold that a human being exists from the moment of conception, and that that human being is entitled to all of the dignity and respect to which every other human being is entitled.

The Constitutional and legal rights to hold and practice one's religious and moral beliefs without interference by the State are as important as any other Constitutional or legal right.

Religious liberties are one of the principal, fundamental rights established by the United States and Connecticut constitutions, as well as by the Connecticut Religious Freedom Act (C.G.S. Section 52-571b).

The Religious Freedom Act prohibits the State from burdening a person's exercise of religion unless the State demonstrates that application of the burden is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that compelling governmental interest.

These requirements cannot be established without reliable, corroborated evidence that is more than anecdotal accounts and hypothetical examples.

There is a fallacy that Plan B must be administered in a hospital. The Plan B pill, which is about the size of an aspirin, need not be administered in a hospital, is readily available on a timely basis in pharmacies, without prescription, and in numerous clinics. Additionally, each of Connecticut's four Catholic hospitals is located in an urban area just minutes from other hospitals where the medication is available.

Not all hospitals in Connecticut provide all services. Patients who cannot receive care or services at one hospital are routinely transferred to other facilities for treatment of emergency conditions such as cardiac failure, severe burns, and neonatal, neurosurgical, and other conditions. If there is ever a need to transfer a victim of sexual to another hospital because the Catholic hospital could not provide Plan B, then such transfer would be hardly distinguishable from, and no more burdensome than, the many other situations in which patients with emergency conditions are routinely transferred from one hospital to another.

Connecticut's Catholic hospitals do not believe that there is a sufficiently compelling or indeed any basis for the State to force the hospitals to violate their religious beliefs by performing abortions, and unless and until the General Assembly, through an objective process, has assembled the evidence necessary to satisfy Constitutional requirements and the conditions set forth in the Religious Freedom Act, the State should not and cannot force the hospitals to violate their religious beliefs.

If and to the extent that the General Assembly determines that non-Catholic hospitals do not provide hormonal medication in a manner that serves what the General Assembly believes to be compelling State interests, then those interests can be addressed by requiring non-Catholic hospitals to provide such medication and by exempting Catholic hospitals from this requirement. Addressing the issue in this manner is exactly what is contemplated when the Religious Freedom Act requires that the State utilize the "least restrictive means" to address an issue before or when burdening one's exercise of religion.

In this regard, there are two important reasons why the New York and New Jersey legislation are not relevant to the situation in Connecticut: First, neither New York nor New Jersey has legislation similar to Connecticut's Religious Freedom Act, and therefore there is a higher hurdle in Connecticut than in New York and New Jersey to lawfully impose burdens on the Catholic hospitals' exercise of their religion. Second, the legislation in those states was passed prior to the act by the U.S. Food and Drug Administration (FDA) in 2006 to permit the dispensing of Plan B over the counter without prescription, thus making Plan B more readily available and raising the hurdle even higher in terms of the requirement that the State use the "least restrictive means" before it burdens the Catholic hospitals' exercise of their religion.

The failure of Raised Bill 1343 to include an exemption for Catholic hospitals with respect to what they consider to be good and ethical medicine threatens the religious liberties of those hospitals. A threat to any individual's or organization's religious liberties is a threat to everyone's religious liberties.

Thank you.

# CONNECTICUT CATHOLIC HOSPITALS

## QUESTIONS AND ANSWERS

### EMERGENCY CONTRACEPTION

**1) Do Catholic hospitals in Connecticut provide compassionate quality care to a rape victim?**

Yes.

The Ethical and Religious Directives for Catholic Health Care Services calls for the utmost respect for victims of sexual assault: “Compassionate and understanding care should be given to a person who is the victim of sexual assault.”

