

# PROPOSED RULEMAKING

## DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 101 AND 117]

### Sexual Assault Victim Emergency Services

The Department of Health (Department) proposes to amend Chapters 101 and 117 (relating to general information; and emergency services) to read as set forth in Annex A.

#### A. Purpose of the Proposed Rulemaking

The proposed rulemaking amends Chapter 117 to add minimum requirements for the physical and psychological treatment of sexual assault victims by hospitals in this Commonwealth. According to the State Police's Uniform Crime Reporting System, there were 3,341 rapes by force reported in this Commonwealth in calendar year 2005. In addition to these forcible rapes, there were 8,636 other sexual offenses. Although most hospitals currently do provide medical services to sexual assault victims, there are no standard requirements for what services must be provided. It is necessary to ensure that appropriate physical and psychological services are provided to the victims of sexual assault in an effort to minimize the effects of the traumatic event on the victim and to ensure the victim's health and safety. The proposed rulemaking provides minimum requirements for "sexual assault emergency services," which include services regarding assessment and prophylactic treatment of sexually transmitted diseases, counseling regarding the assault either onsite or at a rape crisis center and information and services regarding emergency contraception. Further, the proposed rulemaking takes into consideration the needs of law enforcement in protecting the community by making evidence gathering easier and helping in the prosecution of a violent crime.

The proposed rulemaking is also intended to address the physical and psychological needs of sexual assault victims, while at the same time taking into consideration issues of religious freedom. The proposed rulemaking includes an exemption from requirements regarding the provision of emergency contraception services for those hospitals that believe provision of that particular service would be contrary to the stated religious or moral beliefs of the hospital.

Finally, the proposed rulemaking requires hospitals choosing to provide sexual assault emergency services to also provide victims with certain written and oral information. This information includes information regarding sexually transmitted diseases, prophylactic treatment of those diseases, risks relating to that treatment and necessary future testing. Hospitals would also be required to provide written information regarding emergency contraception in a range of languages. Hospitals not providing sexual assault emergency services would be required to comply with certain notice and transport provisions.

#### B. Requirements of the Proposed Rulemaking

In developing this proposed rulemaking, the Department reviewed a variety of information regarding the subject, including language from statutes in other states which currently have these requirements, such as California, Illinois, Massachusetts, New Jersey, New Mexico, New York, South Carolina and Washington. The Department also reviewed language in proposed legislation in

the General Assembly, the United States Congress and model legislation proposed by sexual assault victim advocacy groups.

The Department proposes to add several definitions to § 101.4 (relating to definitions) made necessary by proposed §§ 117.51—117.58 (relating to sexual assault victims emergency services). Because the Department's proposed regulations focus on the provision of "sexual assault emergency services," the Department proposes a definition for that term. The Department is also proposing to add definitions for "emergency contraception," "rape crisis center," "sexual assault," "sexual assault counselor" and "sexual assault victim." Although some of these terms may have a common usage in either the medical community or law enforcement community or are defined in statutes or other regulations, they are not currently defined in the Department's regulations regarding general and special hospitals. These definitions are required to ensure the purposes of proposed §§ 117.51—117.58 are properly implemented.

Proposed § 117.51 (relating to principle) explains the scope of proposed regulations and clarifies that a hospital that chooses to provide sexual assault emergency services would be required to comply with the minimum standards in the proposed regulations. However, this section also provides that a hospital choosing to seek a religious or moral exemption under provisions existing elsewhere in the proposed regulations would not be required to provide certain services relating to emergency contraception. Further, this section provides that hospitals not providing sexual assault emergency services would be required to comply with certain notice and transport provisions.

Proposed § 117.52(a) (relating to minimum requirements for sexual assault emergency services) contains the minimum standards for sexual assault emergency services, which would be provided only with the consent of the sexual assault victim. These services include services to treat both the physical and the psychological health of the victim. This section requires testing to ensure the health, safety and welfare of the victim, the presence or absence of a sexually transmitted disease, the provision of information on sexually transmitted diseases and pregnancy and on medical procedures, medication and accepted contraindications of medication available for prevention or treatment of infection or disease resulting from the assault, the provision of prophylactic treatment against the transmission of sexually transmitted diseases and HIV and provision of information regarding the need for additional testing and treatment. A comprehensive approach to the treatment of the victim would maximize the benefits to the victim of seeking proper treatment for a sexual assault in a hospital.

