Premarital Health Examination Legislation

—*History and Analysis*—

By J. K. SHAFER, M.D.

UPON ANALYSIS, the principal purpose of the provisions of various statutes requiring premarital physical examinations appears to be the prevention of transmission of syphilis to either party to a marriage and to the prospective progeny of the union. Premarital physical examination is an effective means of discovering whether either party is infected with syphilis and thus protects the innocent partner from acquiring an infection in marriage. Also, as a consequence of discovering an existing venereal infection, other persons may be discovered and treated, persons who otherwise might remain undiscovered.

Premarital laws are meant not to prevent marriages but only to postpone marriages until such time as the infected parties have had adequate treatment or have passed the communicable stage of syphilis.

History

As early as 1913, many States had passed laws regarding premarital physical examination. While these differed from State to State, none of them was particularly effective. A medical certificate of freedom from venereal disease on the part of the male applicant was all that was required to secure a marriage license in Alabama, North Dakota, Oregon, and Wisconsin. In New York and Pennsylvania, both applicants were required to state under oath that they were free from venereal disease and tuberculosis. Indiana, Michigan, New Jersey, Oklahoma, and Vermont had regulations making it a misdemeanor for a person having a venereal disease to marry, but there were no adequate enforcement measures or any penalties for noncompliance. The Utah law provided that a marriage between persons afflicted with a venereal disease was void. The Virginia law provided that if the woman was under 45 years of age, the man must swear that he was free from any contagious venereal disease and he also must make an affidavit that he believed the woman named in the license to marry was free from such disease.

Early in 1918, there was renewed interest in legislation for protection of family life. This interest centered around providing uniform marriage laws and physical examinations for both parties to the marriage. By 1925, a great number of States had adopted general legislation intended to safeguard marriage partners from venereal disease. After 1925, however, the campaign against venereal disease slowed down. There was little enforcement of the

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laws, and practically no new legislation was introduced in the States.

Premarital Examination Law

In 1935, when Connecticut passed what was known as the "premarital examination law," a real pattern was set for this type of legislation in the United States. The early statutes merely had required a personal affidavit of good health from the applicants for a marriage license, but this law required, among other provisions, that a blood test for syphilis and physical examination of both applicants be made. However, it was not until 1936 under the leadership of Surgeon General Thomas Parran of the Public Health Service that a nationwide drive was relaunched. The campaign against venereal disease gained support through State and local measures to combat the disease and through clinics and public health services.

It was this vigorous attack that indirectly influenced the enactment of new premarital health examination laws. There was greater public recognition of the dangers of venereal disease to the public health and to the national welfare. There was recognition of the need to provide health checks at strategic points in life, such as at the time of marriage. Compulsory reporting of venereal disease and provision for treatment of infected persons may have helped change public feeling about concealment of the presence of a venereal infection. Certain principles of eugenics sponsored by the national office of the American Eugenics Society gained wider acceptance. Those principles stressed the importance of health examinations and waiting periods between applications for and issuance of marriage licenses. They advocated restrictions on marriages of the unfit and ways to improve the physical and mental qualities of the population of the United States. In 1937, 5 States passed acceptable legislation, and by 1939, 12 additional States had enacted premarital examination laws.

The proposed and enacted legislation (*1*) which required compulsory health examination to exclude venereal disease in applicants for marriage aroused heated opposition. The physicians themselves were the main opponents. They pointed out that it required too much reliance on blood tests. They challenged the reliability of any particular test or combination of tests and suggested that healthy people might be penalized. There was much talk about the threat to the liberty of the individual and the professional secrecy of the physician from improper legislation. Public health authorities argued that the discovery and treatment of one case of unsuspected syphilis is a gain to society and that theoretical objections concerning the validity of the blood test should be disregarded.

An Informed Citizenry

Problems confronting various States attempting to enlist public support for passage of premarital examination laws were recognized. The fact that the first sound premarital legislation (Connecticut, 1935) was so long in coming suggested that much work in public education was necessary and a program to inform the citizens of the various States would require cooperation on all sides.

In the fall of 1941, a plan was worked out to stimulate public interest. The Division of Venereal Disease of the Public Health Service requested the health officers in 33 States where premarital laws were in effect to describe their methods for organizing public sentiment toward sound premarital legislation.

How were the provisions of the act first publicized? How was the information kept before the public? How were the courts, marriage authorities, and the physicians informed about the proposed act. What educational media were employed? Health officers in various States were asked these specific questions in the hope that the answers to them might serve as a guide to those States in which premarital legislation was being considered. Twenty-eight States responded, sending copies of their premarital examination laws and samples of their education material.

