

## **FASCINATION OVER EXCEPTIONS**

by: Former Rep. Edcel C. Lagman

Why be fascinated with the exceptions and fail to appreciate the general rule? The rule, as held by the Supreme Court, is that the Reproductive Health Law is constitutional, and the exceptions are some provisions which were voided to principally respect minority views.

Did the stricken provisions render the RH Law "toothless"? Not at all. The core provisions are intact, untouched by the judicial scalpel, foremost of which are the following:

1. The mandate for government to afford the marginalized sectors free access to family planning services and supplies (Sec. 3[c]).

2. The provision on the Philippine National Drug Formulary which includes hormonal contraceptives, IUDs, injectables and other safe, legal, non-abortifacient and effective family planning devices and supplies, as determined by the Food and Drug Administration [Sec. 9].

3. The authority of the Department of Health to procure family planning supplies for distribution to Local Government Units (LGUs) [Sec. 10].

4. The mandate for LGUs to assist in the implementation of the RH Law [Sections 5,6,8,16 and 20].

5. The provision for reproductive health education to adolescents in all schools [Sec. 14]. Importantly, RH education is mandated for all schools, both public and private. The only difference is that the DepEd shall formulate the curriculum for public schools, which may be adopted by private schools. Otherwise, private schools shall make their own curriculum, subject to the supervisory authority of DepEd.

Section 14 does not distinguish whether an adolescent is enrolled in a public or private school. It would be a violation of the equal protection clause if adolescents in private schools are deprived of the benefits of RH education.

6. Government to pursue public awareness programs and nationwide multi-media campaign for reproductive health.

With the constitutionality of the foregoing salient provisions sustained, the voiding of a few provisions will not diminish the efficacy of the law and deter its full implementation.

The voided provisions can be categorized into the following groupings:

(a) Protection of the right of conscientious objectors: (i) hospitals owned by religious groups are not required to refer a patient needing reproductive health care to another hospital; (ii) an RH care provider who is a conscientious objector is not obliged to follow the referral requirement; (iii) a private RH care provider who is a conscientious objector is not required to render 40-hour a year *pro bono* service to indigent women for PhilHealth accreditation.

(b) Requirement of spousal and parental consent in the following cases: (i) spousal consent is needed for a married person to undergo ligation/vasectomy; (ii) parental consent for a minor to access modern contraceptives even if such minor had already a miscarriage; (iii) parental consent for minors who would like to avail of nonelective surgical procedures.

(c) Any public official who refuses to implement the RH law.

(d) Any healthcare provider "who fails and/or refuses to disseminate information regarding programs and services on reproductive health regardless of his/her religious beliefs."

The foregoing situations cover exceptions to the rule, to wit:

(a) Conscientious objectors are more the exception than the rule. The vast majority of health providers, albeit Catholics, are RH advocates. Moreover, a conscientious objector must act in good faith. Conscientious objection is not an absolute license to violate the RH Law. Furthermore, a patient who is refused medical care will seek on his own another provider even without a referral.

(b) In most cases, spouses discuss and agree if one has to undergo ligation or vasectomy, especially when such a procedure is medically recommended or they have already children. Consequently, the need for spousal consent in case of disagreement is again the exception than the rule.

(c) Non-elective surgical procedures for minors where parental consent is required happen rarely.

(d) Public officials who refuse to support the RH program or hinder the implementation of the law constitute the exception because generally public functionaries will obey the law consistent with their oath of office.

However, a healthcare provider, whether public or private, who knowingly withholds information or intentionally provides incorrect information regarding programs and services on reproductive health is culpable as held by the Supreme Court because such prohibited acts "connote a sense of malice and ill motive to mislead or misrepresent the public as to the nature and effect of programs and services on reproductive health."

Consequently, while refusal to disclose information or render service is exempt conduct and nonactionable, knowingly giving misinformation about RH programs is penalized.