

PHARMACY REFUSALS 101

PRESCRIPTION CONTRACEPTION IS BASIC HEALTH CARE FOR WOMEN

- Family planning is central to good health care for women. Access to contraception is critical to preventing unwanted pregnancies and to enabling women to control the timing and spacing of their pregnancies. Contraceptive use in the United States is virtually universal among women of reproductive age. A woman who wants only two children must use contraception for roughly three decades of her life. Also, women rely on prescription contraceptives for a range of medical purposes in addition to birth control, such as regulation of cycles and endometriosis.
- Emergency contraception (EC), also known as the morning after pill, is an FDA-approved form of contraception. EC is an extremely time-sensitive drug that works for up to 120 hours, but is most effective if used within the first 12 to 24 hours following birth control failure, unprotected sex, or sexual assault. EC has great potential to prevent unwanted pregnancies.

REFUSALS TO DISPENSE CONTRACEPTION ARE INCREASING

- Increasing reports of pharmacist refusals to fill prescriptions for birth control—or provide EC to women 18 and older who do not require a prescription—have been attracting media attention. Reports of pharmacist refusals have surfaced in states across the nation, including: AZ, CA, GA, IL, LA, MA, MN, MO, NH, NY, NC, OH, OR, RI, TN, TX, WA, WV, WI.
- These refusals to dispense prescription contraceptives or provide EC are based on personal beliefs, not on legitimate medical or professional concerns. The same pharmacists who refuse to dispense contraceptives because of their personal beliefs often refuse to transfer a woman's prescription to another pharmacist or to refer her to another pharmacy. These refusals can have devastating consequences for women's health.
- Despite the FDA's recent decision to make EC available without a prescription to women 18 and older, refusals based on religious, moral or personal beliefs are still a problem. Under the FDA's conditions, EC is kept behind the counter, so even women who do not need a prescription must interact with pharmacists or other pharmacy staff who may have strong personal beliefs against providing the drug. Although non-prescription EC has been on pharmacy shelves only for a few months, there have already been a number of refusal incidents. In fact, there may actually be an increase in refusals, as more women are made aware of the drug and request it at their pharmacies. Because the FDA decided that women younger than 18 still need a prescription, pharmacists can demand proof of age from women requesting the drug who may not have such proof with them, delaying access. Moreover, some pharmacists may refuse to fill prescriptions for women under 18 based on a presumption that such women are not married or should not be sexually active.

- Some examples of pharmacist refusals:
 - January 2007: In **Columbus, Ohio**, a 23-year-old mother went to her local Wal-Mart because she had read that Wal-Mart was stocking EC in all its pharmacies. When she asked for non-prescription EC, the pharmacist on staff “shook his head and laughed.” She was told that even though the store stocked EC, no one on staff would give it to her. She had to drive 45 miles to find another pharmacy that would provide her with EC.
 - December 2006: In **Seattle, Washington**, a 25-year-old woman went to her local Rite-Aid to get non-prescription EC after she and her fiancé experienced a birth control failure. The pharmacist told her that although the pharmacy had EC in stock, he would not give it to her because he thought it was wrong. The woman had to repeatedly insist that the pharmacist find her another pharmacy in the area that would provide her with EC before he would do so.
 - January 2006: In **Northern California**, a married mother of a newborn baby experienced a birth control failure with her husband. Her physician called in a prescription for EC on her behalf the next morning. However, the pharmacist on duty not only refused to dispense the drug, which was in stock, but also refused to enter the prescription into the pharmacy’s computer so that it could be transferred elsewhere. By refusing, the pharmacist jeopardized the young mother’s ability to obtain the drug in time for it to be effective.
 - January 2005: In **Milwaukee, Wisconsin**, a mother of six went to her local Walgreens with a prescription for emergency contraception. The pharmacist refused to fill the prescription and berated the mother in the pharmacy’s crowded waiting area, shouting “You’re a murderer! I will not help you kill this baby. I will not have the blood on my hands.” The mother left the pharmacy mortified and never had her prescription filled. She subsequently became pregnant and had an abortion.
 - April 2004: In **North Richland Hills, Texas**, 32-year-old Julee Lacey, a mother of two who had relied on birth control pills for years, went to her local CVS for her regular prescription refill. The pharmacist refused to refill her prescription because of his personal beliefs. Outraged, Ms. Lacey summoned her husband to the store, where he was told that the pharmacist would not fill the prescription because oral contraceptives are “not right” and “cause cancer.”
 - January 2004: In **Denton, Texas**, a rape survivor seeking EC was turned away from an Eckerd pharmacy by three pharmacists, who refused to fill the time-sensitive prescription due to their religious beliefs. The pharmacists’ refusal put the survivor in danger of becoming pregnant due to the rape.

THE LEGAL LANDSCAPE: WHAT GOVERNS THE PRACTICE OF PHARMACY?

