

Section 6:

Other Things You Can Ask Your Board to Do

**If your board will not address refusals,
there are other tacks you can pursue
that may be less controversial but still
beneficial to consumer access.**

If your board is resistant to issuing a rule or policy directly addressing the issue of refusals in the pharmacy, there are other “asks” you can pursue that may seem less controversial but can still help women access contraception at the pharmacy. These also might be options for advocacy if your board has already taken a position or adopted a rule on refusals or your legislature has passed a law.

Prohibition on Discrimination

One option is to ask the pharmacy board to initiate rulemaking in order to prohibit discrimination in the pharmacy. A non-discrimination provision that includes sex or gender could be used in the event of a refusal to dispense prescription contraceptives or over-the-counter emergency contraception.

Eight states (AK, IA, ME, MD, ND, OK, PA, WI) prohibit discrimination in the pharmacy on the basis of sex alongside other grounds. These provisions make discrimination a ground for discipline. A good example of a very inclusive non-discrimination provision is Iowa’s, which states:

It is unethical to unlawfully discriminate between patients or groups of patients for reasons of religion, race, creed, color, gender, gender identity, sexual orientation, marital status, age, national origin, physical or mental disability, or disease state when providing pharmaceutical services.⁵⁸

Pursuing a non-discrimination provision also would present an opportunity for reproductive rights advocates to partner with non-traditional allies who would be invested in ensuring fairness in the pharmacy. By placing sex alongside other prohibited grounds—such as race, age, or disease state—in a non-discrimination provision, advocates could work with groups such as minority groups, disability groups, or HIV/AIDS groups.

Pharmacy Patient’s Bill of Rights or Code of Ethics

You also might consider asking your pharmacy board to adopt a pharmacy patient’s bill of rights or a code of ethics. These are generally statements of the rights pharmacy patients deserve as a recipient of pharmacy services and a guide to the professional conduct of pharmacists.

Some states have a pharmacy patient’s bill of rights or code of ethics that provides protections for customers seeking medication. For example, Wyoming has a binding codes of ethics in its state pharmacy regulations requiring that a pharmacist “hold the health and safety of patients to be of first consideration. . . .”⁵⁹ New Hampshire has both a code of ethics and a patient’s bill of rights. Its code of ethics requires that the pharmacist “fulfill all professional obligations conscientiously and with due respect for the physical and well-being of the community. . . .”⁶⁰ Its patient’s bill of rights says that patients have a right to “have their prescriptions dispensed and pharmacy services provided at a pharmacy of their choice in an atmosphere which allows for confidential communication. . . .”⁶¹

TIP:

The American Pharmacist Association’s Code of Ethics has patient-protective provisions that can serve as a model for state pharmacy boards. <http://www.aphanet.org/>

Stocking Requirements

Women continue to encounter problems with accessing EC because some pharmacies do not stock it. For example, a recent survey by NARAL Pro-Choice North Carolina Foundation found that 40% of pharmacies surveyed did not have EC in stock. And only 57% of rural pharmacies had it in stock at the time of the survey.⁶² Although no state has a law or regulation requiring pharmacies to stock particular drugs or medication, there are states that recognize that pharmacies should be responsive to the community they serve and stock drugs to meet those needs. Eighteen (18) states have such provisions in their administrative codes.⁶³

The language of each state’s stocking provision varies, but each requires pharmacies to be responsive to their customers. Some require the pharmacy to stock drugs to meet the needs of the community it serves; others require a stock sufficient to serve or protect public health; others require a “representative” or “adequate” stock of drugs. These provisions are consistent with the practice of pharmacy—they ensure that customers’ needs are met while also allowing pharmacies the discretion to make business decisions based on their location and customer base. A pharmacy in a retirement community, for example, would not be expected to stock EC, while a pharmacy near a college campus would need to do so.

These types of stocking provisions already have proved useful in challenging bans on stocking EC. In Massachusetts, NARAL Massachusetts and other advocates used their state’s stocking provision as the basis for a complaint filed with the state pharmacy board in early 2006. The complaint said that Wal-Mart’s refusal to stock EC violated the state’s provision, which requires all pharmacies to “maintain on the premises at all times . . . commonly prescribed medications in accordance with the usual needs of the community.”⁶⁴ The Massachusetts pharmacy board agreed and ordered Wal-Mart to stock and dispense EC at all of its pharmacies in Massachusetts.