Proposed subsection (a) would also require that a hospital choosing to provide sexual assault emergency services provide the victim with information on the availability of a rape crisis center or sexual assault counselor, provide the victim with the telephone number and contact a rape crisis center or sexual assault counselor at the victim's request. The proposed subsection would also require that the hospital provide the victim with the opportunity to consult with the rape crisis center or sexual assault counselor in person and in private while at the hospital.

Finally, this section takes into account the needs of law enforcement since prosecution of a violent crime remains important to the well-being of the victim and the community. Subsection (a) includes tests that may be used in evidence at a criminal proceeding in its list of minimum requirements that hospitals providing sexual assault emergency services are to provide. Currently, these tests may be conducted with the assistance of law enforcement and the procedures would not be impeded by this proposed rulemaking. The Department intends that hospitals coordinate with law enforcement to ensure that all appropriate tests are conducted to maintain the integrity of evidence collection and analysis. However, the proposed rulemaking does not require a hospital to contact law enforcement prior to conducting the tests, as on certain occasions a victim does not wish to report the crime to law enforcement. The examinations and tests conducted by the hospital would provide for some evidence to be collected in the event the victim later decides to report the crime to law enforcement and seek apprehension and prosecution of the offender. Further, subsection (b) requires that hospitals maintain records of all examinations, tests and services provided to a sexual assault victim and make the records available to law enforcement at the victim's request and with the victim's consent.

Proposed § 117.53(a) (relating to emergency contraception) requires that a hospital inform a female sexual assault victim of the availability, use, risks and efficacy of emergency contraception and offer and provide her emergency contraception onsite at her request, unless the medication is contraindicated. These services must be provided by a hospital that provides sexual assault emergency services, unless that hospital claims an exemption under proposed § 117.57 (relating to religious and moral exemptions).

Hospitals providing sexual assault emergency services, including those claiming a religious or moral exemption under proposed § 117.57, shall provide the victim with medically and factually accurate and objective written informational materials regarding emergency contraception. Proposed § 117.55 (relating to emergency contraception informational materials) sets forth the preparation of that material.

Subsection (b) allows a hospital to require a sexual assault victim to undergo a pregnancy test before providing her with emergency contraception. Subsection (b) also allows the hospital to refuse emergency contraception to the victim if she is pregnant. Emergency contraception is intended to prevent a pregnancy and will not have an effect on eliminating an already existing pregnancy.

The Department also proposes provisions regarding pregnancy to address some of the concerns of Catholic hospitals and the United States Conference of Catholic Bishops, as well as the Pennsylvania Catholic Conference. See *Ethical and Religious Directives for Catholic Health Care Services*, 4th Edition, June 15, 2001 ([www.nccbuscc.org/bishops/directives.shtml](http://www.nccbuscc.org/bishops/directives.shtml)) and *Guidelines for Catholic Hospitals Treating Victims of Sexual Assault*, September 23, 1998 ([www.pacatholic.org/pcha/statements/sexgdlines.htm](http://www.pacatholic.org/pcha/statements/sexgdlines.htm)). These guidelines include conducting a pregnancy test on the victim and prohibit Catholic hospitals from giving emergency contraception to a pregnant sexual assault victim.

Proposed § 117.54 (relating to prevention of sexually transmitted diseases) requires hospitals to perform sexually transmitted disease risk assessments on sexual assault victims according to recommendations from the United States Centers for Disease Control and Prevention

(CDC), to advise victims of the risk of transmission of sexually transmitted diseases and the availability of postexposure prophylaxis treatment for sexually transmitted diseases, the risks of deferral of the treatment and to provide postexposure prophylaxis treatment for sexually transmitted diseases with the consent of the victim. These requirements are proposed for the health of the victim and are intended to prevent and control the spread of sexually transmitted disease not only to the victim, but to the victim's future consensual sexual partners if the victim is untreated or unaware that a sexually transmitted disease may have been transmitted. In some cases, sexually transmitted diseases such as syphilis, Chlamydia and gonorrhea can lead to infertility and even death.

Proposed § 117.55 sets minimum standards for the development of medically and factually accurate and objective written informational materials regarding emergency contraception to be provided to sexual assault victims in accordance with proposed § 117.53(a)(1). Further, the informational materials would be required to be prepared and produced in clear and concise, readily comprehensible language and in varieties and forms as necessary to inform victims in English and languages other than English. The Department expects individual hospitals will determine which languages are appropriate based on the needs of the community the hospital serves.