Twenty of the States reported they relied upon newspapers as the major medium for publicizing the provisions of the legislation. Some States faced an indifferent and sometimes critical press, but personal calls upon the editors of the newspapers by sponsoring clubwomen usually brought support for the legislation. Eight States sent letters, pamphlets, and leaflets to all the physicians in the State, and enlisted the cooperation of State or county

medical journals. Civic groups and other nonprofessional organizations cooperated in six States and carried on the educational and informational campaign for the health departments. Five States set up a program of lectures for nonprofessional audiences on the public health value of premarital examination laws. One State organized its publicity through women's clubs; their members throughout the State made personal calls on the officers of the courts, marriage clerks, private physicians, ministers, and school superintendents. These women explained to these groups the provisions of the law and the benefits that arise through such health examinations to the parties being married as well as to society itself. Five States supplied literature to the county health offices and to the clerk of the court's office for distribution to all marriage applicants. All information received by the Division of Venereal Disease of the Public Health Service was then made available through a report to the various States contemplating either premarital legislation or a revision of their old laws.

Once premarital legislation has become law, the continuing effectiveness of the law's operation depends upon an informed citizenry. Newspaper releases, public lectures, motion pictures, and other educational media may be utilized.

Results of Legislation

Of the 631,206 blood tests made from 1936 to 1941 in 13 States (*2*), 8,605 (1.4 percent) were found to be positive for syphilis. Many who had a positive reaction to the blood test were interviewed, and the greater proportion of those interviewed who had syphilis stated that they had been unaware of the infection prior to getting a blood test. In New Jersey (*3*), of 20,202 tests performed in the State health department laboratory during a 9-month period in 1936, 226 persons had positive premarital blood tests. A questionnaire was mailed by the health department to the physicians who had sent in the blood samples of these persons, and replies were returned for 206 of this group. Of these 206 individuals, 93 were granted marriage certificates because, in the examining physicians' opinion, the disease was not in a communicable state; and 113 were refused certificates to marry. The reports also indicated that 113 (55 percent) were still under treatment approximately 3 months after the tests; 34 (16.5 percent) were not under treatment; and 59 (29 percent) had disappeared (so far as the doctor was concerned). Many of the physicians reporting on the last 2 groups suggested that followup machinery be put into motion to get these persons under treatment.

During the first 6 months the legislation requiring a premarital physical examination was in operation in West Virginia, in 1939, positive blood tests were found in 4.2 percent of 1,600 persons examined; in the next 12 months, this percentage dropped to 2.4.

However, as the implications of positive blood tests became known, the rate of positive reactions dropped suddenly, and it was believed that many people suspecting that they might have a positive serologic test for syphilis were avoiding examination and avoiding the statute by various devices.

In Connecticut (*4*), the marriage rates for the 2 years preceding the enactment of the law (1935) were 7.1 per 1,000 population. For the next 3 years, 1935, 1936, and 1937, the rates dropped to 6.8, 5.9, and 6.4, respectively.

Illinois passed a premarital health examination law in June 1937. The number of marriage licenses issued in the State, excluding Cook County, dropped from 54,545 in 1936 to 46,068 in 1939, a decrease of 15.5 percent. In Cook County (*5*), the number issued dropped from 43,775 in 1936 to 35,111 in 1939, a decrease of 19.8 percent.

In upstate New York (New York State exclusive of New York City), marriages of State residents increased in 1939 over 1938, the year the law became effective, but the number of nonresident marriages decreased.

In Rhode Island, there were 6,753 marriages in 1937, 4,916 marriages in 1938, the year the law became effective, and 5,501 in 1939.

Opponents of premarital examination legislation pointed to the ineffectiveness of the statutes. They said that evidence showed that those persons suspecting the presence of syphilis simply avoided the examination; enactment of the law merely had resulted in evasion of its

provisions and also had caused a decline in the number of marriages. Public health authorities agreed that there apparently was some evasion of the law but that the marriage rate had suffered no actual decline attributable primarily to the enactment of premarital health legislation (*3*).

The passage and amendment of premarital laws at different times in various States and originating in separate legislatures resulted in a diversity of legal and administrative detail (*6*). Although these laws were quite simple in operation for residents of the particular State, certain stipulations of some laws caused difficulty for out-of-State residents, for example, the lack of reciprocity in accepting examination certificates signed by out-of-State physicians and in accepting results of laboratory tests performed in other States. These points and others aroused considerable discussion, and remedial action was taken by some public health officials.

On March 23, 1949, the venereal disease control officers of New York and the New England States agreed on the essentials of a premarital examination and on an acceptable medical certificate form for use in intrastate and interstate marriages (*7*). Following this, the Massachusetts law was amended in 1950 so that this State now could accept medical certificates, when properly executed, from 34 States, 2 Territories, and New York City. Today, 27 of the 40 States having premarital examination laws will accept the reports of out-of-State physicians; 37 will accept results of out-of-State laboratories.