Getting a similar provision in your state could provide a useful tool if you encounter refusals to stock EC or other drugs that are crucial to women’s health and well being. One of the best provisions is Pennsylvania’s, which states: “A pharmacy shall maintain a supply of drugs and devices adequate to meet the needs of the health professions and the patients it is intended to serve.”⁶⁵

Notice in Pharmacies

Another strategy for advocates is working with the pharmacy board to require pharmacies to post notices related to EC and refusals.

Notice in pharmacies that do not stock EC and a referral to another pharmacy

You could work with the pharmacy board to require pharmacies to post notice if they do not stock EC. One state—CO—has this requirement,⁶⁶ as does New York City.⁶⁷ Even better would be notice of not stocking and a referral to another pharmacy known to have the medication in stock. The addition of the referral requirement will save women critical time in their search for another pharmacy that carries the drug. The city of Madison, Wisconsin requires notice of this type.⁶⁸ A similar notice requirement could be developed through the pharmacy board, and apply state-wide.

Such notice requirements balance a pharmacy's decision not to stock EC with the needs of a patient seeking lawful medication that is most effective the earlier it is taken. Notice requirements may be effective in increasing the percentage of pharmacies that stock. For example, in New York City, in 2002 only 55% of pharmacies stocked EC. The notice requirement was passed in 2003. A recent survey indicated that 94% of pharmacies now stock EC.⁶⁹

Notice in pharmacies of anti-refusal provisions

If you are in a state with a law or policy prohibiting or limiting refusals, you could ask the pharmacy board to require pharmacies to post signs that inform customers of the provisions. The sign also could include information about filing a complaint in case the provisions are not followed. In Illinois, for example, the Department of Financial and Professional Regulations amended its administrative code to require all retail pharmacies to post notice of customers' rights under the state's anti-refusal regulation, and also information about how customers can file a complaint if they are refused.⁷⁰ Although this action came at the direction of the governor, it could come through the pharmacy board instead.

Pharmacist Education and Training

There is a lack of awareness about what emergency contraception is and how it works. Unfortunately, many pharmacists confuse EC with the abortion pill, or RU-486, even though they have different outcomes, mechanisms of action, and distribution. There is also widespread confusion among pharmacy staff about the specific conditions under which Plan B® can be sold in pharmacies.⁷¹ This leads to consumers leaving the pharmacy without EC, because of the misconception that they could not obtain it.

One potential avenue for advocates is to work with your state pharmacy board to educate pharmacy staff about EC. Education should focus not only on what EC is and how it works, but on the FDA's conditions for sale of EC OTC. For example:

- Both MergerWatch and Pharmacy Access Partnership have facilitated pharmacist trainings on EC across the country and are willing to work with state advocates and pharmacy boards to set up trainings. Surveys done after MergerWatch's trainings indicated an improvement in the level of knowledge about how EC works and increased understanding of the FDA restrictions.⁷²
- Family Planning Advocates of New York State worked with the state pharmacy board and other members of a broad coalition in the state to develop and disseminate factsheets targeted at pharmacists and consumers. Three factsheets were created to increase pharmacists' awareness about Plan B® and inform consumers about what to expect when they purchase Plan B® at a pharmacy. The pharmacy board assisted in development and distribution. The board also helped disseminate information about a web conference convened by the advocates. To view these factsheets and find a link to the web conference, go to the Resources section at www.edfundfpa.org or www.fpaofnys.org.

TIP:

Remember: Women and men over 18 can purchase EC without a prescription. And anyone who is authorized to be behind the pharmacy counter—including pharmacy interns and technicians—can check I.D. and sell Plan B®. It does not have to be the pharmacist!

Pharmacy Access to EC

Another initiative advocates could work on with pharmacy boards is passing agreements to allow pharmacists to prescribe and dispense EC to women without a prescription from a doctor. Nine states—AK, CA, HI, ME, MA, NH, NM, VT, and WA—have these “collaborative practice” agreements. Despite the FDA's decision to allow women 18 and older to access EC without a prescription, these laws are still needed to ensure that women under the age of 18 will be able to access EC in a timely manner and without unnecessary hurdles. Pharmacists and pharmacy boards tend to support such agreements, since they give pharmacists more authority. Pharmacy Access Partnership's website (<http://www.go2ec.org/>) can help you figure out whether your state has an optimal environment for such an initiative.