The materials would explain what emergency contraception is and describe its use, risks and efficacy, as well as inform victims of locations where emergency contraception may be obtained in the event it is not obtained at the hospital. These requirements would ensure victims are fully aware of the use of emergency contraception in order to make an informed decision on whether taking the medication is desired. Further, providing information on alternate locations for obtaining emergency contraception would allow the victim to consider the information before taking the medication as well as reduce the strain in finding emergency contraception for those victims treated at hospitals that do not offer or provide emergency contraception to the victim under the religious and moral exemption in proposed § 117.57.

Proposed § 117.56 (relating to information regarding payment for sexual assault emergency services) requires hospitals to inform the sexual assault victim of the availability of known financial resources for services provided to the victim, including the victim's medical insurance provider, the Pennsylvania Crime Victim's Compensation Program and programs administered by the hospital. Informing the victim of these resources for payment for the services received at the hospital would further diminish the concern to the victim resulting from the criminal assault, and hopefully encourage victims to report the crimes to law enforcement to secure resources for payment of the services provided. The hospital would also provide the victim with any information required to obtain these services, including copies of itemized bills and medical records.

Proposed § 117.57 provides that a hospital would not be required to comply with § 117.53(a)(2) and (3) if doing so would be contrary to the stated religious or moral beliefs of the hospital. Offering and providing emergency contraception is well established to be a sensitive matter for certain religious groups and section 902 of the Health Care Facilities Act (act) (35 P. S. § 448.902) may mandate that the requirements of offering and providing emergency contraception would be unenforceable against hospitals able to establish that requirements are contrary to the hospital's stated religious or moral beliefs.

Although a hospital may be exempt from offering and providing emergency contraception under this section, it would still be required to provide all the other services required in the proposed rulemaking, including providing the victim with written and oral information about emergency contraception under § 117.55 and informing the victim of locations where emergency contraception may be obtained. Furthermore, this section requires a hospital that is exempt from offering and providing emergency contraception to a sexual assault victim under this section, to inform the victim of this fact and to arrange for transportation of the victim, at no cost, to a hospital in this Commonwealth that does provide the service. This section furthers the Department's goal of ensuring the appropriate treatment is provided to the sexual assault victim while attempting to avoid having hospitals decide against providing other sexual assault emergency services based on objections under section 902 of the act.

Recognizing that some of the hospitals in this Commonwealth are specialty hospitals with limited services and are not staffed and equipped to provide the services, proposed § 117.58 (relating to hospitals not providing sexual assault emergency services) allows a hospital to self-evaluate its facilities to determine if providing sexual assault emergency services at the hospital would be appropriate. Although ideally it would be of greater benefit to this Commonwealth to have sexual assault emergency services provided in as many locations as possible, there is a greater risk to the victim and the integrity of future criminal prosecution if a sexual assault victim is treated at a hospital without the appropriate staff and equipment. For example, the Department does not expect that hospitals not providing general emergency services, such as rehabilitation hospitals, would or could provide sexual assault emergency services.

Subsection (a) requires hospitals electing not to provide sexual assault emergency services to provide notification to the Department, law enforcement and ambulance and emergency medical care and transport services that these services will not be provided by the hospital. This notification must be in writing and provided within 30 days of the hospital's decision not to provide the services. Further, the Department will publish a notice in the *Pennsylvania Bulletin* to inform other facilities, local government and the general public that sexual assault emergency services are not provided at that facility. The notice published by the Department will differentiate between hospitals which elect not to provide emergency contraception under the religious and moral exemption in § 117.57 from those which do not provide any sexual assault emergency services under § 117.58.

Subsection (b) requires a hospital that elects not to provide sexual assault emergency services to inform the victim of this fact and to arrange for transportation of the victim, at no cost, to a hospital in this Commonwealth that does provide the service. This subsection ensures that a victim that presents at a hospital receives treatment at a facility that is properly staffed and equipped.

#### C. Affected Persons

This proposed rulemaking affects all Commonwealth hospitals which would be required to consider whether or not they will provide sexual assault emergency services. Hospitals that choose not to perform these services would be required to inform the Department, ambulance and emergency medical care and transport services and law enforcement agencies of this decision within a specified time frame. Further, hospitals choosing not to provide

these services, including those that choose to take an exemption under § 117.57, would be required to develop policies and procedures for informing sexual assault victims who present at those hospitals of the hospital's position on these issues and for transporting victims who request a transfer to hospitals that would provide the services.

