

**DATE:** February 9, 2005

**TO:** House Committee on Health  
Honorable Dennis Arakaki, Chair  
Honorable Josh Green, MD, Vice-Chair

**FROM:** Kelly Rosati, JD

**RE:** ***OPPOSITION*** to HB 1240, relating to emergency contraceptives for sexual assault survivors in emergency rooms ***UNLESS A RELIGIOUS EXEMPTION IS INCLUDED***

### **GOVERNMENT COMPULSION TO VIOLATE RELIGIOUS BELIEFS**

Because of its religious tenets, St. Francis Healthcare System does not provide abortion services. Passage of HB 1240 would use government force to compel St. Francis to provide 'emergency contraceptives' which can act as abortifacients – something that would be directly contrary to St. Francis' religious beliefs in the sanctity of human life.

We believe strongly, along with St. Francis Healthcare System, that HB 1240 is problematic and flawed. We hold that the "scope of services" provided by any licensed health care institution is the prerogative of that organization's administration and its medical staff. It is that institution's right as a business and a health care provider to determine which services should be made available via its programs and facilities. In addition, it is that organization's administration and medical staff that adopts medical protocols for services to be rendered.

### **LEGISLATURE SHOULDN'T MANDATE MEDICAL PRACTICE PROTOCOLS**

HB 1240 ***mandates*** hospitals (not authorizes or allows by license) to carry out specific protocols in the treatment of sexual assault victims as established by the Legislature and the Department of Health – and not as determined by medical staffs and administrations of hospitals, as is the normal practice. We believe a particular medical protocol may be allowed by law, but certainly not mandated. The question of liability undoubtedly becomes an issue should there be a charge of medical malpractice.

HB 1240 in effect gives the State a license to practice medicine and takes away that right from medical doctors. Hospitals with their emergency rooms are licensed to operate facilities to support physicians in the treatment of their patients. Physicians evaluate and assess patients' medical problems and determine, based on medical judgment, the proper course of treatment. This bill takes the "practice of medicine" away from physicians and gives it to the State.

While we strongly advocate compassionate treatment of victims of sexual assault, we also believe that health care providers who treat these individuals should also provide medically accurate information and offer spiritual and psychological support as needed. Because of this, we strongly oppose HB 1240.

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### **HB 1240 LIKELY UNCONSTITUTIONAL**

The information in the preamble to the legislation is incomplete and misleading. However, from a legal perspective it is illuminating. By highlighting the Ethical and Religious Directives for Catholic Health Care Services, the authors have signaled their intent to target this legislation at the St. Francis Health Care System.

St. Francis may assert its free exercise of religion rights under the First Amendment to the United States Constitution. By singling out Catholic healthcare institutions in the preamble, the government must then pass the legal standard of strict scrutiny. This means the government would need to show a compelling interest for forcing St. Francis to violate its religious beliefs and would need to show it used the least restrictive means available to achieve its compelling interest. Given the proximity of many other health care institutions capable of providing the services prescribed in HB 1240, we believe it would be nearly impossible for the government to meet this test.

### **DIVERSITY & TOLERANCE ACHIEVED WITH A RELIGIOUS EXEMPTION**

St. Francis is not suggesting other health care facilities adopt its practices. Nor is it suggesting the government codify the St. Francis medical practice protocols. We simply request the same courtesy and consideration.

We respectfully suggest the legislature can achieve its purposes and balance religious liberty, tolerance and diversity of opinion by granting St. Francis a religious exemption.

Thank you for affording me the opportunity to testify.