The Sexual Assault Protocol of the Connecticut Catholic Hospitals requires that Catholic Hospitals:

- A. Facilitate prompt, compassionate examination and treatment.
- B. Provide emergency contraception (“Plan B”) when the woman in the phase of her cycle in which Plan B can have a contraceptive effect by preventing ovulation.
- C. In the extremely rare cases in which the woman is already in the ovulation stage of her cycle so that Plan B cannot have a contraceptive effect:
  - a. Inform the woman of the reasons why the Catholic Hospital cannot provide Plan B;
  - b. Inform the woman of other sites in the community that may offer Plan B;
  - c. Provide the woman with such clinical, technical or factual information that the patient requests or may need to make a decision whether to continue to receive treatment at the Catholic hospital;
  - d. Facilitate the transfer of the patient if the patient requests.

**2) Do Catholic hospitals provide emergency contraception (Plan "B") to a rape victim as part of its medical protocol?**

Yes.

As explained above, Connecticut's Catholic hospitals provide emergency contraception (Plan B) in those cases in which the woman is in the phase of her cycle in which Plan B can have a contraceptive effect by preventing ovulation.

If the woman is already in the ovulation stage of her cycle, then Plan B cannot have a contraceptive effect. In these cases, the only objective of administering Plan B is to impede the implantation of a fertilized ovum, which is abortion that the Catholic hospital cannot perform directly or in cooperation with others.

**3) Catholic hospitals administer an extra test to a rape victim to determine if she can be given emergency contraception. What is that test?**

Catholic hospitals administer a luteinizing hormone urine dip test (LH Test), or if this test is not available, a progesterone blood level test. These tests indicate whether the woman is in the ovulation stage of her cycle. The LH Test gives an immediate positive or negative indication. The blood test is less precise and takes more time, and therefore is not recommended.

**4) Why is the luteinizing hormone ovulation test given?**

The LH Test is given to determine whether the administration of Plan B will have a contraceptive effect, or whether the administration of Plan B will cause an abortion.

If the LH Test indicates that the woman is not in the ovulation stage of her cycle, then Plan B can act as a contraceptive by preventing ovulation, and Catholic hospitals will provide Plan B in such cases.

If the LH test indicates that the woman is already in the ovulation stage of her cycle, then Plan B cannot have a contraceptive effect. In these extremely rare cases, the only objective of administering Plan B is to impede the implantation of a fertilized ovum, which is abortion that the Catholic hospital cannot perform directly or in cooperation with others.

**5) Many people believe that a rape victim will not receive emergency contraception at a Catholic hospital due to the ovulation test. Is this true?**

No.

Catholic hospitals will administer Plan B when the ovulation test indicates that the woman is not in the ovulation stage of her cycle and the medication can have a contraceptive effect. The only situations in which the Catholic hospital will not provide the medication, which are extremely rare, is when the

woman is in the ovulating stage of her cycle so that the Plan B cannot prevent ovulation or have a contractive effect, and can only have an abortive effect.

**6) What if the woman cannot be given Plan B based on the test?**

- a. In the extremely rare cases in which the woman is already in the ovulation stage of her cycle so that Plan B cannot have a contraceptive effect, the Catholic hospital will:
  - i. Inform the woman of the reasons why the Catholic Hospital cannot provide Plan B;
  - ii. Inform the woman of other sites in the community that may offer Plan B;
  - iii. Provide the woman with such clinical, technical or factual information that the patient requests or may need to make a decision whether to continue to receive treatment at the Catholic hospital; and
  - iv. The transfer of the patient if the patient requests.

**7) Connecticut's Catholic hospitals have said that Plan B can sometimes cause an abortion. Is this correct?**

The primary mechanism of Plan B is to prevent ovulation, and therefore —  
conception.

The secondary mechanism of Plan B is to prevent the implantation of a fertilized ovum, which is abortion. This is confirmed on the manufacturer's web site that says, "Plan B® may also work by preventing it (the fertilized egg) from attaching to the uterus (womb)."

**8) Is it a true statement to say that forcing Catholic hospitals to provide Plan B under all cases is equivalent to forcing Catholic hospitals to perform an abortion?**

Yes.

When Plan B cannot act as a contraceptive, it can only act to cause an abortion. Forcing Catholic hospitals to provide Plan B in these situations forces the hospitals to perform abortions.