Hospitals that choose to provide emergency sexual assault services would need to develop policies and procedures to comply with this proposed rulemaking, including those regarding provision of informational materials regarding emergency contraception, sexually transmitted diseases and pregnancy.

The proposed rulemaking also affects sexual assault victims who would be offered the same information and care at hospitals in this Commonwealth providing sexual assault services. Victims would also be offered the opportunity to be transported to hospitals that did offer these services, if they present at a hospital that does not do so.

Lastly, this proposed rulemaking affects law enforcement agencies and ambulance and emergency medical care and transport services, since these services would be required to be aware of the list of hospitals that have chosen to provide emergency sexual assault services, so that victims may be taken to these hospitals to ensure they receive sexual assault emergency services and information regarding those services.

#### D. Cost and Paperwork Estimate

##### Cost

*Commonwealth*—There will be additional costs to the Commonwealth resulting from this proposed rulemaking associated with the Department's need to enforce the proposed regulations. The Department estimates that an additional position for a Health Facility Quality Administrator would be required to survey and inspect hospitals to ensure compliance with the proposed rulemaking and respond to complaints regarding the manner in which the proposed regulations would be implemented by those hospitals. These costs include salary, benefits, workstation, computer, telephone, travel, training and other related costs. Reducing the effects a sexual assault would have on victims through implementation of the proposed regulations and the services offered through them, however, would outweigh the estimated costs.

*Local government*—There will be no additional cost to local government. Although the proposed regulations require that hospitals not providing sexual assault emergency services send notice to law enforcement agencies of their decision not to provide those services, and law enforcement agencies should be aware of this list to the extent that they transmit sexual assault victims to hospitals, this requires no additional work on the part of law enforcement agencies. The Department will publish a compiled list of these hospitals in the *Pennsylvania Bulletin*.

*Regulated community*—There will be additional cost to hospitals in this Commonwealth. The Department has estimated the costs of developing the informational materials that the proposed regulations would require hospitals providing sexual assault emergency services to distribute. The Department estimates that it would cost approximately \$7,500 to develop the written informational materials and approximately \$2,500 to print 5,000 brochures. These costs may be shared by the hospitals, however, if they join in developing standard information materials for all hospitals to utilize. Printing costs may

be lowered significantly if a hospital explores alternative methods for printing of the written materials.

In addition to these costs, hospitals could have additional costs of reviewing current procedures and making any changes necessary to comply with the proposed regulations once they are published in final form. These costs will depend upon what procedures individual hospitals in this Commonwealth currently have in place. However, as with the costs of developing and printing written informational materials, hospitals might be able to significantly reduce their costs by coordination of these efforts.

*General public*—There is no additional cost for the general public. In fact, since victims of rapes and other sexual offenses and their families are members of the general public and may be subject to serious medical and psychological effects as a result of the crime, including sexually transmitted disease and pregnancy, there would be a benefit to the general public from this proposed rulemaking. Because the proposed regulations also aid in gathering information necessary for investigation and successful prosecution of a violent crime, society as a whole would benefit from the implementation of the proposed regulation.

#### *Paperwork Estimates*

*Commonwealth*—To effectively survey and inspect hospitals for the purpose of enforcing the proposed regulations, the Department estimates additional survey and inspection time equivalent to an additional position for one Health Facility Quality Administrator would be necessary. There will be the need to review complaints in this additional area of proposed rulemaking. The Department, however, already has a process in place for the review and investigation of complaints against hospitals.

Further, the Department would be required to obtain and compile a list of hospitals that have decided not to provide sexual assault emergency services and to publish that list in the *Pennsylvania Bulletin*.

*Regulated community*—Hospitals would be required to either develop or obtain informational material on sexually transmitted diseases, pregnancy, emergency contraception and the need for additional testing. With respect to information regarding emergency contraception, the proposed regulations require that this written information be available in languages other than English. It is possible that this written information may be available in part from the CDC. It is also possible that hospitals may be able to join in developing standard information materials for all hospitals to utilize.

Hospitals would be required to review current policies and procedures and make any changes necessary to comply with the proposed regulations once they are adopted. Whether additional or revised policies or procedures are necessary would depend upon what policies and procedures each hospital currently has in place. However, as with the costs of developing and printing written informational materials, hospitals might be able to significantly reduce their costs by coordination of these efforts.

