



Protecting Patients' Rights and Access to Care

PO Box 540, JAF Station
New York, NY 10016
www.mergerwatch.org
An affiliate of Community Catalyst

**Testimony of Lois J. Uttley, M.P.P.
Director, The MergerWatch Project
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Connecticut State Legislative Hearing**

Good afternoon. Thank you for the opportunity to present testimony today on the need to ensure that rape victims can receive comprehensive compassionate medical care at all of Connecticut's hospital emergency departments.

I direct a national health advocacy project, MergerWatch, which is dedicated to protecting patients' rights and access to care. Our focus is on those situations in which health providers – such as hospitals – claim a right to use religious doctrine to prohibit or restrict the medical care they will provide. Our “clients” are the patients, whose right to informed consent and prompt emergency treatment is often violated in such situations. We have a special area of expertise in making sure that rape victims can receive emergency contraception (“the morning after pill”) at all hospital emergency departments, including those in Catholic hospitals.

Qualifications

I hold a Master's in Public Affairs and Policy, with a concentration in health policy, from the Nelson A. Rockefeller College of Public Affairs and Policy of the University at Albany. I have served as Director of Public Affairs for the New York State Department of Health and a member of the Executive Board of the National Public Health Information Coalition. I have presented expert testimony before numerous state legislatures on the topic before you today, and have lectured on this subject at such institutions as the Boston School of Public Health, the Columbia University School of Public Health and Stanford Law School. I have presented papers on this topic at annual conferences of such organizations as the American Public Health Association, American Bar Association and the American Society of Bioethics and Humanities.

I am Chair of the national Action Board of the American Public Health Association, which has adopted an official policy that calls on state Legislatures to enact laws ensuring the prompt offering of emergency contraception to rape victims. The public health community is united in the conviction that traumatized rape victims who are at risk of pregnancy should be immediately offered the means to prevent the additional trauma of a pregnancy resulting from sexual assault.

Analysis of opposition to the measure

As I understand it, there is only one source of opposition to the measure you are considering to require that all hospitals in Connecticut offer emergency contraception to rape victims. That opposition is coming from the State Catholic Conference, which contends that Catholic hospitals in this state must refuse to give emergency contraception to rape victims in some circumstances. Citing Catholic teaching, the state's Bishops have required these hospitals to administer ovulation tests to rape victims and then deny emergency contraception to any women who test positive. Out of deference to the Bishops and a well-intentioned desire to protect religious freedom, some Connecticut policymakers last year opposed the measure that is before you today.

I have five points I would like to make today to help persuade you that the position of the state's Catholic Bishops should not be allowed to block enactment of this critically-important health measure:

- 1. Catholic hospitals in other states are having no problem complying with laws requiring that they offer emergency contraception to rape victims. There is no reason why Connecticut's Catholic hospitals could not do so, as well.**

In my home state of New York, more than 40 Catholic hospitals are complying with such a law. Initial concerns raised by the New York State Catholic Conference were withdrawn once a clause was added to the legislation stating that "no hospital shall be required to provide emergency contraception to a rape victim who is pregnant." The Catholic hospitals in New York simply administer a standard pregnancy test, and if the result is negative, they immediately offer emergency contraception to the rape victim. Of course, if a rape victim was already pregnant prior to the assault – which is what a pregnancy test would show – she does not need emergency contraception. Knowing that her pregnancy is not from the rape will be a source of relief and comfort to her.

Similar pregnancy test language was included in New Jersey's legislation and satisfied the Catholic conference in that state. It is also worth noting that California, New Mexico, Washington and Massachusetts have all adopted laws similar to those being proposed here in Connecticut – without the pregnancy test clause included in New York and New Jersey -- and Catholic hospitals in those states appear to be complying with no problems.

Ron Hamel, Ph.D., who is senior director for ethics at the Catholic Health Association of the United States, has written an article in the association's journal supporting use of the pregnancy test in this situation: "The pregnancy approach is responsive to the needs of the woman who has suffered untold trauma from being sexually assaulted and is consistent with the Catholic moral tradition generally and Catholic teaching on this matter particularly."

- 2. The ovulation test protocol being used by Connecticut's Catholic hospitals is based on a deeply-flawed understanding of basic reproductive biology and what an ovulation test can show.**

An open letter being delivered today to the Connecticut State Legislature from nationally-recognized physicians, scientists and public health experts explains these flaws in detail. I will simply summarize here. An ovulation test, if working perfectly, would only show whether a woman is *about to ovulate or has recently ovulated*. It cannot show whether there is a fertilized egg present, which is what Connecticut's Catholic Bishops are trying to detect. *There is no medical test in existence that can determine the presence of a fertilized egg within five days after unprotected intercourse, which is the outside time frame in which emergency contraception is effective.*

Moreover, ovulation tests are notoriously inaccurate. Any woman who has ever used one to try to become pregnant could have told that to Connecticut's Catholic Bishops. The test can be thrown off by such factors as when the urine sample is taken – it's best first thing in the morning-- whether the woman has been drinking and whether she has taken certain antibiotics.

