

**CHAPTER 51. DISCRIMINATION WITH RESPECT TO
ABORTION AND STERILIZATION**

GENERAL PROVISIONS

- Sec.
51.1. Purpose and policy.
51.2. Definitions.

**RIGHTS AND OBLIGATIONS OF HOSPITALS AND OTHER
HEALTH CARE FACILITIES**

- 51.31. Adoption and substance of stated ethical policy.
51.32. Objection to performance of abortion or sterilization by nonpublic hospitals or other nonpublic health care facilities on moral, religious or professional grounds.
51.33. Statement or other manifestation of attitude with respect to abortion or sterilization.

**RIGHTS AND OBLIGATIONS
OF INDIVIDUALS**

- 51.41. Written objection to performance, participation in or cooperation in abortion or sterilization procedures.
51.42. Willingness or refusal to perform or participate in abortion or sterilization procedures.
51.43. Other protections afforded individuals in employment and education.
51.44. Reasonable accommodation to rights of employees.

**EXEMPTIONS BECAUSE OF BONA FIDE OCCUPATIONAL
QUALIFICATIONS**

- 51.51. Supplementary interpretation regarding bona fide occupational qualification standards.
51.52. Securing supplementary interpretations.

EXEMPTIONS

- 51.61. Exemption for certain clinics and health care facilities.

Authority

The provisions of this Chapter 51 issued under section 7(d) of the Pennsylvania Human Relations Act (43 P. S. § 957(d)), unless otherwise noted.

Source

The provisions of this Chapter 51 adopted March 11, 1977, 7 Pa.B. 699, unless otherwise noted.

GENERAL PROVISIONS**§ 51.1. Purpose and policy.**

(a) The purpose of this chapter is to assist persons and institutions subject to the provisions of section 5.2 of the act (43 P. S. § 955.2) to comply with the act of October 10, 1973 (P. L. 278, No. 78) (43 P. S. §§ 955.2 and 961) prohibiting discrimination with respect to abortion and sterilization. This chapter will show what courses of conduct are considered by the Commission to be in violation of the act. Persons and institutions subject to the provisions of the act should govern themselves accordingly.

(b) It is the policy of the Commission, under the provisions of the 1973 amendment to the act, to prevent and eliminate discrimination based upon refusal or willingness to participate in abortion or sterilization procedures, consistent with the obligation of hospitals and other health care facilities to provide competent medical care.

§ 51.2. Definitions.

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

Abortion—The termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

Act—The Pennsylvania Human Relations Act (43 P. S. §§ 951—963).

Commission—The Pennsylvania Human Relations Commission.

Moral, religious, or professional grounds—The deeply held beliefs, ethical rules and standards of conduct and practice of a person which impose a duty of conscience concerning the performance of or participation in abortion or sterilization procedures. Professional grounds include judgments of a medical nature regarding the performance of or participation in abortion or sterilization procedures.

Public hospital or public health care facility—A hospital or health care facility whose funding, financing, organization, administration, operations, policies or location have imbued it with State action, including but not limited to the following:

(i) Nonproprietary municipal and county hospitals and health care facilities that are community controlled, for example, Philadelphia General Hospital.

(ii) Hospitals and health care facilities controlled by the State related universities of the Commonwealth—Temple University, the University of Pennsylvania, the University of Pittsburgh and Pennsylvania State University.

(iii) Medical facilities controlled by any Commonwealth-owned institution of higher learning that perform gynecological surgery.

(iv) State General Hospitals that are regulated by sections 321—323 of the act of June 13, 1967 (P. L. 31, No. 21) (62 P. S. §§ 321—323). Absent the existence of the indicia of State action, denominational hospitals and health care facilities will be deemed to be nonpublic. Neither will an otherwise private hospital or health care facility be deemed to be public merely through the receipt of Federal funds under either the Hill-Burton Act (42 U.S.C.A. § 291 *et seq.*) or Title XVIII or Title XIX of the Social Security Act (42 U.S.C.A. §§ 1395 *et seq.* and 1396 *et seq.*). Receipt of such funds, however, along with other indicia of state action may establish that such facility is a public hospital or public health care facility. The definitions of a “public hospital or public health care facility,” and of a “place of public accommodation, resort or amusement,” contained in section 4(1) of the act (43 P. S. § 954(1)), are independent of and have no effect upon each other.