*Local government*—There is no additional paperwork requirement for local government. Although the proposed regulations require that hospitals not providing sexual assault emergency services send notice to law enforcement agencies of their decision not to provide sexual assault emergency services, and law enforcement agencies should be aware of this list to the extent that they transport sexual assault victims to hospitals, this re-

quires no additional work on the part of law enforcement agencies. The Department will publish a compiled list in the *Pennsylvania Bulletin*.

*General public*—There is no additional paperwork requirement for the general public.

#### *E. Statutory Authority*

Section 803(2) of the act (35 P. S. § 448.803(2)) authorizes the Department to promulgate, after consultation with the Health Policy Board, regulations necessary to carry out the purposes and provisions of the act. See section 601 of the act (35 P. S. § 448.601), which states that "The department, in the exercise of its duties under this act shall have the power to adopt such regulations as are necessary to carry out the purposes of this act." Section 801.1 of the act (35 P. S. § 448.801a) provides that a purpose of the act is to promote the public health and welfare through the establishment of regulations setting minimum standards for the operation of health care facilities. Section 801.1 of the act also provides that the minimum standards are to assure safe, adequate and efficient facilities and services and are also to promote the health, safety and adequate care of patients or residents of these facilities. The General Assembly has also stated that a purpose of the act is, among other things, to assure that all citizens receive humane, courteous and dignified treatment. See section 102 of the act (35 P. S. § 448.102). Finally, section 201(12) of the act (35 P. S. § 449.201(12)) provides the Department with explicit authority to enforce its rules and regulations promulgated under the act.

The Department also has the duty to protect the health of the citizens of this Commonwealth under section 2102(a) of The Administrative Code of 1929 (71 P. S. § 532(a)). The Department has general authority to promulgate regulations under section 2102(g) of The Administrative Code of 1929.

#### *F. Effectiveness/Sunset Dates*

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. No sunset date has been established. The Department will continually review and monitor the effectiveness of these regulations.

#### *G. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 11, 2006, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Health and Human Services Committee and the Senate Public Health and Welfare Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

#### *H. Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed

rulemaking to Gerald Radke, Director, Bureau of Facility Licensure and Certification, Department of Health, Room 932, Health and Welfare Building, 7th and Forster Streets, Harrisburg, PA 17120, (717) 787-8015 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Persons with a disability who wish to submit comments, suggestions or objections regarding this proposed rulemaking may do so by using the previous telephone number or address or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT). Persons who require an alternative format of this proposed rulemaking should contact Gerald Radke at the previous address or telephone numbers so that necessary arrangements may be made.

CALVIN B. JOHNSON, M. D., M.P.H.,  
*Secretary*

**Fiscal Note:** 10-182. (1) General Fund; (2) Implementing Year 2006-07 is \$78,000 (includes one time, nonrecurring costs); (3) 1st Succeeding Year 2007-08 is \$74,000; 2nd Succeeding Year 2008-09 is \$76,000; 3rd Succeeding Year 2009-10 is \$78,000; 4th Succeeding Year 2010-11 is \$80,000; 5th Succeeding Year 2011-12 is \$82,000; (4) 2005-06 Program—\$14,529,526; 2004-05 Program—\$14,157,071; 2003-04 Program—\$13,330,964; (7) Quality Assurance; (8) recommends adoption.

**Annex A**

**TITLE 28. HEALTH AND SAFETY**

**PART IV. HEALTH FACILITIES**

**Subpart B. GENERAL AND SPECIAL HOSPITALS**

**CHAPTER 101. GENERAL INFORMATION**

**GENERAL PROVISIONS**

**§ 101.4. Definitions.**

The following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

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**Emergency contraception**—A drug, drug regime or device approved by the Food and Drug Administration that is used after sexual intercourse to inhibit or prevent ovulation, fertilization or the implantation of a fertilized ovum within the uterus.

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**Rape crisis center**—An office, institution or center that offers assistance to a sexual assault victim or the victim's family through crisis intervention, medical and legal accompaniment and follow-up counseling.

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**Sexual assault**—An offense specified in 18 Pa.C.S. Chapter 31, Subchapter B (relating to definition of offenses).

**Sexual assault counselor**—A person who is engaged or employed by a rape crisis center that arranges for the provision of services to a sexual assault victim, who has undergone at least 40 hours of sexual assault training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault.

**Sexual assault emergency services**—A medical examination, forensic examination or other procedure or service provided by a hospital to a sexual assault victim because of a sexual assault.

