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Pharmacist Conscience Clauses: Violating Individual Rights and  
Threatening Public Health

**Abstract**

The spread of state conscience clauses that allow pharmacists to refuse to fill prescriptions threatens the public health of Americans. Not only does the public overwhelmingly oppose conscience clauses, but such measures promote the violation of individual rights. As states consider whether to allow pharmacists to refuse to dispense prescriptions, the negative impact on individual rights must be taken into account. This paper suggests that in order to promote public health and protect individual rights, states should not enact conscience clauses, and instead should enact laws that require pharmacists to uphold their duty to dispense prescriptions.

**Keywords:** Pharmacist; Pharmacy; Contraceptives; Refusal Clauses; Public Health

### **Pharmacist Conscience Clauses: Violating Individual Rights and Threatening Public Health**

What kind of place would the United States be if police officers could choose who deserves protection based on his or her personal religious beliefs? Religious officers who oppose homosexuality could refuse to work crowd control at a gay pride parade or stand by while a homosexual is beaten to death and still make their salary for the day. A nurse or physician who is religiously opposed to blood transfusions could let a patient bleed to death. These scenarios may sound absurd to those of us who rely on police and medical personnel to be there when we need them, but real examples of people who have tried to claim similar religious exceptions exist. One case involved a nurse, employed by a maternity ward who, refused to scrub in for an emergency caesarian section and left a woman standing in a pool of blood for 30 minutes. In another case, a police officer refused to guard an abortion clinic. Both of these people claimed religious grounds for refusing to perform their duties, both were fired, both sued their employers, and in both situations the courts rejected their cases (Defend Civil Rights, 2006).

These graphic scenarios clearly violated the patient's and public's rights to safety and health, and they were rightly rejected by the courts. If the courts have declared that police officers and health care workers are not allowed to refuse to help in emergencies, what makes pharmacists different? Pharmacists have begun to claim religious exemptions and have refused to fill prescriptions more frequently. In response, states have begun to deliberate about and enact conscience clauses that allow pharmacists to refuse to fill their duty of dispensing prescriptions.

Conscience clauses, also known as refusal clauses, are exemptions from laws of general applicability that permit health care providers to refuse to provide or cover

medically necessary treatment based on the provider's religious or moral beliefs (Letter to the Senate, 2002). Conscience clauses allow pharmacists to refuse access to medications for which patients have valid and lawful prescriptions. Public opinion polls clearly show that most Americans oppose conscience clauses. In 2002, a nation-wide public opinion poll showed that Americans overwhelmingly oppose laws that protect religious objectors at the expense of patient rights and public health. Specifically, the poll showed that the public opposes conscience clauses that threaten access to health care with 88% saying they were opposed to "allowing pharmacies to refuse to fill prescriptions they object to on religious grounds" (Weiss).

Despite general public opinion in opposition, state legislators have begun to yield to religious groups in introducing and passing legislation allowing religious exemptions. The spread of state conscience clauses threatens the public health of Americans. Not only does the public overwhelmingly oppose conscience clauses, but such measures promote the violation of individual rights and violate the pharmacists' own code of ethics. In order to promote public health and protect individual rights, states should not enact conscience clauses. Instead, state legislators should enact laws that require pharmacists to uphold their duty to dispense prescriptions. This paper provides a brief history of conscience clauses; illustrates recent developments in the issues surrounding conscience clauses; examines state laws relating to pharmacist conscience clauses, and outlines how conscience clauses for pharmacists violate the individual rights of others.

### **The History of Conscience Clauses**

Conscience clauses began to appear across the nation after the Supreme Court's 1973 decision legalizing abortion in *Roe v. Wade* and have predominately pertained to

the right of a medical institution or professional to refuse to perform abortions or sterilizations. The federal government passed the Church Amendment in 1973, which established that recipients of federal funds with moral or religious objections to sterilization or abortion could not be required to perform them. It also prohibited federally funded institutions from discriminating against health care professionals who refuse to perform or assist in an abortion or sterilization (Teliska, 2005).