Separate clinic of a health care facility—Any area of a hospital or health care facility designated or made available by the governing or administrative body of such facility for the performance of abortion, sterilization, or related procedures.

Stated ethical policy—A written statement, declaration, or resolution with respect to abortion or sterilization based upon moral judgments or standards of conduct and practice to be followed in the provision of health care services by a hospital or other health care facility.

Sterilization—The interruption and termination of the reproductive capabilities of a person with the intention of making that person incapable of the reproduction of human life.

Cross References

This section cited in 28 Pa. Code § 101.164 (relating to civil rights compliance records).

RIGHTS AND OBLIGATIONS OF HOSPITALS AND OTHER HEALTH CARE FACILITIES

§ 51.31. Adoption and substance of stated ethical policy.

(a) Section 5.2(a) of the act (43 P. S. § 955.2(a)) permits a hospital or other health care facility to make a determination, in the form of a stated ethical policy, with regard to whether such institution will permit or refuse to permit the performance of abortion or sterilization procedures upon its premises. Pursuant to

“Abortion and Sterilization in Public Hospitals,” Opinion No. 75-16 of the Attorney General, appearing at 5 Pa.B. 1383, no public hospital or other public health care facility may make such a determination, in the form of a stated ethical policy or otherwise, which would prohibit upon its premises the performance of sterilization procedures or the performance of abortion procedures prior to the last trimester of pregnancy.

(b) No nonpublic hospital or other nonpublic health care facility shall be required to or held liable for refusal to perform or permit the performance of abortion or sterilization contrary to its stated ethical policy. Such policy shall consist of a written statement which reflects an official resolution or declaration of a board of directors or other governing body of a nonpublic hospital or other nonpublic health care facility charged with the responsibility for over-all administration and policy determination for such institution. Such policy shall be adopted by a board of directors or other governing body of such institution in the same manner as and following the procedures used for the consideration and adoption of all other policy decisions concerning the rendering of health care service by such institution.

(c) The stated ethical policy of a hospital or other health care facility shall expressly set forth the policy of that institution with regard to the performance of abortion or sterilization procedures in such hospital or facility. The policy may, in addition, be based upon specified and well-defined moral, religious, or professional grounds. The adoption of a stated ethical policy by a nonpublic hospital or other nonpublic health care facility, the effect of which would be to refuse to permit the performance of abortion or sterilization procedures upon its premises, must have occurred subsequent to January 22, 1973, the date when the United States Supreme Court rendered its decisions in the cases concerning the right to abortion: *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) and *Doe v. Bolton*, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973).

(d) If a nonpublic hospital or other nonpublic health care facility desires to retain, as its official policy, a stated ethical policy which existed prior to such date and which refuses to permit the performance of abortion or sterilization procedures upon its premises, such policy must be reaffirmed or restated subsequent to such date.

(e) The stated ethical policy of a hospital or other health care facility shall be made known to all persons employed by or participating in medical or other services provided by such institution, and such policy shall be freely available and conspicuously posted for public inspection.

(f) In the absence of a stated ethical policy as set forth in this section, it will be presumed that a nonpublic hospital or other nonpublic health care facility possesses no stated ethical policy regarding the performance of abortion or sterilization procedures in such institution.

Cross References

This section cited in 16 Pa. Code § 51.32 (relating to objection to performance of abortion or sterilization by nonpublic hospitals or other nonpublic health care facilities on moral, religious or professional grounds); and 28 Pa. Code § 119.22 (relating to referral).

§ 51.32. Objection to performance of abortion or sterilization by nonpublic hospitals or other nonpublic health care facilities on moral, religious or professional grounds.