**Sexual assault victim or victim**—A person who has been sexually assaulted.

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**CHAPTER 117. EMERGENCY SERVICES  
SEXUAL ASSAULT VICTIMS EMERGENCY SERVICES**

*(Editor's Note: The following text is new. It is printed in regular type to enhance readability.)*

**§ 117.51. Principle.**

This section and §§ 117.52—117.58 establish requirements for a hospital that provides sexual assault emergency services and for the provision of information and services relating to emergency contraception and prevention of sexually transmitted diseases to sexual assault victims. A hospital that provides sexual assault emergency services to sexual assault victims shall comply with these sections, except that a hospital may be excluded from providing the services required by § 117.53(a)(2) and (3) (relating to emergency contraception) under § 117.57 (relating to religious and moral exemptions). All hospitals electing not to provide sexual assault emergency services under § 117.58 (relating to hospitals not providing sexual assault emergency services) shall comply with the notification and transfer provisions therein.

**§ 117.52. Minimum requirements for sexual assault emergency services.**

(a) Promptly upon a sexual assault victim's presenting to a hospital that provides sexual assault emergency services, the hospital shall, at a minimum, provide, with the consent of the sexual assault victim, the following:

(1) Medical examinations and laboratory or diagnostic tests required to ensure the health, safety and welfare of the sexual assault victim, or which may be used as evidence in a criminal proceeding against a person accused of the sexual assault, or both.

(2) Oral and written information concerning the possibility of sexually transmitted disease and pregnancy resulting from the sexual assault.

(3) Oral and written information concerning accepted medical procedures, medication, and possible contraindications of the medication available for the prevention or treatment of infection or disease resulting from the sexual assault.

(4) Medication as deemed appropriate by the attending physician, including HIV and sexually transmitted disease prophylaxis.

(5) A blood test to determine the presence or absence of sexually transmitted disease.

(6) Oral and written instructions indicating the need for additional blood tests at time periods after the sexual assault as medically indicated to determine the presence or absence of sexually transmitted disease.

(7) Information on the availability of a rape crisis center or sexual assault counselor and the telephone number of a local rape crisis center or sexual assault counselor. The hospital shall contact the local rape crisis center or sexual assault counselor at the request of the victim.

(8) The opportunity for the victim to consult with the rape crisis center or sexual assault counselor in person and in private while at the hospital.

(b) A hospital shall maintain records of the results of all examinations, tests and services provided to a sexual assault victim and make those records available to law enforcement officials upon the request and with the consent of the sexual assault victim.

**§ 117.53. Emergency contraception.**

(a) The hospital shall provide the following services to a female sexual assault victim in addition to the minimum requirements in § 117.52 (relating to minimum requirements for sexual assault emergency services):

(1) Provide the victim with medically and factually accurate written informational materials regarding emergency contraception prepared under § 117.55 (relating to emergency contraception informational materials).

(2) Orally inform the victim of the availability of emergency contraception, its use, risks and efficacy unless the hospital claims an exception in accordance with § 117.57 (relating to religious and moral exemptions).

(3) Offer emergency contraception to the victim and provide emergency contraception onsite upon the victim's request, unless contraindicated or unless the hospital claims an exception in accordance with § 117.57.

(b) Prior to providing emergency contraception to a sexual assault victim as required in subsection (a)(3), a hospital may require the victim to submit to a pregnancy test. A hospital is not required to provide emergency contraception to a pregnant sexual assault victim, but shall provide the victim with information regarding the pregnancy and information relating to appropriate medical care for the pregnancy.

**§ 117.54. Prevention of sexually transmitted diseases.**

(a) A hospital shall promptly provide a sexual assault victim with an assessment of the victim's risk for contracting a significantly prevalent sexually transmitted disease.

(b) The hospital shall base the risk assessment upon the following considerations:

(1) Available information regarding the assault as well as the subsequent findings from medical examination and tests that may be conducted.

(2) Established standards of risk assessment, including consideration of recommendations established by the United States Department of Health and Human Services Centers for Disease Control and Prevention.

(c) In addition to the assessment required in subsection (a), a hospital shall advise a sexual assault victim of significantly prevalent sexually transmissible diseases for which postexposure prophylaxis exists, and for which deferral of treatment would either significantly reduce treatment efficacy or would pose a substantial risk to the individual's health.

(d) Upon the victim's consent, the hospital shall provide the victim with postexposure prophylactic treatment for sexually transmissible diseases, except that a hospital will not be required to comply with this subsection when risk evaluation, adopted by the United States Department of Health and Human Services Centers for Disease Control and Prevention, clearly recommends against the application of postexposure prophylaxis.