In 1997, Congress provided another conscience exemption; under new Medicaid requirements, providers were required to inform patients about how to obtain family planning services. However, an organization could not be required to provide, reimburse, or cover any counseling or referral service related to family planning if their religious beliefs opposed it (Teliska, 2005). In 1998, Congress passed another law that exempted religiously affiliated health plans from having to provide federal employees with contraceptive drug coverage (Weiss, 2002). The Weldon Amendment in 2004, specifically pertained to abortion and prohibited local, state, and federal authorities from requiring any institution or health care professional to provide or pay for abortions or supply abortion-related referrals (Green, 2005).

To date, the federal government has not passed legislation allowing pharmacists to refuse to dispense prescriptions based on religious exemption; however forty-six states have used general federal conscience clause laws as justification to pass various laws that exempt entities from having to perform abortions, and some of these laws are being expanded to include pharmacists (Severson, 2006).

In the early 1990s, pharmacy organizations began debating pharmacists' professional obligations in light of new questions raised by the introduction of physician-

assisted suicide and the new non-surgical abortion drug RU-486. Pharmacy organizations and religious groups began lobbying state legislatures, and the first pharmacist-specific state conscience clause was passed in South Dakota in 1998 (Teliska, 2005).

In addition to governmental refusal clauses, pharmacies have implemented refusal clauses of their own. Most large national pharmacy chains have refusal policies in place. Walgreens allows pharmacists to refuse to dispense medication as long as they assist patients in having their prescriptions filled. Another pharmacist in the store may fill the prescription or the patient may be referred to the nearest Walgreens (Stein, 2005; Teliska, 2005). Similarly, CVS has a “refuse and refer” policy (Feldt, 2005) where a pharmacist is required to ensure that a prescription is filled by either another pharmacist at that store or another local pharmacy. The problem with allowing company refusal clauses to dictate whether people receive their prescriptions is that the provisions intended to protect patients are not enforceable. There are many reports of patients being refused their prescription and then not referred to another pharmacist or nearby pharmacy (Teliska, 2005).

### **Recent Developments in Pharmacist Conscience Clauses**

On July 6, 2002, Amanda Renz went to the pharmacy at a K-Mart in Wisconsin to obtain a refill of her hormonal oral contraceptive. The only pharmacist on duty, Neil Noesen, asked Amanda if her prescription would be used as a contraceptive. When Amanda replied in the affirmative, Noesen refused to fill her prescription. He said that he would not fill the prescription because he does not believe in the use of contraception,

and then he refused to transfer Amanda's prescription to a pharmacist at another store (Teliska, 2005).

In April 2004, Julee Lacey, 33, a Fort Worth, Texas, mother of two, went to a CVS drugstore for a last-minute Pill refill. Although the prescription had been filled at that pharmacy previously, the pharmacist told her, "I personally don't believe in birth control and therefore I'm not going to fill your prescription" (Bollinger, 2004).

As shocking as these incidences seem, they are not isolated cases. Planned Parenthood Federation of America has documented 180 cases of a doctor or pharmacist refusing to provide contraceptive services to women since May 2004 (Teliska, 2005). In fact, the practice of refusing to fill prescriptions has become so prevalent that the American Medical Association passed a resolution condemning pharmacists' use of conscience clauses at its 2005 annual convention. Doctors declared that they may seek permission to directly dispense the medications so that pharmacists could not intervene in their treatment of patients (Pierce, 2006).

Abortion and contraceptives seem to be the lightning rods in debates over pharmacist conscience clauses. Current debate focuses primarily on whether pharmacists should be allowed to refuse to dispense contraception such as birth control pills and emergency contraception such as Plan B<sup>®</sup>, the brand name for the morning-after pill. Anti-abortion groups have fueled the debate by equating emergency contraception with abortion; however there is an important difference. Plan B<sup>®</sup> prevents a fertilized egg from implanting in the uterus and is used to prevent a pregnancy, not terminate one. Plan B<sup>®</sup> is not the same as Mifeprex, or RU-486, which is a non-surgical abortion drug (Ensuring Access, 2006; NCSL, 2006).

Although anti-abortion groups generally oppose the use of Plan B<sup>®</sup>, using this drug may prevent a woman from seeking a surgical abortion later. Abortion rights groups claim that emergency contraceptives such as Plan B<sup>®</sup> have the potential to prevent 800,000 abortions each year (Bollinger, 2004). On the other hand, as access to prescription contraceptives decreases, it is predicted that the rates of abortions will increase (Bollinger, 2004).

