

## PHARMACY REFUSALS 101

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### 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 unintended 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 that prevents pregnancy after sexual intercourse. EC is a time-sensitive medication that has great potential to prevent unintended pregnancies. Currently, there are several options for emergency contraception available, one that requires a prescription and two that are available without a prescription for individuals 17 and older.

### REFUSALS TO DISPENSE CONTRACEPTION ARE INCREASING

- Reports of pharmacist refusals to fill prescriptions for birth control—or provide EC to individuals who do not require a prescription—have surfaced in at least twenty-four states across the nation, including: AZ, CA, DC, GA, IL, LA, MA, MI, MN, MO, MT, NH, NY, NC, OH, OK, OR, RI, TN, TX, VA, 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 fact that two brands of EC are available without a prescription to certain individuals, refusals based on personal beliefs are still a problem. Non-prescription EC must be kept behind the counter, so individuals seeking it must interact with pharmacists or other pharmacy staff who may have personal beliefs against providing the drug.
- Some examples of refusals in the pharmacy:
  - November 2010: Adam Drake attempted to purchase non-prescription EC at a Walgreens in **Houston, Texas** and was turned away, despite the fact that the federal Food and Drug Administration (FDA) has approved that brand of EC for sale to *men and women* aged seventeen and older.
  - March 2010: A pro-life pharmacy refusing to stock or dispense contraceptives in **Chantilly, Virginia** closed due to lack of business. When it opened in October 2008, staff at the pharmacy refused to provide referrals or help individuals find contraception elsewhere.

- January 2010: A mother of two in **Montclair, California** went to her local CVS to purchase EC after she and her fiancé experienced a birth control failure. The pharmacist refused to dispense EC to her, even though it was in stock, and told her to “come back in two and a half days,” at which point it would no longer be effective.
- May 2007: In **Great Falls, Montana**, a 49-year-old woman who used birth control to treat a medical condition went to her local pharmacy to fill her latest prescription. She was given a slip of paper informing her that the pharmacy would no longer fill any prescriptions for birth control. When she called back to inquire about the policy change, the owner of the pharmacy told her that birth control was “dangerous” for women.
- January 2007: In **Columbus, Ohio**, a 23-year-old mother went to her local Wal-Mart for 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 sell 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 EC was 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.
- 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 to her regular pharmacy, but when she went to pick it up, 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.
- 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**, a 32-year-old mother of two went to her local CVS for her regular birth control prescription refill. The pharmacist refused to refill her prescription because of his personal beliefs. The pharmacist said he 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 written 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, and suspected drug abuse or misuse—as opposed to personal judgments.
- Many pharmacist associations that have considered this issue, including the American Pharmacists Association, have issued policies requiring that patient access to legally prescribed medications is not compromised—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 REFUSALS IN THE PHARMACY

Fewer than half of the states in the country explicitly address the issue of refusals to provide medication to patients in the pharmacy.

### Prohibiting or Limiting Refusals

- *Existing State Laws and Policies:*
  - **Eight states**—CA, IL, ME, MA, NV, NJ, WA, WI—explicitly require pharmacists or pharmacies to provide medication to patients. In April 2011, a court prevented the Illinois regulation from being enforced against two pharmacists and the pharmacies they own.
  - In **seven states**—AL, DE, NY, NC, OR, PA, TX—pharmacy boards have issued policy statements that allow refusals but prohibit pharmacists from obstructing patient access to medication.
- *State Legislation:* Thus far in the 2011 legislative session, **nine states** (AK, AZ, IN, MI, MO, NJ, NY, OK, and WV) have considered **thirteen bills** to prohibit or limit refusals. These bills would prevent or restrict pharmacists or pharmacies from denying access to contraception based on personal beliefs, including **seven bills** that apply to non-prescription EC.

### Permitting Refusals

- *Existing State Laws and Policies:* **Six states**—AZ, AR, GA, ID, MS, and SD—have laws or regulations that specifically allow pharmacies or pharmacists to refuse for religious or moral reasons without critical protections for patients, such as requirements to refer or transfer prescriptions. However, a state court prevented Arizona’s law allowing pharmacy and pharmacist refusals from going into effect pending litigation and it is therefore not currently enforceable.
- *State Legislation:* Thus far in the 2011 legislative session, **three states** (IN, MO, and PA) have considered **three bills** that could permit pharmacists or pharmacies to refuse to dispense certain drugs and devices without protecting patient access. The Missouri bill incorrectly classifies EC as an abortifacient despite the fact that the FDA approved it as a form of birth control.

## **PUBLIC OPINION**

- According to surveys, the public is overwhelmingly opposed to allowing refusals in the pharmacy that prevent women from obtaining contraception.
  - A national survey of Republicans and Independent voters conducted in September and October 2008 on behalf of the National Women’s Law Center and the YWCA found that 51% *strongly* favor legislation that requires pharmacies to ensure that patients get contraception at their pharmacy of choice, even if a particular pharmacist has a moral objection to contraceptives and refuses to provide it. That includes 42% of Republicans and 62% of Independents.
  - In a national opinion survey released in July 2007, which was conducted for the National Women’s Law Center and Planned Parenthood Federation of America by Peter D. Hart Research Associates, 71% of voters said that pharmacists should not be allowed to refuse to fill prescriptions on moral or religious grounds, including majorities of every voter demographic such as Republicans (56%), Catholics (73%), and evangelical Christians (53%). Even more respondents (73% overall) supported requiring pharmacies to dispense contraception to patients without discrimination or delay.
  - A poll conducted in May 2007 by Lake Research Partners found that 82% of adults and registered voters believed that “pharmacies should be required to dispense birth control to patients without discrimination or delay.”
  - 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 pharmacist refusals should not be permitted, including 85% of Democrat respondents and 70% of Republican respondents.

## **HOW TO RESPOND TO A REFUSAL IN THE PHARMACY**

- 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](mailto:info@nwlc.org).*