**§ 117.55. Emergency contraception informational materials.**

(a) A hospital that provides sexual assault emergency services shall ensure that each member of the hospital personnel that provides the services is furnished with medically and factually accurate and objective written informational materials about emergency contraception developed by the hospital under this section.

(b) The hospital shall prepare, produce and distribute the written informational materials. The informational material must meet the following standards:

(1) Be in clear and concise language, readily comprehensible, in such varieties and forms as are deemed necessary to inform victims in English and languages other than English.

(2) Explain the nature of emergency contraception, including its use, risks and efficacy.

(3) Provide sexual assault victims with information on finding locations where emergency contraception may be obtained in the event it is not obtained at the hospital.

**§ 117.56. Information regarding payment for sexual assault emergency services.**

A hospital shall inform a sexual assault victim receiving sexual assault emergency services at the hospital of the availability of known financial resources for services provided to the victim due to the sexual assault, including payments by the victim's medical insurer, if applicable, the Crime Victim's Compensation Program administered by the Pennsylvania Commission on Crime and Delinquency, and any programs administered by the hospital. The hospital shall provide the victim information required to secure the services, including copies of itemized bills and medical records.

**§ 117.57. Religious and moral exemptions.**

In accordance with section 902(a) of the act (35 P. S. § 448.902(a)), a hospital is not required to comply with § 117.53(a)(2) and (3) (relating to emergency contraception) if providing those services would be contrary to the stated religious or moral beliefs of the hospital. If the hospital does not provide services under this religious and moral exemption, the hospital shall provide the following services:

(1) Provide individual oral and written notice to the sexual assault victim that those services are not provided at the hospital due to the services being contrary to the stated religious or moral beliefs of the hospital.

(2) Upon request of the victim, arrange for the immediate transfer of the victim, at no cost, to a hospital in this Commonwealth in close proximity that does provide those services.

**§ 117.58. Hospitals not providing sexual assault emergency services.**

(a) If a hospital otherwise governed by this subpart elects not to provide sexual assault emergency services to victims, including a hospital not providing certain emergency contraception services under § 117.57 (relating to religious and moral exemptions), the hospital shall provide the following notifications:

(1) The hospital shall notify the Department within 30 days of the hospital's decision not to provide sexual assault emergency services. The hospital shall address and send the written notice to the Division of Acute and Ambulatory Care. The Department will publish a list of

hospitals in the *Pennsylvania Bulletin* that have chosen not to provide sexual assault emergency services.

(2) The hospital shall notify the law enforcement agencies which may transport or refer a sexual assault victim to the hospital that the hospital has elected not to provide sexual assault emergency services. The written notice to law enforcement agencies shall be sent no later than 30 days after the hospital's decision not to provide those services.

(3) The hospital shall notify the ambulance and emergency medical care and transport services which may transport or refer a sexual assault victim to the hospital that the hospital has elected not to provide sexual assault emergency services. The written notice to ambulance and emergency medical transport and care services shall be sent no later than 30 days after the hospital's decision not to provide those services.

(b) If a hospital does not provide services under this section, the hospital shall do the following:

(1) Provide individual oral and written notice to the sexual assault victim that those services are not provided at the hospital.

(2) Upon request of the victim, arrange for the immediate transfer of the victim, at no cost, to a hospital in this Commonwealth in close proximity that does provide those services.

[Pa.B. Doc. No. 06-2059. Filed for public inspection October 20, 2006, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 75]

[Correction]

### Implementation of the Alternative Energy Portfolio Standards Act of 2004

The document which appeared at 36 Pa.B. 6289 (October 14, 2006), regarding the implementation of the Alternative Energy Portfolio Standards Act of 2004, will be renumbered on final adoption as follows:

§§ 75.51—75.62 will be §§ 75.61—75.72

[Pa.B. Doc. No. 06-2018. Filed for public inspection October 13, 2006, 9:00 a.m.]

## STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

### Sexual Misconduct

The State Board of Dentistry (Board) proposes to add § 33.211a (relating to sexual misconduct) to read as set forth in Annex A.

#### Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

#### Statutory Authority

Under section 3(c), (d), (d.1) and (o) of the Dental Law (63 P.S. § 122(c), (d), (d.1) and (o)), the Board has authority to establish standards of professional conduct for Board regulated practitioners under its jurisdiction. These individuals include dentists, dental hygienists and expanded function dental assistants (EFDA).