Another important difference between Plan B<sup>®</sup> and RU-486 is that pharmacists do not fill prescriptions for RU-486, and therefore it should not be part of the current debate over pharmacist conscience clauses. However, confusion persists, and conscience clause advocates continue to strategically blur the line between RU-486 and Plan B<sup>®</sup> (Ensuring Access, 2006; NCSL, 2006).

Further blurring the line is the belief some health care professionals hold that hormonal birth control pills, traditionally prescribed to prevent ovulation and pregnancy, actually result in “chemical abortions” when ovulation does occur and an egg is fertilized. Members of the anti-abortion group Pharmacists for Life International, such as pharmacist Karen Brauer, claim that they should not have to dispense a medication that they think takes lives (Bollinger, 2004). However, according to David Grimes, MD, a clinical professor in obstetrics and gynecology at the University of North Carolina School of Medicine, there is no scientific evidence that regular doses of birth control pills are abortifacients or that they prevent the implantation of fertilized eggs (Bollinger, 2004). In fact, a position paper published by the American Association of Pro-Life Obstetricians and Gynecologists, written by four self-proclaimed “Christian pro-life Obstetrician-Gynecologists,” states, “An extensive review of pertinent scientific writings indicates that

there is no credible evidence to validate a mechanism of pre-implantation abortion as a part of the action of hormone contraceptives” (AAPLOG, 1999).

Although most cases of pharmacists refusing to fill prescriptions involve cases of birth control or emergency contraception, even in cases where the prescription is not a contraceptive, the religious objection may be based in the issues of abortion or contraceptives. For example, one case was reported in Seattle involved a pharmacist in a hospital who refused to fill a woman’s prescription for antibiotics because it came from a facility that provides abortions (Davidow, 2006). This case illustrates the point that although current uses of conscience clauses predominately discriminate against women seeking birth control options, such religious exemptions can be more broadly applied.

Some cases of pharmacist refusals have resulted in lawsuits. Court cases around the country have fallen both in favor of and against conscience clauses, but most are still pending. The previously mentioned lawsuit involving Neil Noesen in Wisconsin found him to be at fault for not filling the prescription for birth control. The Department of Regulation and Licensing in Wisconsin brought a disciplinary proceeding against Mr. Noesen for failure to fulfill his professional obligation. An administrative judge declared that he had engaged in practice that “constitutes a danger to the health, welfare, or safety of a patient and has practiced in a manner which substantially departs from the standard of care ordinarily exercised by a pharmacist.” The judge also recommended that he needed training in the ethics of his profession and ordered that he be required to take ethics courses for pharmacists (Teliska, 2005).

In January, 2006, three pharmacists who had been placed on unpaid leave from a Walgreens Pharmacy in Illinois sued Walgreens, alleging they were illegally suspended. Walgreens had asked the employees to sign a pledge that they would fill prescriptions for contraceptives such as the morning-after pill. When the pharmacists refused, they were suspended without pay. The pharmacists are claiming that Walgreens' pledge violates the Illinois Health Care Right of Conscience Act. Walgreens claimed that it was only trying to comply with Governor Rod Blagojevich's executive order requiring pharmacies to fill prescriptions for contraceptives "without delay" (Schmidt, 2006).

In February, 2006, the Massachusetts Board of Pharmacy required Wal-Mart stores in the State to stock emergency contraception (Davidow, 2006). Wal-Mart's policy at the time was that it did not carry emergency contraception in nearly all of its over 3,700 pharmacies nationwide (Thottam, 2006). Except for pharmacies in Illinois, where Wal-Mart was legally obligated to provide contraceptives, Plan B<sup>®</sup> was not available at most Wal-Mart pharmacies prior to March 20, 2006. A Wal-Mart press release from March 3, 2006, indicates that the legal mandates in Massachusetts and Illinois, combined with pending pressures in states like Connecticut and New York contributed to the company's decision to carry Plan B<sup>®</sup> nationwide (Wal-Mart, 2006). Despite this apparent victory for access to contraceptives, the statement also makes the company's refusal policy clear, "This policy, except where prohibited by law, allows any Wal-Mart or SAM'S CLUB pharmacy associate who does not feel comfortable dispensing a prescription to refer customers to another pharmacist or pharmacy" (Wal-Mart, 2006).

