

**Written Testimony to the Nevada Board of Pharmacy
Regarding Proposed Refusal Amendment to Chapter 639
of the Nevada Administrative Code**

The National Women's Law Center, based in Washington, D.C., is a nonpartisan, non-profit organization dedicated to improving the lives of women and girls. The Center has been at the forefront of the issue of pharmacy refusals to dispense contraception, working to protect patient access to prescription contraception in pharmacies throughout the country. The Center is pleased to be able to follow up its written testimony submitted to the Nevada Board of Pharmacy in October 2005 with this additional testimony about its proposed amendment to the Nevada Administrative Code regarding pharmacy refusals.

I. Proposed Language

Below is our suggested language, building on your proposed regulation. Note that all additions are in italics.

Section 1. NAC chapter 639 shall be amended to add the following new language:

1. A pharmacist may *not* refuse to fill a prescription ~~because~~ *unless*:
 - (a) The filling of the prescription would violate a genuine principle or tenet of conscience held by the pharmacist *and the pharmacist has provided written notice to his or her employer, and;*
 - (b) *The pharmacist does not discuss with the patient the genuine principle or tenet of conscience held by the pharmacist that is the basis for his refusal for filling the prescription.*
 - (c) ~~The pharmacist reasonably believes that the filling of the prescription would be unlawful or potentially harmful to the patient; or~~
 - (d) ~~The pharmacist reasonably believes a prescription is fraudulent or not for a legitimate medical purpose.~~
2. A ~~pharmacist~~ *pharmacy that has been notified by a pharmacist* who refuses to fill a prescription pursuant to paragraph (a) of subsection 1:
 - (a) Shall, *if the medication is in stock,* respect the patient's right to have access to ordered medications and shall arrange without delay to have the prescription filled

without delay by another pharmacist at the pharmacy or by a pharmacist at another pharmacy; and

- (b) *Shall, if the drug is not in stock, offer the patient the choice of (i) reordering the drug, according to standard ordering procedures, to ensure timely access to the drug; (ii) arranging to have the prescription filled without delay at a nearby pharmacy that is known to stock the drug; or (iii) returning the prescription to the patient and referring the patient to a nearby pharmacy that is known to stock the drug. ~~not discuss with the patient the genuine principle or tenet of conscience held by the pharmacist that is the basis for his refusal for filling the prescription.~~*
3. If a pharmacist has notified his employer in writing that he will refuse to fill prescriptions for some drug or drugs ~~for a reason under subparagraph (a) of pursuant to section 1~~ prior to refusing to fill any such prescription, the pharmacist may not thereafter be disciplined or terminated for refusing to fill a prescription. ~~provided that the pharmacist has also complied with subparagraphs (a) and (b) of section 2.~~
4. Nothing in this regulation alleviates any other legal or professional obligation a pharmacist otherwise owes to a patient.

II. Explanation of Proposed Changes

Section 1. We suggest changing the first line because it makes clear that the primary purpose of the Nevada Board of Pharmacy in taking up the issue of pharmacist refusals is to ensure that a pharmacist's right of refusal is conditioned upon a duty to protect both patients and employers in a refusal situation.

The other suggestions in section 1 merely reflect a tightening of the language:

- We suggest making explicit in section 1 the notice requirement that was implicit in section 3.
- We suggest moving the provision prohibiting discussion of the reason for the refusal to section 1, since it is a condition of permitting a refusal.
- We suggest eliminating sections 1(c) and (d) because they are covered by section 4 and are therefore unnecessary.

Section 2. We suggest placing the duty in section 2 on the *pharmacy* rather than the pharmacist. In order to ensure access to medication, it is important that pharmacies have systems in place to guarantee that prescriptions are filled expeditiously and without delay. This protects the patient's access to prescriptions while still allowing pharmacy owners to make arrangements to accommodate the objections of individual pharmacists. It also shifts the duty from the refusing pharmacist to the pharmacy, reflecting the reality

that a pharmacist who is unwilling to fill a prescription often is unwilling to arrange for another pharmacist to fill the prescription. We suggest clarifying that section 2(a) only applies when the drug is in stock. We also suggest moving the “without delay” language to ensure that the prescription is *filled* without delay.

We suggest language in section 2(b) to cover out-of-stock drugs. We suggest three options for the pharmacy: reordering the drug, arranging for the prescription to be filled at a pharmacy known to stock the drug, or returning the prescription to the patient and providing a meaningful referral. We believe leaving the choice to the patient is the best way to ensure that patients do not face additional burdens. This new language provides considerable leeway to the pharmacy while ensuring that patients’ needs are met in the event of a refusal and an out-of-stock drug.

Section 3. The changes in section 3 were made to comport with the rest of our suggestions.

Thank you in advance for your consideration of our suggestions. The National Women’s Law Center looks forward to working further with you on this proposed regulation. Please do not hesitate to contact Gretchen Borchelt, Counsel, at (202) 588-5180 if you have any questions.