Under the provisions of section 5.2(b)(1) of the act (43 P. S. § 955.2(b)(1)), and of Opinion No. 75-16 of the Attorney General, appearing at 5 Pa.B. 1383, any nonpublic hospital or other nonpublic health care facility which objects to the performance of abortion or sterilization procedures on moral, religious, or professional grounds and which, as a result, refuses to perform or permit the performance of abortion or sterilization procedures in such institution shall not be subject to the imposition of penalties; disciplinary action; or denial or limitation of public funds, licenses, certifications, degrees, or other approvals or documents of qualification under the provisions of the act. The objections of a nonpublic institution to the performance of abortion or sterilization procedures in its facilities on such grounds shall be clearly set forth in writing and may be contained within the stated ethical policy of such institution, in its articles of incorporation, by-laws, deed of trust, or official resolution of the board of directors or other governing body of a nonpublic hospital or other nonpublic health care facility, and such objections shall comply with the requirements as set forth in § 51.31 (relating to adoption and substance of stated ethical policy). When such objections are so stated, they shall be reprinted and made known to all persons employed by or participating in medical or other services provided by such institution and shall be made freely available and conspicuously posted for public inspection.

§ 51.33. Statement or other manifestation of attitude with respect to abortion or sterilization.

(a) Any hospital or other health care facility which makes a statement, sets forth a position, or otherwise demonstrates a manifestation of attitude with respect to abortion or sterilization, as set forth in section 955.2(b)(1) of the act (43 P. S. § 955.2(b)(1)) shall not be subject to the imposition of penalties or disciplinary action or the denial or limitation of public funds, licenses, certifications, degrees, or other approvals or documents of qualification as a result of such statement, position or other manifestation of attitude. Such statement or other manifestation of attitude with respect to abortion or sterilization may express a willingness or an objection to the performance of abortion or sterilization procedures, except that no public hospital or other public health care facility may make such a statement or other manifestation of attitude objecting to or prohibiting upon its premises the performance of sterilization procedures or the performance of abortion procedures prior to the last trimester of pregnancy.

(b) A manifestation of attitude by a hospital or a health care facility shall include, but shall not be limited to, any official or unofficial policy of such institution with respect to abortion or sterilization, any course of conduct in which such institution or its administration have engaged subsequent to January 22, 1973, or the adoption or initiation of any procedure which contemplates or implements, as a general policy, the performance or refusal to perform abortion or sterilization procedures in such institution.

RIGHTS AND OBLIGATIONS OF INDIVIDUALS

§ 51.41. Written objection to performance, participation in or cooperation in abortion or sterilization procedures.

(a) Pursuant to section 5.2(a) of the act (43 P. S. § 955.2(a)), any physician, nurse, staff member, or employe of a hospital or other health care facility who objects to performing, participating in, or cooperating in abortion or sterilization procedures on moral, religious or professional grounds and who, for such reasons, does not wish to participate or cooperate in the performance of such procedures shall clearly set forth such objection in writing and shall submit the objection to the board of directors, governing body, or administrator in charge of such institution. Unless such a written objection is submitted, under section 5.2(a) of the act (43 P. S. § 955.2(a)), a staff member will be presumed to have no objection to participation or cooperation in the performance of abortion or sterilization procedures on moral, religious, or professional grounds, and shall not be subject to the protections set forth in that section. If such a written objection is duly submitted to the proper authority, no such staff member shall be required to or held liable for refusal to perform, participate in, or cooperate in abortion or sterilization procedures.

(b) Individuals performing or participating in abortion or sterilization procedures are those physicians, nurses, staff members, or employes of a hospital or other health care facility who are directly involved in such a procedure and are in attendance at the time when and in the room where the procedure takes place and without whose services the procedure itself could not be performed.

(c) Individuals cooperating in abortion or sterilization procedures are those physicians, nurses, staff members, or employes of a hospital or other health care facility, whether or not directly involved in such procedures or in attendance at the time when and in the room where the procedure takes place, whose duties are of a type peculiar to abortion or sterilization procedures and without whose services the procedure itself could not be performed. Examples of "cooperation" include assistance rendered by a nurse, staff member, or employe of a hospital or health care facility to a doctor in performing the abortion procedure; rendering of the services of an anesthetist or anesthesiologist in connection with the abortion procedure; disposal of or assistance in the disposal of aborted fetuses; cleaning the instruments used in the abortion or sterilization procedure. Examples of duties

and conduct which would not constitute “cooperation” include: functioning in ancillary services, such as food preparation, to serve the patient, ordinary services of housekeeping and dietary personnel; cleaning of the room used in the abortion procedure following the abortion; record keeping by clerical personnel; installation of or repairs to electrical, plumbing, or heating facilities in surgical areas; performance by a laboratory technician of blood tests upon a patient prior to abortion upon that patient; involvement of a nurse, staff member, or employe in the caring for a patient in any preparatory procedure leading to abortion or in the postabortion period of the patient.