Wal-Mart is not the only store that has refused to carry legal contraceptives. One study in 2004 found that 25% of pharmacies in New York City did not carry Plan B<sup>®</sup> emergency contraceptives. Of those that did not carry Plan B<sup>®</sup>, none had posted the legally-required sign telling customers that they did not provide the pills. (Filipovic, 2004). Although Wal-Mart felt pressure to acquiesce, smaller pharmacies may not feel the same high-profile economic pressure to provide contraceptives. In the absence of clear state laws requiring pharmacies to carry and dispense legal pharmaceuticals, pharmacies will simply flout weak laws like the posting law in New York and will continue to stock their shelves according to their own moral standards.

### **State Laws Relating to Conscience Clauses for Pharmacists**

At least forty-three states currently enforce some type of refusal clause that allows medical providers to refuse to provide certain services that contradict their religious beliefs (Green, 2005). For example, Arkansas, Georgia, Mississippi, and South Dakota have passed conscience clause laws that allow pharmacists to refuse to dispense emergency contraceptives. Additionally, Colorado, Florida, Maine, and Tennessee have more general conscience clauses that do not specifically name pharmacists, but which essentially provide them the right to refuse to dispense (NCSL, 2006). Other states such as Vermont, New Hampshire, and Iowa do not have refusal clauses (Letter to the Senate, 2002).

State laws vary in their approach to conscience clauses. Some states explicitly provide a right to refuse dispensing certain drugs. For example, Arkansas allows certain individuals or entities to refuse to perform abortion services and provide or dispense contraceptives in most circumstances; Georgia law provides that a pharmacist shall not be

required to fill a prescription for an emergency contraceptive; and South Dakota allows pharmacists the right to refuse to provide services (NCSL, 2006).

Alternatively, some states have not explicitly declared a right to refuse providing prescriptions, but have prohibited legal suits against such people or entities. For example, Colorado law states that no private institution, its employees, or physicians may be held liable for refusing to dispense contraceptive supplies, procedures, or information; and Florida law similarly states that a physician or other professionals may not be held liable for refusing to dispense contraceptives or family planning devices, services, or information. The end result of these laws is the same: Pharmacists may refuse to dispense prescriptions for contraceptives or the morning-after pill without legal ramifications (NCSL, 2006).

One state that stands out from the others is Illinois where Governor Rod Blagojevich issued an emergency rule on April 1, 2005, that required pharmacies in the state to dispense FDA-approved contraceptives. The order, which was made permanent and became the Pharmacy Practice Act, does not allow pharmacists to refuse a lawful prescription and requires that if a pharmacy does not have the drug, it must order it, transfer the prescription to another pharmacy, or return the prescription to the patient (NCSL, 2006).

Despite Illinois' prohibition of conscience clauses, violations continue to occur. In January 2006, a nurse practitioner called a pharmacist at a West Peoria, Illinois, Walgreens pharmacy to inquire about the availability of Plan B<sup>®</sup>. The pharmacist told her that it was not in stock. Several days later, however, she spoke with the store's pharmacy manager, who told her that the drug had been available the day she first asked

about it (Bodine, 2006). In response to this and other alleged violations, Governor Blagojevich followed his 2005 order with a directive in 2006 that requires all drugstores in the state to post a listing of options for customers seeking Plan B<sup>®</sup> if it is not available at their regular pharmacy. In response to the Governor's order, the Illinois Department of Financial and Professional Regulation mailed out more than 17,000 letters to pharmacists and retail pharmacies, reminding pharmacists of their professional obligations to dispense contraceptives under the Pharmacy Practice Act (Bodine, 2006).

California and Nevada have seemingly found a compromise between the religious rights of pharmacists and the individual rights of patients. California law requires pharmacists to dispense prescriptions unless their employer approves the refusal, and the woman must still be able to access her prescription in a "timely manner" (NCSL,2006). Nevada considered legislation during the 2005 Legislative Session (Senate Bill 163, second reprint), that would have required pharmacists to fill a prescription regardless of their beliefs, but in the end the bill was amended to only require that a pharmacist transfer a prescription to another pharmacy at a patient's request.

