

Section 2:

What to Do if You Have a Non-Receptive Board

If your research shows that the board is not receptive to developing affirmative policies to protect patient access, you still have options.

If the results of your research into the state pharmacy board indicate that it is not receptive to working with advocates to develop affirmative policies that would protect women's access to contraception at the pharmacy, you still have options.

Monitor the Board's Actions

If your board is less than enthusiastic about regulating on pharmacist refusals or indicates that it is in favor of refusals, you still should keep up to date on the board's rulemaking. You can do this by monitoring your state register, as described below, and by reading your state pharmacy board newsletter and/or keeping tabs via the board's website, as described in the prior section.

Monitoring Rulemaking

Monitoring rulemaking is critical because it can alert you if the board decides to move forward with a rule that permits refusals and/or does not contain patient protections. For example, by reading the state register, advocates learned in March 2007 that the Iowa Board of Pharmacy was considering adopting a bad rule on pharmacist refusals. This prompted them to organize and submit comments to the board, which helped convince the board to withdraw the proposal.¹¹

Typically, any notice regarding changes in existing regulations or proposals for new regulations will be in a state "register," which is a guide to administrative rulemaking in your state. Registers are generally published every two weeks or so. In order to stay abreast of what your state's pharmacy board is doing, be sure to get on the notification list for alerts when regulations are formed and announced. The register also will provide notice about comment periods and relevant hearings.

Alerts are either electronic or via postal mail. Usually you can sign up for these lists through the pharmacy board website, or you can request to be on a list by writing to your board. States may even have an online version of their register that you can access. For example, Maryland maintains an online version of its register.¹²

TIP:

Check on whether the legislature or governor has a role in the rulemaking process. If so, and if they are friendly to the issue, you could seek their assistance in stopping a bad proposed rule.

TIP:

If you find that the board has proposed a rule that permits refusals and/or does not contain patient protections, do not assume that the board members are hostile or have bad intentions. As Sharon Breitweiser, Executive Director of NARAL Pro-Choice Wyoming found when dealing with the Wyoming state pharmacy board, they were not hostile, they just had not thought through the long-term, possibly unintended consequences of various actions.

Influence Board Membership

Advocates may be able to influence board membership, which could change a hostile board to a friendly one. First, check to see if there are vacancies on your state board of pharmacy. Also check to see if any terms are about to expire.

You will need to learn about the appointment process and the makeup of the board, as described below. Check the board's website for this information. If this information is not available on the board's website, look to state statutes and administrative codes that govern the practice of pharmacy. Usually there is a link to these statutes and codes on the pharmacy board website.

TIP:

The National Association of Boards of Pharmacy publishes an annual Survey of Pharmacy Law, which includes a breakdown of each state's board of pharmacy membership, including the number of pharmacist and public members, requirements for those members, and term length and limits. There is a fee charged to access the Survey (see Appendix D for more information), but the National Women's Law Center has a copy, and can provide technical assistance.

Learn About the Appointment Process

If a vacancy exists or is forthcoming, you should find out how members are selected. Some states require appointment by the governor; some states allow the state pharmacist association to nominate members; in others members are elected by ballot; and in some, there is a role for the legislature. In Montana, for example, members of the pharmacy board are appointed by the governor with confirmation

by the state senate for up to two-five year terms.¹³ Your state may even have a general application for appointed positions.¹⁴ Given the political situation in your state, you can decide whether you can influence the process.

Learn About the Required Makeup of the Board

Once you know the process and whether there are vacancies currently or in the near future, you can work to get sympathetic pharmacists on the board. Depending on the state, boards can have different types of practicing pharmacists. The Maryland Board of Pharmacy, for example, includes two acute care hospital pharmacists, two independent pharmacists, two pharmacists that work in chain store pharmacies, two at-large pharmacists, one pharmacist that works in home care services, and one pharmacist that works in long-term care.¹⁵ Getting pharmacists concerned about patient protections appointed to the board will require you to identify and develop relationships with those pharmacists, so you can champion their appointment.

Depending on your state, you also may be able to get non-pharmacists on the board. Some states require that a pharmacy board have “citizen members” who are not pharmacists by training and have no relation to the practice of pharmacy or a financial interest except as a consumer.¹⁶ In Arkansas, for example, two members of the Board must be citizen members: one must represent consumers while the other must be at least sixty years old in order to represent senior citizens. The citizen members are appointed from the state at large and confirmed by the state senate.¹⁷

Approach Another State Official

Depending on the political climate in your state, you might want to explore the idea of not going to the pharmacy board. Instead, you could approach either the governor or the state attorney general in order to address the issue of refusals. You also could focus more locally, asking the city council or other local officials to take action for your particular area. There are many possible avenues these state or local officials could initiate. These include: passing an executive order; issuing an opinion interpreting existing laws in the state to prohibit refusals; conditioning city or government contracts on good policies; or initiating emergency rulemaking on the topic.

For example:

- On April 1, 2005, prompted by several refusal incidents, Illinois Governor Blagojevich compelled the Department of Financial and Professional Regulation to issue an emergency regulation requiring retail pharmacies in the state to fill prescriptions for contraception without delay.¹⁸ After subsequent review by a legislative committee, the rule became permanent.
- In August 2005, the Austin City Council passed a measure to require Walgreens, the city’s pharmaceutical contractor, to fill all contraceptive prescriptions for patients enrolled in its medical assistance program “without discrimination or delay.”¹⁹
- In March 2006, the Connecticut Comptroller requested a ruling from the state attorney general that the state health insurance plan for 188,000 state employees and retirees should no longer cover prescriptions at Wal-Mart unless it agreed to stock emergency contraception. The attorney general so ruled, and the Comptroller sent a letter to Wal-Mart telling the retail chain that it would be dropped from the state insurance plan unless it began stocking EC in the state. Wal-Mart agreed to stock EC in Connecticut.²⁰

TIP:

Refer to Section 3 for an explanation of emergency rulemaking.

If you are interested in pursuing any of these options, the National Women’s Law Center can help you to figure out whether the laws and rules in your state can be used in these ways.

Continue to Bring Attention to the Issue

You should look to Section 4 for ways to gather evidence of refusals and continue to bring attention to the issue of pharmacist refusals in your state.

Work with the Pharmacy Board on Other Things

If your board seems hostile only to acting on refusals specifically, but might be open to other ideas, see Section 6.

TIP:

If you can work with the pharmacy board on other issues, such as a pharmacy patient’s bill of rights or pharmacist education and training, and establish a good working relationship, you might be able to work with them later on the issue of refusals.