(d) Pursuant to the procedures set forth in this section, any physician, nurse, staff member, or employe of a hospital or other health care facility may submit a written limited objection to performing, participating in, or cooperating in particular types of abortion procedures or abortion procedures performed after a certain number of weeks of gestation, and such person may thereby obtain the protections afforded by section 5.2(a) of the act (43 P. S. § 955.2(a)), to the extent set forth in such limited objection.

Cross References

This section cited in 16 Pa. Code § 51.44 (relating to reasonable accommodation to rights of employes).

§ 51.42. Willingness or refusal to perform or participate in abortion or sterilization procedures.

(a) Pursuant to section 5.2(b)(2) of the act (43 P. S. § 955.2(b)(2)), no physician, nurse or staff member of a hospital or other health care facility who expresses a willingness to participate in the performance of abortion or sterilization procedures; who expresses a refusal to participate in the performance of such procedures based upon objection thereto on moral, religious or professional grounds; or who makes a statement or otherwise manifests any attitude with respect to abortion or sterilization shall be subject to any penalties; disciplinary action; denial; or limitation of public funds, licenses, certifications, degrees or other approvals or documents of qualification by reason of such willingness or refusal or statement or manifestation of attitude, except where such willingness, refusal, objection, statement or manifestation of attitude constitutes an overt act which disrupts hospital procedures, operations, or services or which endangers the health or safety of any patient.

(b) Individuals performing or participating in abortion or sterilization procedures are those physicians, nurses, staff members or employes of a hospital or other health care facility who are directly involved in such a procedure and are in attendance at the time when and in the room where the procedure takes place and without whose services the procedure itself could not be performed.

(c) For the purposes of sections 5.2(b)(2) and (3) of the act (43 P. S. § 955.2(b)(2) and (3)), a statement or other manifestation of attitude includes, but is not limited to, any written or oral statement and any course of conduct in which such person has engaged subsequent to January 22, 1973 which clearly and openly reflects or expresses the attitude of such person with respect to abortion or sterilization including, as an expression of attitude, the fact that such person has undergone an abortion or sterilization procedure.

Cross References

This section cited in 16 Pa. Code § 51.44 (relating to reasonable accommodation to rights of employes).

§ 51.43. Other protections afforded individuals in employment and education.

(a) Section 5.2(b)(3) of the act (43 P. S. § 955.2(b)(3)) provides certain protections in the areas of employment and education and is applicable to the employment practices of hospitals and health care facilities as well as such practices of any "public or private agency, institution or person, including a medical, nursing or other school." Under this section, it is unlawful to deny admission to, impose any burdens in terms or conditions of employment upon, or otherwise discriminate against any applicant for admission or any student or employe who expresses a willingness to participate in the performance of abortion or sterilization procedures, who expresses a refusal to participate in the performance of such procedures based upon objection thereto on moral, religious, or professional grounds, or who makes a statement or otherwise manifests any attitude with respect to abortion or sterilization, except where such willingness, refusal, objection, statement or manifestation of attitude constitutes an overt act which disrupts hospital procedures, operations or service or which endangers the health or safety of any patient.

(b) Nothing in this section shall be taken to permit a student or employe either to refuse to participate in an emergency surgical procedure which involves an inevitable abortion or to refuse to complete his participation in any surgical procedure once he has voluntarily undertaken it without knowing it would involve a procedure to which he is opposed on moral, religious or professional grounds.

Cross References

This section cited in 16 Pa. Code § 51.44 (relating to reasonable accommodations to rights of employes).

§ 51.44. Reasonable accommodation to rights of employes.

(a) It is the goal of the Commission to encourage all employers and their employes to anticipate any interference in the regular course of business activities which might be caused by the exercise of the rights of an employe under §§ 51.41—51.43 (relating to rights and obligations of individuals) and that such advance planning shall enable the parties to develop a satisfactory course of action to be followed in all such instances.

