

MCC 2005 Written Testimony before the Joint Committee on Public Health, Massachusetts General Court, on A Bill Mandating Emergency Contraception

To: Joint Committee on Public Health
From: Maria Parker, M.B.A., Interim Executive Director (submitted by D. Avila during oral testimony)
Date: April 13, 2005
Re: S. 1319/H. 1643

The Massachusetts Catholic Conference opposes S. 1319 and H. 1643, dealing with the issue of so-called emergency contraception. These bills provide for no conscience exception to the mandate to provide contraceptive means in response to sexual assault when the provider is conscientiously opposed to such provision in the case where their effect could be abortifacient rather than contraceptive. Instead, these bills require that any conscientious refusal be treated as malpractice. This is a serious interference with conscience and religion. I urge the Committee to report these bills unfavorably. I am attaching [testimony](#) on this same topic that was submitted during the previous legislative session for more background on our position.

To: Chairwoman Fargo, Chairman Ketoujian, and Members of the Joint Committee on Public Health
From: Daniel Avila, Esq., MCC Associate Director for Policy & Research
Re: **EC Bill's Impact on Individual Physicians**
Date: April 13, 2005

At today's hearing on a bill creating an emergency contraception mandate (S. 1319/H. 1643), I testified that the bill would subject individual physicians to the threat of malpractice liability for conscientiously objecting to the provision of emergency contraceptives. I promised to provide the committee with the following brief analysis supporting my testimony.

Sections 2 & 3 of the bill would amend the Massachusetts Patients Rights Act (MPRA), M.G.L. ch. 111, § 70E, by adding additional rights related to emergency contraception. A catch-all provision of MPRA states that "Any person whose rights under this section are violated may bring . . . a civil action under sections sixty B to sixty E, inclusive, of chapter two hundred and thirty-one." M.G.L. ch. 231, §§ 60B to -E provides for "malpractice actions against providers of health care". Section 60B defines a "provider of health care" as including "a person, corporation, facility or institution licensed by the commonwealth to provide health care or professional services as a physician, hospital clinic . . . , registered or licensed nurse, . . . or an officer, employee or agent thereof acting in the course and scope of his employment."

While Section 3 of the bill refers to "the standard of care for facilities" relating to the provision of emergency contraception, that alone does not limit liability to facilities, given that any number of actors within the facility could participate or refuse to participate in such provision. In addition, Section 3 requires "all persons who provide care to victims of sexual assault to be provided with medically and factually accurate written information about emergency contraception", indicating that "all persons who provide care" and not just "the facility" will be subject to the bill's "standard of care" and mandate. Anyone subject to the mandate thus will be

subject to the malpractice liability referred to in MPRA's catch-all provision if he or she conscientiously objects.

In sum, amending the MPRA in the manner indicated by the bill sweeps within the zone of civil liability any employee or agent, including physicians and nurses, of the facility.

The Massachusetts Catholic Conference is the public policy office of the Roman Catholic Bishops in the Commonwealth, representing the Archdiocese of Boston, and the Dioceses of Fall River, Springfield, and Worcester. The MCC office is located at West End Place, Suite 5, 150 Staniford St., Boston, MA 02114-2511 and MCC staff can be contacted by phone (617-367-6060), fax (617-367-2767) and by email (staff@macathconf.org).