Despite these compromises, such legislation does little to protect the rights of the patient. "Timely manner" is too vague, and certain emergency contraceptives such as Plan B<sup>®</sup> are more effective the sooner they are taken. Plan B<sup>®</sup> is only effective if it is taken within 72 hours after unprotected sex; its effectiveness drops by 50% every 12 hours (Thottam, 2006); and it is most effective when taken within 24 hours (Plan B, 2006). Patients in rural areas or who lack transportation may not have access to another open pharmacy nearby even if the pharmacist is required to transfer the prescription.

Every hour a woman is forced to wait for her emergency contraceptive prescription to be filled increases her chances of having an unplanned or dangerous pregnancy.

In states where the law is silent on a pharmacist's duty to fill a prescription, lawmakers should be encouraged to clarify their intent. Eighteen states are currently considering legislation related to conscience clauses. Some states, such as West Virginia, are considering competing proposals; one proposal would allow pharmacists to refuse to fill a prescription, and another would require pharmacists to fill legal prescriptions. Still other states are scrambling to further clarify conscience clause laws they already have (NCSL, 2006). In debating whether to enact conscience clauses, state legislators should consider the impact such exemptions will have on the individual rights of their constituents.

### **Pharmacist Conscience Clauses Violate Individual Rights**

The American Civil Liberties Union's (ACLU) position on conscience clauses is that police officers and doctors "should not be able to refuse to fulfill their duty in a particular situation on religious grounds if it would result in harm to someone else's civil rights or healthcare" (Defend Civil Rights, 2002). Using the criteria of not infringing on or harming someone else's individual rights or right to health care, pharmacists should likewise not be allowed to refuse to fill prescriptions if it violates someone else's civil rights or health in the process. Therefore, the burden is to prove that when pharmacists refuse to dispense drugs they are violating someone else's civil rights or harming their health. The following arguments outline the various rights that pharmacists violate when they refuse to dispense prescriptions:

*Pharmacist Conscience Clauses Violate Patient Rights of Self-determination and Autonomy*

The “Code of Ethics for Pharmacists,” adopted by the American Pharmacists Association membership on October 27, 1994, clearly states that a pharmacist must respect the individual rights of the patient:

III. A pharmacist respects the autonomy and dignity of each patient. A pharmacist promotes the right of self-determination and recognizes individual self-worth by encouraging patients to participate in decisions about their health. A pharmacist communicates with patients in terms that are understandable. In all cases, a pharmacist respects personal and cultural differences among patients (Code of Ethics, 1994).

When pharmacists refuse to dispense a drug based on their religious beliefs, they are violating this code and the patient’s rights of self-determination and autonomy by denying their right to participate in decisions about their own health. Patients have already decided with their doctor what the best treatment is for their condition, and the pharmacist must respect that decision. Refusing to dispense certain drugs also violates this portion of the code because doing so is disrespectful of personal and cultural differences. If pharmacists have certain religious, personal, or cultural beliefs, they should still dispense a drug based on their acknowledgement of and respect for people of other religious beliefs.

*Pharmacist Conscience Clauses Violate the Right to Confidential Medical Treatment*

Federal law and physician codes of ethics hold that the confidential relationship between a physician and their patient cannot be violated. Allowing pharmacists to decide which prescriptions are morally appropriate for a patient violates this confidentiality. A patient should not have to justify to a pharmacist why he or she needs a particular drug or

treatment because that information is confidential and has already been deemed appropriate by his or her physician. For example, hormonal birth control pills are not just used as contraceptives. They are important tools used to treat as many as twenty medical conditions including painful menstrual cycles, excessive bleeding, acne, fibroids, ovarian cancer prevention, and endometriosis (Bollinger, 2004; Khan & McCoy, 2005).