(b) Employers who are covered by section 5.2 of the act (43 P. S. § 955.2), relating to discrimination with respect to abortion and sterilization, have a duty to make reasonable accommodations to the needs of their employes, as specified in this section, where such persons express either a willingness or refusal to perform or participate in abortion or sterilization procedures based upon the lawfully stated grounds of objection thereto which willingness or refusal requires the employe to refrain from performing his normally assigned duties or where an employe manifests an attitude with respect to abortion or sterilization. In all cases where it is reasonably foreseeable that a manifestation of attitude or a willingness or objection with respect to abortion or sterilization will result in an interference with the performance of duties required of an employe in the normal course of his employment, such employer may require advance notice thereof by the employe. This notice is necessary so that the claim and the needs of such person may be evaluated by the employer prior to the anticipated interference and enable the employer to make reasonable accommodations to such manifestation of attitude or willingness or objection, with respect to sterilization.

(c) The reasonable accommodations made by the employer to the needs and desires of such employes are such accommodations which may be made without undue hardship to the conduct of the employer's business. Such undue hardship, for example, may exist where the employe's needed work cannot be performed by another employe of substantially similar qualifications in the situation where and at the time when the person refuses to perform or participate in the performance of abortion or sterilization procedures or where the employe refuses to perform his normally assigned duties incident to employment.

(d) Because of the particularly sensitive nature of the problems raised in this area and the needs and personal requirements of each person with respect to performance or participation in abortion or sterilization procedures or the manifestation of attitude with respect thereto, the employer shall have the burden of proving that an undue hardship renders the required accommodations to such needs and requirements of the employe unreasonable.

(e) The Commission will review each case on an individual basis, in an effort to seek an equitable application of the provisions of this chapter to the variety of situations which may arise due to the moral, religious, or professional practices and requirements of the citizens of the Commonwealth.

**EXEMPTIONS BECAUSE OF BONA FIDE OCCUPATIONAL
QUALIFICATIONS**

§ 51.51. Supplementary interpretation regarding bona fide occupational qualification standards.

(a) A public hospital or public health care facility and all other medical facilities which elect to provide abortion or sterilization services have the duty to employ and assign sufficient numbers of medical and other staff persons and provide the necessary equipment and facilities to offer the services on a medically-safe and professional basis. It is imperative that the institutions obtain the services of responsible physicians and other necessary personnel whose personal views on abortion do not prohibit them from providing or participating in abortions or sterilizations.

(b) When an institution is unable to provide sufficient numbers of physicians, nurses, staff members and other employees to provide abortion or sterilization services due to the objection of staff members, the institution shall request from the Commission a supplementary interpretation regarding bona fide occupational qualification standards for the position in question, to be operative during the period of time when the institution is attempting to employ sufficient numbers of staff people to provide the medical services.

§ 51.52. Securing supplementary interpretations.

(a) Applications for the issuance of a supplementary interpretation are governed by the provisions of §§ 41.71—41.73 (relating to bona fide occupational qualifications). The applications shall be in writing and directed to the Executive Director of the Commission, setting forth the jobs involved by title, duties and numbers of positions. Applications shall include a demonstration of why the applicant believes that an adequate number of present employees are not available to perform the jobs or services for which the interpretation is requested. The applicant may make appropriate references to guidelines, regulations, decisions or court opinions and may include other appropriate supportive materials.

(b) If the Commission grants a supplementary interpretation to a hospital or other health care facility, the institution shall be permitted to make a preemployment inquiry with regard to the willingness of an applicant for employment to perform or otherwise participate in the performance of abortion or sterilization procedures and services related thereto, for the purpose of utilizing the information in its selection procedures.

EXEMPTIONS

§ 51.61. Exemption for certain clinics and health care facilities.

The requirements of section 5.2(b)(3) of the act (43 P. S. § 955.2(b)(3)) do not apply to the employment practices of a health care facility operated exclusively for the performance of abortion or sterilization or directly related procedures or to a separate clinic of a health care facility for the performance of abortion or sterilization or directly related procedures.

[Next page is 81-1.]

51-12

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