

## 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. EC is an extremely time-sensitive drug that 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 unintended 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 twenty-one states across the nation, including: AZ, CA, DC, GA, IL, LA, MA, MN, MO, MT, 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 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. Since non-prescription EC arrived in pharmacies, there have been a number of refusal incidents.
- Some examples of refusals in the pharmacy:
  - 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 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, 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 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**

### • Prohibiting or Limiting Refusals

- *Existing State Laws and Policies:*
  - **Seven states**—CA, IL, ME, MA, NV, NJ, WA—explicitly require pharmacists or pharmacies to ensure that valid prescriptions are filled.
  - In **seven states**—AL, DE, NY, NC, OR, PA, 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.
- *Federal Legislation:* On June 6, 2007, Representatives Carolyn Maloney (D-NY) and Christopher Shays (R-CT) introduced the Access to Birth Control Act in the House of Representatives, and Senator Frank Lautenberg (D-NJ) introduced the same bill in the Senate. The Access to Birth Control Act requires pharmacies to provide contraceptives, including non-prescription EC, to women without delay, and to ensure that their employees do not intimidate or harass women seeking contraceptives.
- *State Legislation:* Thus far in the 2008 legislative session, **thirteen states** (FL, IN, MO, NJ, NY, OH, OK, PA, RI, SD, WA, WV, WI) have considered **twenty-one bills** that would prevent pharmacists or pharmacies from denying access to prescription contraception based on personal beliefs, including eleven bills that apply to EC over-the-counter (OTC). Additionally, in the past 2007 legislative session, **eleven states** (AZ, MO, NJ, NY, OH, OK, PA, TX, VA, WI, WV) considered **twenty bills**, six of which explicitly prohibited pharmacies or pharmacists from refusing to provide EC OTC to women 18 and older. One bill, from NJ, was enacted.

### • Permitting Refusals

- *Existing State Laws and Policies:* **Four states**—AR, GA, MS, and SD—have laws or regulations that allow refusals based on pharmacists’ personal beliefs without patient protections.
- *State Legislation:* Thus far in the 2008 legislative session, **ten states** have considered **twelve bills** that would permit pharmacists or pharmacies to refuse to dispense certain drugs and devices without any patient protections. Those states are: AL, HI, IN, MI, MO, NY, PA, RI, SC, and VT. Additionally, the Missouri bill allows pharmacies to

refuse to dispense “abortifacient[s], including but not limited to the RU 486 drug and emergency contraception”—incorrectly classifying EC, an FDA-approved contraceptive, as an abortion pill despite medical consensus to the contrary. In the past 2007 legislative session, **ten states** (IN, MI, MO, NJ, NC, RI, SC, TX, VT, WV) considered a total of **fifteen bills** that would permit such refusals.

## **PUBLIC OPINION**

- According to recent surveys, the public is overwhelmingly opposed to allowing pharmacists to refuse to provide contraception based on their personal beliefs.
  - 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 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@nwl.org](mailto:info@nwl.org).*

**If you are a member of the media and would like more information,**

National Women’s Law Center, Washington, DC, February 2008

**contact Ranit Schmelzer or Jenice Robinson at 202-588-5180.**