



The Vermont Legislative Research Shop

Distribution of Birth Control by Pharmacists

A recent trend has emerged across the United States, where pharmacists have been refusing to fill regular birth control and morning-after pill prescriptions on moral and religious grounds. This has sparked a wide debate over a woman's reproductive rights versus a pharmacist's religious rights. As a result of this largely heated issue, many state legislatures have responded by seeking to pass laws either protecting pharmacists or forcing them to fulfill their roles as pharmacists. Legislators have also proposed some compromise solutions of laws allowing pharmacists to refuse to fill a prescription so long as another pharmacist was on site to fill it, or

pharmacies to fill such prescriptions. The rule is in place for 150 days. A hotline was also created to allow people to report noncompliance by pharmacists.

The following chart shows existing states' laws regarding the rights of Individual Health Care Providers and Health Care Institutions (including the possibility of private or religious institutions) to decline to provide health care services involving abortion, contraception, and sterilization.

EXEMPTIONS FROM PROVIDING HEALTH SERVICES						
STERILIZATION		STATE	ABORTION		CONTRACEPTION	
Individual Providers	Institutions		Individual Providers	Institutions	Individual Providers	Institutions
		Alaska	X	Private		
		Arizona	X	X		
Religious					California	X
X	X	Private			Colorado	X
					Connecticut	X
X					Delaware	X
X	X				Florida	X
		Hawaii	X	X		
X	X	Idaho	X	X		
X	X	Illinois	X	Private	X	X
					Iowa	X
			X		Kansas	X
						Private
		Louisiana	X	X		
X	X				Maryland	
X	X		Private	X	Massachusetts	

Figure 1: Exemptions from Providing Health Care Services
Source: The Alan Guttmacher Institute

Judicial Issues Pertaining to Pharmacists' Refusal

Actual Court Cases

With the increasing trend of pharmacists' refusal to fill contraceptive and "emergency" contraceptive prescriptions, as well as the move of state legislatures to pass this legislation, this issue has also begun to make its way to the legal battlefield as well. Although both pharmacists against their employers and women against pharmacies have filed several suits, almost all cases are still in current litigation. Some examples of court cases where there have been decisions made regarding a pharmacist's refusal to fill a birth control prescription include one in Ohio and in Wisconsin. In the Wisconsin case, pharmacist Neil T. Noesen refused to fill a University of Wisconsin birth control prescription at a Kmart. The pharmacist also refused to transfer the prescription to another pharmacy. In this case, an administrative judge of the state pharmacy board required Noesen to take ethics classes, alert future employers to his beliefs, and pay up to \$20,000 to cover the legal proceeding costs. It would then be left up to the state pharmacy board for future penalties (Stein, 2005). Another court case in Ohio, had a different result. In this case, a pharmacist was fired for refusing to fill a prescription for Micronor, an "emergency contraceptive pill." The judge in this case refused to dismiss

activists and the religious right. Those two issues are the First Amendment's Free Exercise Clause protecting "an absolute freedom of belief and an individual right to practice religion," and the Fifth Amendment's protection of property and prohibition on deprivation of personal liberty without due process (Annenberg Center 2005). Therefore, the issue of the pharmacist's religious and moral right to refuse filling birth control prescriptions has become a difficult issue to grapple with due to those roots. For instance, legally, it can be argued that requiring pharmacists to fill prescriptions that conflict with their religious beliefs violates the Free Exercise Clause of the First Amendment because "people whose religion prohibits birth control or abortion cannot freely exercise their religion if they are forced to dispense these medications (Annenberg Center 2005)." On the other hand, it has also been argued that requiring a pharmacist to fill a prescription against its religious beliefs, does not violate the Free Exercise Clause because the pharmacist doesn't actually have to take the medication. Finally, even if there is a possibility of a free exercise violation, it doesn't matter because the patients' need to have their medication outweighs the pharmacist's religious rights and beliefs. This issue continues to be complicated because it can involve the Fifth Amendment as well as the first. For instance, under the fifth, an individual is guaranteed both the protection of property and no deprivation of personal liberty without due process (Annenberg Center 2005). In this case, the prescription is not only the patient's property, but "passing laws to allow individual pharmacists to refuse to refill

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Stein, Rob. "Pharmacists' Right at Front of New Debate." The Washington Post. March 28, 2005. Retrieved from <http://www.washingtonpost.com/wp-dyn/articles/A5490-2005Mar27.html>. April 21, 2005.

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