There are also many health-based reasons a woman may want the morning-after pill to prevent pregnancy, reasons that are confidential. The most obvious argument is in the case of rape. Must a woman relive the nightmare by explaining it to a pharmacist who is a stranger to her? What if the woman is addicted to methamphetamine, has no plans to quit, and knows her baby would be born addicted? What if the woman is in an abusive relationship that she is trying to escape that would be made harder by the abuser's knowledge of a pregnancy? What if she is in advanced stages of diabetes, has a heart condition, has cancer, or is in some other way not able to carry a baby safely to term without harming her own health? The "what if's" are infinite, and a pharmacist does not have the right to discriminate against or in favor of patients when the physician has already deemed the treatment necessary.

Part of the Pharmacists' Code of Ethics promotes the value of confidentiality and preservation of the patient's dignity:

II. A pharmacist promotes the good of every patient in a caring, compassionate, and confidential manner. A pharmacist places concern for the well-being of the patient at the center of professional practice. In doing so, a pharmacist considers needs stated by the patient as well as those defined by health science. A pharmacist is dedicated to protecting the dignity of the patient. With a caring attitude and a compassionate spirit, a pharmacist focuses on serving the patient in a private and confidential manner (Code of Ethics, 1994).

Refusing to fill a prescription violates the value of confidentiality by forcing a person to divulge the reason he or she needs a prescription, which has already been shared with his or her doctor. Patients' dignity is violated by having to endure the humiliation of being turned away and having to beg for the drug that he or she was legally prescribed. In some cases, patients are reduced to begging for the return of the piece of paper their prescription is written on so they can go elsewhere.

*Pharmacist Conscience Clauses Violate the Right to Science-Based Health Care*

The Pharmacists' Code of Ethics cited above also emphasizes the use of health science as a foundation for medicine; "a pharmacist considers needs stated by the patient as well as those defined by health science" (Code of Ethics 1994). Refusing to fill a prescription not only denies the patient's stated need, but it devalues science as the foundation of medicine. Pharmacists who invoke a conscience clause hold religion above science in guiding their decision, which clearly violates the code of ethics and the patient's right to science-based healthcare.

Similarly, the oath that pharmacists take states, "I will apply my knowledge, experience, and skills to the best of my ability to assure optimal drug therapy outcomes for the patients I serve" (USPharmD, 2006). Nowhere does the oath allow for religious beliefs. By stating "optimal drug therapy outcomes," this oath suggests the superiority of science in determining the actions pharmacists should take, not religion.

*Pharmacist Conscience Clauses Violate the Right to Equal Protection*

Pharmacists who refuse to fill prescriptions are not doing so with an equal hand. Women, especially those with low income or who live in rural areas, are predominately the victims of this discrimination. Because the debate has centered on religious

objections to abortions historically, and more recently confusion over the morning-after pill's medical functions, women's health is at risk, not men's.

Pharmacists who believe a woman "immoral" for using contraceptives have not imposed the same moral judgment on their male patients. As Anne Drapkin Lyerly, MD, a reproductive rights ethicist and an assistant professor of obstetrics and gynecology at Duke University Medical Center states, "We're seeing a growing trend among pharmacists and medical practitioners who consider it acceptable to impose their morality on women's bodies. I don't think moral aspects should be a concern. Imagine a pharmacist asking a customer whether his Viagra<sup>®</sup> prescription is to enhance sexual performance in his marriage or in an extramarital affair" (Bollinger, 2004).

Facing particular discrimination are women who live in rural areas with only one pharmacy and lack of access to or funds for transportation. For example, in Fabens Texas, a small town about 30 miles from El Paso, women may no longer obtain birth control from the only pharmacy in town. The pharmacy owner, Steve Mosher, believes that birth control is a form of abortion and refuses to sell it. Women in Fabens must drive out of town or resort to mail-order to have their prescriptions filled (Pharmacists do not let women choose, 2004). As this case illustrates, although state laws such as those now found in California and Nevada require a pharmacist to transfer a prescription, the distance and time restrictions on such provisions are not specific enough to protect poor, rural women (Teliska, 2005).

Why are pharmacists with moral opposition to birth control not equally opposed to condom use? Condoms do essentially the same thing the birth control pill does: both stop sperm from fertilizing an egg. Some argue that restricting access to birth control

pills is not about “morality,” but is more about controlling women and their bodies (Libert, 2005). Regardless of whether the intent of refusal policies is to control women, the outcome is that women are disproportionately discriminated against in the implementation of such policies.