- The laws governing pharmacists vary from state to state. Pharmacists must abide by state laws and regulations, which are authored by the state legislature and the state Pharmacy Board.
- The laws and regulations in most states do not specifically speak to the issue of pharmacist refusals based on personal beliefs. States that provide general guidance about when

pharmacists may refuse to dispense tend to limit the reasons for such a refusal to professional or medical considerations—such as potentially harmful contraindication, interactions with other drugs, improper dosage, suspected drug abuse or misuse and the like—as opposed to personal, moral or religious judgments.

- Many pharmacist associations that have considered this issue, including the American Pharmacists Association, have issued policies requiring that pharmacists ensure patient access to legally prescribed medications—for example by either filling valid prescriptions or transferring them to another pharmacist who can. Although such policies are not legally binding, they encourage pharmacists to meet consumers’ needs.

LEGISLATIVE AND ADMINISTRATIVE RESPONSES TO PHARMACIST REFUSALS

- Permitting Refusals

- *Existing Law and Policy:* **Four states**—AR, GA, MS, and SD—have laws or regulations that allow pharmacists to refuse to fill prescriptions because of their personal beliefs.
- *Legislation:* Thus far in the 2007 legislative session, **ten states** have introduced a total of **fifteen bills** that would permit pharmacists and/or pharmacies to refuse. Those states are: IN, MI, MO, NJ, NC, RI, SC, TX, VT, WV. In the 2006 legislative session, **twenty states** introduced or considered **forty-three bills** that would permit pharmacists and/or pharmacies to refuse to dispense, and in some cases, to refuse to refer or transfer a prescription to another pharmacy. These states are: AL, GA, IL, IN, MI, MN, MO, NH, NJ, NY, NC, OH, OK, RI, SD, TN, VT, WA, WV, WI.

- Prohibiting or Limiting Refusals

- *Existing Law and Policy:*
 - **Six states**—CA, IL, ME, MA, NV, WA—explicitly require pharmacists or pharmacies to ensure that valid prescriptions are filled.
 - In **five states**—DE, NY, NC, OR, TX—pharmacy boards have issued policy statements that prohibit pharmacists from obstructing patient access to medication or from refusing to transfer prescriptions to another pharmacy.
 - Legislators in the Austin (TX) City Council unanimously passed a measure to require Walgreens, the city’s pharmaceutical contractor, to fill all prescriptions “without discrimination or delay” for patients enrolled in its medical assistance program.
- *Legislation:* Thus far in the 2007 legislative session, **nine states** (AZ, MO, NJ, NY, OK, PA, TX, VA, WV) have introduced **sixteen bills** that would prevent pharmacists or pharmacies from denying access to prescription contraception based on personal beliefs. Additionally, four of those bills explicitly prohibit pharmacies or pharmacists from refusing to provide EC over-the-counter to women 18 and older. In the 2006 legislative session, legislators in **eleven states**—AZ, MD, MI, MN, MO, NJ, NY, OH, PA, WV, WI—introduced bills that would require pharmacists or pharmacies to fill prescriptions for contraceptives.

PUBLIC OPINION

- According to recent surveys, the public is overwhelmingly opposed to allowing pharmacists to refuse to provide contraception based on their personal beliefs.
 - Most recently, an **August 2006 poll** conducted by the **Pew Research Center on People and the Press** found that 80% of Americans believe that pharmacists should not be able to refuse to sell birth control based on their religious beliefs. This was true across party lines and religious affiliations. Particularly notable was the poll's finding that "No political or religious groups express majority support for this type of conscience clause."
 - A **November 2004 CBS/*New York Times* poll** showed that public opinion disfavoring pharmacist refusals was strong regardless of party affiliation. 78% of Americans believe that pharmacists should not be permitted to refuse to dispense birth control pills, with 85% of Democrat respondents and 70% of Republican respondents squarely opposed to pharmacist refusals.
 - The *Arizona Daily Star* published "a range of opinions" in response to the question of whether pharmacists should be permitted to refuse to distribute birth control based on their personal beliefs. Notably, there was no range of opinions. Every respondent was outraged at the idea that a local pharmacist could leave a woman without her valid birth control prescription filled because of the pharmacist's personal opinions. Responses ranged only in degree of anger, from "Find another line of work!" to "How dare they!" to "Hard to believe we are in the 21st century."

HOW TO RESPOND TO A PHARMACIST'S REFUSAL

- File a complaint with your state's Pharmacy Board to get sanctions against the pharmacist or pharmacy.
- Communicate your story to the press.
- Ask the state Pharmacy Board or legislature to put in place policies that will ensure every consumer's right to access legal pharmaceuticals.
- Alert the pharmacy's corporate headquarters; some pharmacies have policies that protect women's right to receive contraception in store, without discrimination or delay.
- Get EC *today*, before you need it!

If you have had trouble getting your prescription for EC or birth control pills filled or getting non-prescription EC, please contact the National Women's Law Center at 1-866-PILL-4-US or info@nwlc.org. We may be able to help you.

If you are a member of the media and would like more information, contact Ranit Schmelzer or Jenice Robinson at 202-588-5180.