

**WRITTEN COMMENTS FOR THE DELAWARE BOARD OF PHARMACY  
REGARDING PROPOSED REGULATION 3.0  
CONCERNING PHARMACIST REFUSALS**

The National Women's Law Center ("Center"), based in Washington, D.C., is a nonpartisan, non-profit organization dedicated to improving the lives of women and girls. Through its Pharmacy Refusal Project, the Center has been at the forefront of the issue of pharmacist refusals to dispense contraception, working to protect patient access to contraception (including prescription and non-prescription emergency contraception) in pharmacies throughout the country.

The Center has learned that the Delaware Board of Pharmacy ("Board") has proposed amendments to regulation 3.0 ("proposed regulation") that would require the pharmacist-in-charge at each Delaware pharmacy to develop written policies for situations in which a pharmacist refuses to dispense pharmaceuticals because of religious, moral, or ethical beliefs. The Center appreciates that the Board has taken proactive steps to ensure that pharmacies are prepared in advance of a refusal. The Center also appreciates the Board's recognition of the delicate balance between a pharmacist's personal beliefs and the patient's right to receive medication in a timely manner and without obstruction.

The Center is concerned, however, that the proposed regulation tips the balance in favor of the pharmacist. Though it is the policy of the Board to provide timely and appropriate care to pharmacy customers, the proposed regulation undermines this commitment by failing to include a requirement that the patient receive the medication *on-site* in the event of a refusal. The Center therefore urges the Board to clarify that any written pharmacy policy must guarantee that lawful requests for in-stock medication (absent contraindications or other professional concerns) are filled expeditiously and without delay *at the same pharmacy*. This approach truly meets patients' needs and is consistent with what other states have done, major pharmacy chain policies, and federal law.

**Background on the Issue of Pharmacist Refusals**

The vast majority of pharmacists do not refuse to fill prescriptions based on their personal beliefs and instead provide vital health services to the community and are a critical part of the health care system. Yet reports of pharmacist refusals to dispense contraception have surfaced across the country, in approximately two dozen states, ranging from California to Texas to Wisconsin. These refusals have occurred at major drugstore chains like Rite-Aid and Walgreen's in addition to smaller independent pharmacies, and have affected everyone from rape survivors in search of emergency contraception to married mothers in need of their birth control pills. Active obstruction of women's access to contraception goes beyond even refusal to dispense certain drugs. Pharmacists who refuse to dispense also have refused to transfer a woman's prescription to another pharmacist or refer her to another pharmacy. Other pharmacists have confiscated prescriptions, misled women about the availability of certain drugs or their mechanism of

action, publicly lectured women about morality, or delayed access to drugs until they are no longer effective.

Pharmacist refusals can have devastating consequences for women's health. Access to contraception is critical to preventing unintended pregnancies and to enabling women to control the timing and spacing of their pregnancies, with real consequences for maternal and infant health and mortality. A woman who wants two children must use contraception for roughly three decades of her life. Failure to provide emergency contraception is particularly burdensome given the extremely time-sensitive nature of the drug. For some women, pregnancy can entail great health risks and even endanger their lives. Also, women rely on prescription contraceptives for a range of medical purposes in addition to birth control, such as amenorrhea, dysmenorrhea, and endometriosis. These refusals interfere with the ability of women to meet their own basic health needs.

### **The Need to Ensure Patient Access to Medication On-Site**

The Delaware Board of Pharmacy already has issued guidance on the question of pharmacists' moral and ethical objections to providing services. In its March 2006 newsletter, the Board took the position that pharmacists have a right to refuse services they oppose based on religious, moral or ethical beliefs, but that patients have a right to receive timely, appropriate and lawful drug therapy.<sup>1</sup> Rather than resolving the potential conflict between pharmacists' and patients' rights, the Board encouraged pharmacies to adopt their own policies to deal with refusals.

Now, the Board has put forward a proposed regulation that requires pharmacies to establish procedures on refusals. The Center strongly supports provisions that direct pharmacies to have systems in place so that a refusal does not occur without advance preparation. Unfortunately, however, this proposed regulation does not adequately ensure that refusals do not burden patients' access to medication.

To protect patients, the proposed regulation must clarify that pharmacies' refusal procedures ensure that patients receive their medication *on the premises*. Individual pharmacists would be able to refuse, but patients still would receive their medication at the pharmacy without delay.