#### *Pharmacist Conscience Clauses Violate the Right to Privacy*

A woman’s constitutional right to contraception has been recognized by the Supreme Court since the case of *Griswold v. Connecticut* in 1965 declared that a married couple had the fundamental right to privacy when making family planning decisions. This right was extended to unmarried women in 1972 in *Eisenstadt v. Baird*. This right to privacy and contraception holds the highest level of constitutional protection, yet state laws and pharmacists are able to interfere by invoking conscience clauses (Teliska, 2005). A woman’s decision to use birth control or emergency contraception is a right, one that should not be violable by a patriarchal pharmacist who “knows what is best” for her.

#### *Pharmacist Conscience Clauses Violate Free Commerce*

Aside from violating the individual rights of others and the principles of their own code of ethics, pharmacists who refuse to dispense a product violate their employer’s profit margin. In any business, employees who refuse, based on religious or personal beliefs, to perform the duties they were hired to perform violate their terms of employment. Refusing to perform basic duties in one’s job description that are otherwise legal is grounds for dismissal in any employment contract, written or not.

It is absurd to think that an employer must pay an employee who refuses to work. Jaana Goodrich, an economist commenting in the *American Prospect* outlines a few

scenarios: a vegetarian Buddhist could acquire a job at a butcher shop and refuse to cut a single piece of meat while making their hourly wage. Likewise, a Christian Scientist could become a pharmacist and refuse to dispense any drugs (2006). In these cases, an employer is not allowed to discriminate against people during the hiring process based solely on their religion, but are they also not allowed to dismiss idle employees based on their *performance*?

A pharmacist who refuses to dispense legally prescribed drugs is, at a basic level, a poor employee who is not performing his or her duties and is interfering with the mission of the organization. Therefore, the company should be allowed to dismiss them. States that enact conscience clauses and allow pharmacists to opt out of one of their duties is an economic burden and slap in the face to businesses. Some pharmacies or conscience clauses allow pharmacists to refuse to fill a prescription if there is another pharmacist present or on call who can dispense the drug. This duplication of salary is an unwarranted economic burden on businesses.

Walgreens spokesman Michael Polzin explained that at night there is often only one pharmacist working in their drugstores, which is why in Illinois pharmacists had been asked to sign a pledge that they would comply with the Governor's executive order and fill all prescriptions. If the one pharmacist on duty refuses to fill the prescription, then the pharmacy will be in violation of state law (Pierce, 2006).

If a person holds a particular religion that would keep them from performing the duties of a pharmacist, they should not become one. Everyone is faced with the ethical dilemma of whether or not to work for an organization that is in line with their personal beliefs. Additionally, pharmacies that hire pharmacists should not have to take a

financial loss when the pharmacist refuses to perform their duties and should not be legally liable for dismissing someone based on poor performance.

### **Conclusion**

So what makes pharmacists different from medical emergency personnel and police officers? What makes them think they should be allowed to decide when to perform their duties and when not to? Some might argue that pharmacists do not encounter emergency situations, and therefore have the luxury of acting in accordance with their conscience. Such arguments deny the reality of situations such as the time-sensitivity of emergency contraceptives and the life-endangering nature of some unplanned pregnancies.

Although the current debate has centered on contraception, what is to stop a pharmacist from invoking a conscience clause to refuse an HIV positive patient their time-sensitive medication to stave off AIDS if the pharmacist believes they obtained the disease by “immoral” means? Similarly, what if a pharmacist, who has embraced the celibacy of certain religions, believes that it is bad for their patient’s soul to use Viagra<sup>®</sup>? These scenarios may sound implausible, but no more so than the situations women are currently experiencing when they are denied health care because their pharmacist believes her past or future actions are “immoral.” Conscience clauses that specifically address contraceptives discriminate against women, and those that are vague enough to allow refusal of any prescriptions on religious grounds leave the previous scenarios as possibilities.

In order to protect public health and individual rights, states must enact legislation that requires a pharmacist to fill all prescriptions that are legal and not medically

dangerous. Such laws protect the rights of the individual and free commerce. Such laws also help pharmacists follow their own code of ethics, which respects the patient's participation in their own healthcare and holds medical science above religion.

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