- 3. The ovulation test protocol being employed at Catholic hospitals in Connecticut is extreme and, according to prominent Catholic health ethicists, goes well beyond what is required by Catholic teaching.**

Ron Hamel, the senior director for ethics of the Catholic Health Association of the United States, has written that use of an ovulation test goes too far -- that it "limits" what is actually allowed under Directive No. 36 of the *Ethical and Religious Directives for Catholic Healthcare Services*, which are issued by the United States Conference of Catholic Bishops. Here is what Hamel has said:

"Nowhere in the directive does it state that Catholic health care providers must refrain from administering emergency contraception to women who are about to ovulate or who have ovulated recently. In fact, Directive 36 explicitly affirms that medications can be administered to prevent fertilization, which occurs after ovulation. By limiting the administration of emergency contraception to situations in which the woman has not yet ovulated or is past the early post-ovulatory phase of her menstrual cycle, the ovulation approach unnecessarily restricts the moral options available to women who are at or near the time of ovulation and wish to prevent a potential conception."

4. The claim by ultraconservative Catholic theologians that emergency contraception is the same as abortion is simply untrue.

Emergency contraception is not the same as RU-486 (mifepistone) or “the abortion pill.” EC works to *prevent pregnancy* within a short time frame after unprotected sex and has no effect once a pregnancy is established through implantation of a fertilized egg in the uterus. Mifepristone, by contrast, can be used to end an established pregnancy of up to nine weeks gestation.

The argument by some Catholic theologians that EC may have an abortifacient effect rests on the hypothesis that EC may, in some tiny percentage of cases, act to prevent a fertilized egg from implanting in the uterus. As Catholic ethicist Hamel notes, “conclusive evidence supporting this position has not surfaced.”¹ To the contrary, recent scientific research suggests that it is extremely unlikely that EC acts in this way.² Moreover, it is important to recognize that mainstream medical organizations define pregnancy as beginning at implantation, not fertilization, and thus would not consider failure of a fertilized egg to implant as being equivalent to abortion.³ More than 60 percent of fertilized eggs do not become implanted due to natural causes, such as genetic defects, according to testimony delivered before the President’s Council on Bioethics.⁴

5. There is plenty of precedent for enactment of laws that are intended to serve broad public purposes – such as ensuring comprehensive and compassionate medical care for rape victims – and, as a side effect, require certain religiously-affiliated institutions to do things to which they have objections.

In my home state of New York, the Legislature enacted a law that requires employers to include coverage for contraceptives in employee prescription drug plans. Only pervasively sectarian institutions – such as monasteries and diocesan offices – were exempted, on the theory that employees of such institutions would all be of the same faith as their employers and would, in fact, be in agreement with their employer’s religious policies. Religiously-affiliated institutions that employ and serve the general public – such as hospitals, colleges and social services agencies -- were not exempted under this law. Supporters of the law pointed out that these institutions employ people of all faiths, serve people of all faiths and, in the case of the hospitals and social services agencies, take a great deal of public money.

Catholic hospitals were among the organizations that sued, claiming this law violated their religious freedom. That challenge was rejected at all three levels of our court system in New York. The courts noted that the purpose of the law was to redress discrimination in health care against women – an important public purposes -- and that it applies equally to all employers. Courts in California have upheld a similar law there.

In summary, I urge you to take the necessary steps to ensure that rape victims in Connecticut are provided with compassionate and comprehensive medical care – including emergency contraception – at every hospital in Connecticut.

Endnotes

¹ Hamel, op cit.

² “Emergency Contraception Prevents Fertilization, Not Implantation, Studies Show,” news release from the Population Council, NY, May 2, 2005, and the related article, “Emergency Contraception’s Mode of Action Clarified,” in *Population Briefs*, 11 (2), May 2005.

³ See, for example, Hughes, Edward, *Obstetric-Gynecological Terminology*, Philadelphia: F.A. Davis Company (1972); “Medical Groups Set the Record Straight on Emergency Contraception,” News Release, May 4, 2004, from the American College of Obstetricians and Gynecologists (ACOG). See also federal regulations on medical research involving human subjects. These regulations define pregnancy as encompassing “the period of time from implantation until delivery.” 46 C.F.R. 202 (f). The Food and Drug Administration also recognizes pregnancy as beginning at implantation, and describes EC as a medication that prevents pregnancy. See, for example, 62 FR 8610-01.

⁴ Testimony of John M. Opitz, M.D., Professor of Pediatrics, Human Genetics and Obstetrics/Gynecology at the University of Utah School of Medicine, before the President’s Council on Bioethics, January 16, 2003.