Scope of Law

At the present time, 40 States and the Territories of Hawaii and Alaska have premarital health examination laws. The majority of these laws require that both the prospective bride and groom have a physical examination, including a blood test for syphilis, prior to issuance of a marriage license. Louisiana's law requires that only the man have a physical examination; a blood test is given at the discretion of the physician. Arizona, Maryland, Minnesota, Nevada, New Mexico, South Carolina, Washington, the District of Columbia, Puerto Rico, and the Virgin Islands do not have laws which require premarital health examination.

Cost of Medical Examination

The cost of making laboratory tests and conducting physical examinations must be borne either by the individual applicants or by the public health authorities. The examination and taking of blood specimens require skill and training. Many States feel a reasonable charge for such service is fair practice. Medical societies in conjunction with health departments have worked out standard fees to be charged in most county and urban areas. The Oregon law limits the charge to $10 for each couple. This fee covers examinations and the necessary certificate. Illinois makes no charge for blood tests done in the State laboratory and specifically limits the charge of any physician making the physical examination and issuing the necessary certificate to $5 a person. In North Dakota, the fee must not exceed $0.50, and in Wisconsin it is $2.

Persons who cannot afford to consult a private physician usually can have the physical examination performed in a local health department. Most State premarital examination laws provide for free laboratory tests upon request of the examining physician.

Penalties for Falsification

Most of the statutes requiring a premarital physical examination for syphilis for both parties to the marriage provide penalties for a physician or laboratory technician who falsifies a health report. In some States (*4*), the parties of the marriage may be penalized for failure to comply with the law. Rhode Island (*8*) enacted a statute providing that residents who marry outside the State and in a State where no health examination is necessary must undergo a blood test after their return to Rhode Island. North Carolina and Wisconsin have the same provision. Such laws may deter evasion, but the obvious difficulties of enforcement make doubtful its practicability. All States that have enacted a premarital law have provided a measure of flexibility to the imposition of the requirement that a license shall not be

used without a medical certificate. In the interest of legitimization of issue, when a woman is pregnant a license may be issued in such States without medical examination at the discretion of an appropriate court officer or designated authority. In general, penalties vary from State to State, but the penalty usually is a fine not exceeding $1,000.

Problems in Administration

One of the problems in the administration of the law is that of identification of applicants. In some instances, an individual fearing he has syphilis in a communicable state will send a friend to take the premarital examination under the applicant's name. One method of checking this practice is to require the applicants to sign the examination form in the presence of the examining physician. Comparison of these signatures with the signatures on the marriage application should reveal any attempt at fraud.

Formerly, common law marriages constituted a threat to the premarital health examination laws. These marriages offered an easy way of avoiding the law. Now, 30 States have passed legislation declaring that future common law marriages will be invalid. Many States have legislation, however, declaring all common law marriages performed in their jurisdiction, past and future, are invalid. Others recognize common law marriage performed before a specified date or those performed between specified dates. Eighteen States (Alabama, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Michigan, Mississippi, Montana, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, and Texas) and the District of Columbia recognize common law marriages as valid. In these States, with the exception of Pennsylvania, neither a license nor a public record for common law marriage is required for such marriages.

Pennsylvania amended its marriage law in 1939 to include a provision affecting common law marriage. This provision requires that any person seeking to be married under common law first must obtain a marriage license and must furnish a certificate showing freedom from syphilis. The law, however, does not require registration of common law marriages and does not make invalid a common law marriage without a license.

All American jurisdictions now have marriage license laws. However, a license is generally not essential to validity of marriage since the great majority of courts construe license statutes as being directory and not mandatory. A few States allow banns to be published as a substitute for a license (*9*).

In addition to providing for the solemnization of marriage in the usual way by a civil or religious officiating officer, a large majority of jurisdictions expressly sanction the celebration of marriage in accordance with customs of particular religious sects or societies. The necessity for special provisions in favor of sects such as the Quakers, for example, arises from the fact that their ceremonies may not call for the intervention of a solemnizing officer; hence, the customary general statute which authorized certain officers to solemnize marriage would not include these ceremonies. Some religious societies are not recognized as "denominations" and, unless by specific statutes they are brought within the scope of the law authorizing the solemnization of marriage either by them or their officers, their legal authority to do so would be dubious, to say the least (*10*). Marriage of tribal Indians in their tribe, valid according to the law of the tribe, will be recognized as valid (*11*). Indiana excepts the Old Amish Mennonite Church, German Baptists, and Friends Church from the law and permits marriage according to the rules of their societies.

In States where there is no specific exception, and a premarital health examination law exists, certain religious sects are married under the common law procedures. So-called common law marriage jurisdiction presents a special situation since marriage with or without a ceremony, license, or a solemnizing official is recognized. Therefore the courts find it "simpler to validate a marriage not complying with statutory formalities, present mutual consent to become man and wife only being necessary" (*12*).