#### **Requiring On-Site Delivery Ensures Patients' Access**

Requiring on-site delivery of in-stock, lawful medications would truly ensure patient access to medication. Without this important clarification, the proposed regulation would allow pharmacies to arrange for transfers or referrals when a pharmacist refuses to provide medication based on personal beliefs. Yet, transfers to other pharmacies can be burdensome, especially for low-income and rural consumers. In Delaware, where there are many rural areas, traveling from one pharmacy to another in search of medication

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<sup>1</sup> *Considering Moral and Ethical Objections*, DELAWARE STATE BOARD OF PHARMACY NEWS (Delaware State Board of Pharmacy, Dover, Del.), Mar. 2006, at 4.

may not be possible. Nor does transfer to another pharmacy provide an adequate remedy if that pharmacy is closed, or a woman cannot find transportation.

Women seeking emergency contraception are at particular risk of harm, since emergency contraception is an extremely time-sensitive drug that is most effective if used within the first 12 to 24 hours after contraceptive failure, unprotected sex, or sexual assault.

Women seeking emergency contraception may be unable to travel to another pharmacy without considerable hardship, and thus some may forgo the drug altogether, resulting in unintended or medically ill-advised pregnancies. For sexual assault survivors, requiring a second visit to a pharmacy adds an unnecessary burden in a moment of crisis and could lead to an additional trauma that no woman should have to endure: the uncertainty of waiting to see if she is pregnant, and the hard decisions that follow.

A clarification that pharmacies' policies must guarantee access to medication on-site reflects the reality that accessing drugs from another pharmacy is burdensome and can be prohibitive for some patients.

#### Requiring On-Site Delivery in Consistent with Other States' Approaches

The approach of requiring pharmacies to deliver in-stock medications on-site when requested by customers has been adopted in other states. For example:

- Illinois's regulation states that "[u]pon receipt of a valid, lawful prescription for a contraceptive, a pharmacy must dispense the contraceptive, or a suitable alternative permitted by the prescriber, to the patient or the patient's agent without delay, consistent with the normal time frame for filling any other prescription."<sup>2</sup>
- The Washington state pharmacy board recently adopted a rule to require pharmacies to deliver lawfully prescribed drugs and devices as well as those approved by the FDA for restricted distribution by pharmacies.<sup>3</sup>

Recognizing the problems inherent in transfers or referrals, these states have adopted approaches that ensure pharmacists have the right to refuse, but only if the patient can get the medication they need in an appropriate time frame *and at the same pharmacy*.

#### Requiring On-Site Delivery is Consistent with Major Pharmacy Chain Policies

A rule specifying that pharmacies must ensure patient access to medication on the premises would be congruent with the policies of several major drugstore chains, including CVS, Rite-Aid, Walgreen's, Wal-Mart, and Kmart.<sup>4</sup> These major chains recognize a pharmacist's ability to refuse to provide medication, but guarantee that patients receive their lawful medications on-site, without discrimination or delay.

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<sup>2</sup> ILL. ADMIN. CODE tit. 68, § 1330.91 (2005).

<sup>3</sup> Adopted rule of WA Board of Pharmacy, to be codified at WASH. ADMIN CODE § 246-869- 010 (2007).

<sup>4</sup> Behind the Counter: PPFA Brings You the Real Story, <http://www.saveroe.com/campaigns/fillmypillsnow/scored> (last visited Sept. 18, 2007).

### Requiring On-Site Delivery is Consistent with Existing and Proposed Federal Law

Requiring pharmacies to ensure that a woman leaves the store with contraceptives in hand is consistent with Title VII of the Civil Rights Act of 1964, the federal law that prohibits discrimination against employees for their religious beliefs. It also is consistent with legislation pending in the U.S. Congress. The Access to Birth Control Act (S. 1555) requires pharmacies to make accommodations so that women do not leave the store without the medications they depend on.

### **Conclusion**

The National Women's Law Center commends the Board for proposing that pharmacies have systems in place to deal with refusals. We urge the Board to clarify that these policies must ensure that individuals do not leave the store without their lawfully prescribed or ordered medication. This is the only approach that truly protects patient access to medication while still allowing pharmacies to make arrangements to accommodate the objections of individual pharmacists.

Thank you in advance for your consideration of our suggestions. If you have any questions, please do not hesitate to contact Gretchen Borchelt (Senior Counsel) of the National Women's Law Center at (202) 588-5180.