**9) At its core, is this issue a question of religious liberty and whether Catholic hospitals can be forced to perform abortions?**

Yes.

When Plan B cannot act as a contraceptive, it can only act to cause an abortion. Forcing Catholic hospitals to provide Plan B in these situations

forces the hospitals to perform abortions, which violates constitutional and statutory principles that ensure the right of everyone, including Catholic hospitals, to exercise their religion without interference by the state. These constitutional and statutory principles are just as important as any other rights.

**10) Do Catholic hospitals in New York and New Jersey follow a different protocol than Connecticut?**

Yes.

However, the protocol followed by Connecticut's Catholic hospitals is endorsed by the National Catholic Bioethics Center. Illinois and Pennsylvania follow a protocol similar to Connecticut's and we anticipate that these will become the mainline standard for Catholic health care nationally. When New York and New Jersey adopted legislation concerning the distribution of Plan B to rape victims, no such standard was in place.

# SURVEY OF CONNECTICUT CATHOLIC HOSPITALS CONCERNING EMERGENCY ROOM DISTRIBUTION OF PLAN B TO RAPE VICTIMS – 2006

## **Background:**

The four Catholic hospitals of Connecticut issued a new protocol concerning the treatment of rape victims with emergency contraception (Plan B) effective January 1, 2006. The purpose of this protocol was to insure that all Catholic hospitals were providing quality, consistent and compassionate medical care to rape victims, while acting within Catholic teaching concerning the sanctity of all human life.

Legislation was also proposed in 2006, at the same time this protocol was being implemented, that would have required Catholic hospitals to provide Plan B in all situations, even when it would act as an abortifacient. This legislation would have forced Catholic hospitals to violate one of its most basic tenets of faith concerning human life. The legislation was not acted upon by the Public Health Committee.

Since the end of the 2006 legislative session, the FDA has approved over-the-counter distribution of Plan B to woman over 18 years of age. This regulatory change makes Plan B easily available to woman in the 18 and over age group.

## **Purpose of Survey:**

This survey was undertaken by the Connecticut Catholic Conference to evaluate the results and impact of the new protocol instituted by Connecticut's Catholic hospitals. Additionally, many unsubstantiated accusations and facts were presented by those in opposition to the Catholic hospitals position on this issue during the 2006 legislative session. This survey was also an effort to add substantiated factual information to the debate.

## **Scope of Survey:**

All four Catholic hospitals were presented a set of questions in August, 2006. The questions were designed to answer questions raised by legislators during last year's debate. The original request was for information covering the first six months of 2006. Since the nature of the questions required a review of case files, the effort was time and labor intensive. Due to this fact, several hospitals did not respond until later in the year. All the hospitals provided more then the six months of data initially requested. None of the hospitals provided data for the full year.

## **Survey Summary:**

<b><u>Reporting Periods</u></b> – Saint Vincent's Medical Center	1/1/2006 thru 7/31/2006
Hospital of Saint Raphael	1/1/2006 thru 9/30/2006
Saint Francis Hospital	1/1/2006 thru 10/30/2006
Saint Mary's Hospital	1/1/2006 thru 7/31/2006

1) Number of rape victims treated in the emergency room?

**Total victims: 73**

Walk-in: 46

Arrival by ambulance: 27

2) How many were denied Plan B based on pregnancy/ovulation testing provisions of protocol?

**Total: 0**

3) How many were provided Plan B based on protocol?

**Total: 26**

4) How many did not received Plan B due to other factors (i.e., refused treatment, on birth control, post-menopausal, 5 days post assault, tubal ligation, sodomized, no evidence of rape, penetration with an object, youthful age of victim, etc.)?

**Total: 47**

5) How many were assisted by rape crisis counselors from outside agencies at the hospital (patient must agree to service)?

**Total: 24 ( note: additional patients were provided follow-up Referrals or other support information)**

6) How many patients requested transfer to another hospital?

**Total: 1 (Transfer of rape victim was not related to Plan B administration)**