Since neither license to marry nor registration of marriage is required in 17 States under common law provisions, it is difficult to know just how many of these marriages exist in States

permitting this type of marriage and whether the lack of premarital health examination would affect the incidence of congenital syphilis. With the outlawing of common law marriages in most States, evasion through that method now is practically eliminated.

Another method of evasion was a trip by the couple to a State lacking a premarital examination statute. With more and more States passing premarital health examination laws, it now appears that avoidance is becoming more difficult than in the past.

Proposed marriage plans often are upset when applicants wait until too short a time before marriage for the examination, and the blood specimen for either of the parties is positive (*3*). Lack of time to make adjustments creates a distressing problem which may be avoided by having a preliminary test well in advance of the contemplated marriage. A growing custom among young people is that of having blood tests taken weeks in advance of the wedding. If the test report is positive, plans can be postponed. If the tests are negative, new tests are then made within the statutory limit.

Constitutionality of Law

A State is fully sovereign with respect to the control and regulation of marriages for the purpose of promoting public morality and moral and physical development of the individuals, and every State has the power to determine who shall assume or occupy the matrimonial relationship within its border (*13*). The court case of *Peterson* v. *Widule*, in 1913, involved the premarital test for venereal disease. It was alleged that the statute was "arbitrary, unreasonable discriminatory classification, in that it applied to male applicants only." The court held that "it is within the police power to prohibit a marriage until the fact of the absence of venereal disease in the male is ascertained." The court further held that "society has a right to protect itself from extinction and its members from a fate worse than death" (*14*). Marriages violative of public policy usually are held void in the State of domicile. So far, the courts have not seen fit to declare void marriages contracted within a State where compliance with premarital health examination laws has been avoided. The courts hold that avoidance of premarital examination does not invalidate an otherwise valid marriage. In the absence of a stronger declaration of policy, the court will not depart from the established rule that a marriage valid where celebrated is valid everywhere (*15*).

Premarital Counseling

In 1945, the premarital women's clinic in Los Angeles (*16*) decided to add premarital counseling to premarital physical examinations. From 217 patients selected because of youth, anxiety about their forthcoming marriage, or upon personal request, the counseling service tried to determine the type of information desired. Counseling varied according to the type of questions most frequently asked. In the 4 years the study was in operation, the clinic furnished essential information and cleared up many misconceptions concerning health and marriage. It was generally agreed that premarital counseling was an excellent public health adjunct to the premarital physical examination.

The progress made in venereal disease control is one of the important developments of modern times. The venereal disease control program is constructive and remedial and seeks to strengthen and preserve the healthy family as a social unit. In order to control venereal disease, it is essential that people be informed about these diseases. There are three aspects to the premarital health examination law: education, case finding, and an evaluation of a venereal disease control program.

The premarital health examination law augments other legislation pertaining to venereal disease control. Proper legislation and enforcement of laws are necessary to maintain a smoothly functioning control program. Regulatory laws are necessary to insure reporting, adequate treatment, quarantine, and followup of persons with venereal disease.

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From CHILDREN . . . . .

Management of Maternity Care

In the light of the predicted physician shortage and our changing concepts of the kind and quality of maternity care required, Dr. Nicholson J. Eastman, Johns Hopkins University professor of obstetrics, suggests a solution may be found in the training of "obstetric assistants" ("Maternity Care Looks to the Future," Jan.–Feb. 1954). This term is one of several used to designate graduate nurses with advanced clinical training in maternity care who assume responsibility under the direction and control of an obstetrician for a mother throughout pregnancy, labor, and the puerperium.

In all likelihood, the observations made by such highly skilled nurses would be just as reliable as those of an intern, probably more so. As to the workability of such a plan in underdeveloped rural areas, Dr. Eastman cites the Frontier Nursing Service in Kentucky and the successful program on the Eastern Shore of Maryland, where home delivery was the rule except for complicated cases. The idea of maternity nurses delivering babies in the hospital is a new one in the United States, however. But any thought of resurrecting the independently operating midwife is out of the question.

Realizing the problems inherent in training "advanced maternity nurses," Johns Hopkins Hospital in 1953 started a training program to study the feasibility of training "nurse-midwives" in a university obstetric clinic, to evaluate their specific contributions to maternity care, and to ascertain the role which they can play on the obstetric team. Although the program is still an experiment, Dr. Eastman observes that nurses with this type of training have unique and urgently needed contributions to make. Quite apart from the expected physician shortage, mothers everywhere stand to benefit from the meticulous, sympathetic, and highly personalized attention these specialists give. As in other clinical fields, such as psychiatry, the profession of nursing will enhance its position by qualifying its members for increasing responsibilities.

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