#### Background and Purpose

Over the past few years, the health-related boards within the Bureau of Professional and Occupational Affairs have been developing regulations regarding sexual misconduct. The purpose of this proposed rulemaking is to protect consumers of dental services and provide clear guidance to practitioners and the public that sexual misconduct by a dentist, dental hygienist or EFDA is prohibited.

The Board previously published a proposed rulemaking regarding sexual misconduct at 32 Pa.B. 5284 (October 26, 2002). The earlier version of the rulemaking prohibited sexual behavior with and sexual exploitation of patients. At that time, it was suggested by commentators that the definitions were somewhat vague and that the Board consider providing specific examples of prohibited conduct. It has been the Board's experience that when specific examples are used, courts interpreting the regulations often deem acceptable those situations not included in a list such as this. The Board does not wish to inadvertently approve sexual misconduct by omission, and therefore, chose not to provide specific examples of prohibited conduct. It would be virtually impossible to write regulations for sexual misconduct that clearly define every possible prohibited behavior and every possible innocent behavior. The Board believes the proposed rulemaking is flexible enough to cover most situations without being overly burdensome.

#### Description of Proposed Rulemaking

Proposed § 33.211a (relating to sexual misconduct) makes it clear that sexual misconduct constitutes unprofessional conduct and subjects the practitioner to disciplinary action.

The purpose of proposed § 33.211a is to better protect patients by providing guidance to the profession and the public that sexual conduct between practitioners and their current patients constitutes unprofessional conduct. This proposed section defines "sexual misconduct" as "[a]ny sexual conduct with a current patient, including words, gestures or expressions, actions or any combination thereof, which are sexual in nature, or which may be construed by a reasonable person as sexual in nature."

Proposed § 33.211a also defines "current patient" as one "that is in the process of dental treatment with a practitioner or who has been treated by the practitioner within the previous 3 months." The definition specifically excludes patients who affirmatively terminate the practitioner-patient relationship by becoming a patient of record at another dental office.

This proposed rulemaking further provides that Board regulated practitioners who engage in sexual misconduct with current patients will not be eligible for placement in the Board's impaired professional program instead of disciplinary or corrective actions. The impaired professional program is unable to effectively monitor Board regulated practitioners who have engaged in sexual misconduct.

The proposed rulemaking also provides that patient consent is not a defense to disciplinary action in these cases and specifically excludes conduct between a practitioner and the practitioner's spouse or a person cohabitating with the practitioner. The intent is to exclude spouses and people who live together on a permanent basis. Other types of more casual relationships are not excluded.

*Fiscal Impact and Paperwork Requirements*

The proposed rulemaking should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the proposed rulemaking should not necessitate any legal, accounting, reporting or other paperwork requirements.

*Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 4, 2006, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Cynthia K. Montgomery, Counsel, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking.

SUSAN E. CALDERBANK, D.M.D.,  
*Chairperson*

**Fiscal Note:** 16A-4618. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 33. STATE BOARD OF DENTISTRY**

**Subchapter C. MINIMUM STANDARDS OF CONDUCT AND PRACTICE**

**§ 33.211a. Sexual misconduct.**

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Current patient*—

(i) A person that is in the process of dental treatment with a practitioner or who has been treated by the practitioner within the previous 3 months.

(ii) The term does not include a patient who has terminated the practitioner-patient relationship by being accepted as a patient of record at another dental office.

*Sexual misconduct*—Any sexual conduct with a current patient, including words, gestures or expressions, actions or any combination thereof, which are sexual in nature, or which may be construed by a reasonable person as sexual in nature.

(b) *Disciplinary action.* Unprofessional conduct, as defined in section 4.1(a)(8) of the act (63 P. S. § 123.1(a)(8)), includes sexual misconduct by a dentist, a dental hygienist or an expanded function dental assistant (EFDA), and subjects the practitioner to disciplinary action under sections 4.1(a)(8) and 10.1 of the act (63 P. S. §§ 123.1(a)(8) and 129.1).

(c) *Impaired professional program.* A practitioner who engages in conduct prohibited by this section will not be eligible for placement into an impaired professional program in lieu of disciplinary action or correction.

(d) *Consent.* Consent is not a defense to conduct prohibited by this section.

(e) *Exclusion.* This section does not apply to conduct between a practitioner and the practitioner's spouse or a person cohabitating with the practitioner.

[Pa.B. Doc. No. 06-2060. Filed for public inspection October 20, 2006, 9:00 a.m.]