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**STATEMENT OF NEW JERSEY CATHOLIC CONFERENCE AND
CATHOLIC HEALTH CARE PARTNERSHIP of NEW JERSEY**

S1668(A2698)

The New Jersey Catholic Conference and the Catholic HealthCare Partnership of New Jersey, which represents the fifteen Catholic hospitals in New Jersey, offer this statement with respect to S1668 and A2698 which requires hospitals to provide sexual assault victims with information about emergency contraception and to provide an emergency contraceptive if a sexual assault victim requests it. We operate our hospitals guided by our belief that compassionate and understanding care should be given to sexual assault victims. At the same time, we are bound by ethical and religious principles which set forth the parameters of treatment. There are parts of this legislation which would require us to violate our religious tenets and moral principles. This statement will address those principles in Part I and the specific requested amendments in Part II.

PART I

Catholic hospitals in New Jersey are compassionate to sexual assault victims. The majority of these hospitals do administer emergency contraception in accordance with ethical principles. Those which do not treat the victims refer them to nearby rape crisis centers because they believe the victim will be better cared for in that specialized setting. The treating hospitals offer psychological and spiritual support as well as accurate medical information. The hospitals also cooperate with law enforcement officials.

In providing treatment, the Catholic hospitals must follow the *Ethical and Religious Directives for Catholic Health Care Services* (4th edition, June 2001) promulgated by the U.S. Conference of Catholic Bishops (hereinafter ERD). Directive 36 (see Appendix) speaks directly to the care and treatment of sexual assault victims and makes clear that **“a female who has been raped should be able to defend herself against a potential conception from the sexual assault.”** It then states what treatment is permitted:

If, after appropriate testing, there is no evidence that conception has occurred already, she may be treated with medications that would prevent ovulation, sperm capacitation, or fertilization. It is not permissible, however, to initiate or to recommend treatments that have as their purpose or direct effect the removal, destruction, or interference with the implantation of a fertilized ovum.

With these principles in mind, we turn to Part II to discuss the relationship of these principles to this legislation.

PART II

1. Abortifacient Potential of the Drugs ---

S1668, sec. 1 defines “Emergency contraception” as “the provision of a drug or device that prevents pregnancy when taken after intercourse and is approved by the federal Food and Drug Administration.”

Medical experts, including those at the federal Food and Drug Administration (FDA), agree that emergency contraceptives can work in one of three possible ways:

- A. Inhibit or delay ovulation, meaning the egg will not be released or will be delayed; or
- B. Inhibit fertilization; or
- C. Alter the endometrium (lining of the uterus) so that an already-fertilized egg will be unable to implant, or slow tubal transport of the embryo ensuring the death of the embryo.

When the pills act as outlined in method “C”, a chemical abortion would occur, destroying the life of a developing human embryo. They have an abortifacient effect. Therefore, emergency contraception can either prevent conception or terminate the life of a growing embryo.

2. Conscience Clause ---

In 1976 a law was enacted in New Jersey commonly referred to as the Conscience Law. N.J.S.A. 2A:65A-1 et seq. That law provides that no hospital shall be required to provide abortion services or procedures, and the refusal to perform, assist in the performance or provide abortion services shall not constitute grounds for civil or criminal liability, disciplinary action or discriminatory treatment. In *Doe v. Bridgeton Hospital Ass’n, Inc.*, 71 N.J. 478,490 (1976) the New Jersey Supreme Court construed this statute to be applicable to sectarian nonprofit hospitals only. The Conscience Law reflects a public policy judgment that a religious institution should not be required to violate its religious and ethical teachings by providing abortion services.

Consistent with the spirit and intent of that conscience law, we submit that this legislation should be amended to provide for conscience clause protection covering those kinds of emergency contraception which are abortifacients. **The amendment should read as follows:**

Nothing in this act shall compel a sectarian nonprofit hospital to provide any emergency contraception which has as its purpose or direct effect the removal, destruction or interference with the implantation of a fertilized ovum when such action violates its ethical, moral or religious beliefs, and the refusal to so provide shall not constitute grounds for civil or criminal liability, disciplinary action or discriminatory treatment.

3. The immediacy requirement of provision of emergency contraception ---

We submit that the requirement in section 2.a.(3) that an emergency contraceptive be provided “immediately” upon request could thwart the ability of a hospital to test to determine whether conception has occurred already (and is required for Catholic hospitals by ERD, section 36). For example, a woman could be pregnant already through a prior act of intercourse.

To impose a statutory requirement that a hospital immediately administer emergency contraception could interfere with their exercise of sound medical procedures. In addition, the principles of informed consent suggest that adequate time be provided for the patient to assess her situation. Moreover, the literature does not demand immediate administration of emergency contraception. There is general agreement that

emergency contraception, as approved by the FDA, can significantly reduce the risk of pregnancy if taken within 72 hours after the sexual assault. In fact, the American College of Obstetrics and Gynecology has indicated that the effectiveness lasts up to five days (120 hours). Indeed, information on the Planned Parenthood Federation of America, Inc. website (www.plannedparenthood.org/ec/) states: “Emergency contraception pills (ECPs) can reduce the risk of pregnancy up to 120 hours after unprotected vaginal intercourse. They work best when taken within 72 hours – during this time they can reduce the risk of pregnancy from 75 to 89 percent.” So too, the New York State Department of Health’s *Protocol for the Acute Care of the Adult Patient Reporting Sexual Assault*, (May 2002) speaks of “timely action” and states that: emergency contraception “should be taken within 72 hours to be effective.” **Accordingly, we ask that the following amendment be made:**

S1668, page 2, sec. 2, line 43: delete “immediately” and insert “as soon as possible but in no event later than 72 hours after the assault.”

Without adoption of the two amendments we seek, we submit that this legislation and the rules and regulations authorized pursuant to section 6 of the legislation could be construed to require a hospital to administer an emergency contraception which has an abortifacient effect. If that occurs, the legislation would compel and coerce our hospitals to act contrary to their religious beliefs and moral principles, thereby undermining their constitutional rights to religious freedom. By adopting our proposed amendments you will permit our hospitals to continue to provide compassionate and comprehensive care to sexual assault victims without forcing them to violate their religious beliefs and moral principles.

APPENDIX

36. Compassionate and understanding care should be given to a person who is the victim of sexual assault. Health care providers should cooperate with law enforcement officials and offer the person psychological and spiritual support as well as accurate medical information. A female who has been raped should be able to defend herself against a potential conception from the sexual assault. If, after appropriate testing, there is no evidence that conception has occurred already, she may be treated with medications that would prevent ovulation, sperm capacitation, or fertilization. It is not permissible, however, to initiate or to recommend treatments that have as their purpose or direct effect the removal, destruction, or interference with the implantation of a fertilized ovum.

Ethical and Religious Directives for Catholic Health Care Services (4th edition, June 2001).