

Working with State Pharmacy Boards to  
Stop Refusals in the Pharmacy

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# Introduction

**Imagine walking into your local pharmacy, attempting to obtain medication, and being refused. Not because you have an invalid prescription or potentially dangerous interaction with another medication you take, but because of the pharmacist's personal beliefs.**

Imagine walking into your local pharmacy, attempting to obtain medication, and being refused. Not because you have an invalid prescription or potentially dangerous interaction with another medication you take, but because of the pharmacist's personal beliefs. Unfortunately, for a growing number of women in our country, this scenario is a reality. While the vast majority of pharmacists are professionals who want to serve their patients' health needs, there are pharmacists who refuse to provide medication not because of legitimate medical or professional reasons, but because of personal beliefs.

Refusals in the pharmacy have centered primarily, though not exclusively, on access to emergency contraception (EC), otherwise known as the morning-after pill or Plan B®. EC is a time-sensitive drug that prevents pregnancy and is most effective in the first 12 to 24 hours after birth control failure, unprotected sex, or sexual assault. In August 2006, the Food and Drug Administration approved EC for non-prescription use by women 18 and older. Despite the FDA's decision to make EC more available, refusals based on personal beliefs are still a problem. Non-prescription EC is kept behind the counter, so even women who do not need a prescription must interact with pharmacists or other pharmacy staff who may have strong personal beliefs against providing the drug. Since non-prescription EC arrived in pharmacies, a number of refusal incidents have been reported.

But it is not just EC that pharmacists are refusing to provide to women. Pharmacists are also refusing to fill prescriptions for regular birth control. These refusals can have devastating consequences for women's health. Access to contraception is critical to preventing unintended pregnancies, to enabling women to control the timing and spacing of their pregnancies, and to protecting women's health and their ability to bear healthy children. Also, women rely on prescription contraceptives for a range of medical reasons in addition to birth control, such as amenorrhea, dysmenorrhea, and endometriosis.

## Addressing Refusals through State Pharmacy Boards

Every state has a pharmacy board, which is a government agency created by law. It is usually part of a larger agency, such as the state Department of Health or Department of Commerce and Consumer Affairs.

State pharmacy boards have various powers and responsibilities, which are determined by their own rulemaking and by the state legislature. State pharmacy boards set standards for the practice of pharmacy through regulations, licensing, and discipline. Pharmacy boards issue pharmacist and pharmacy licenses and permits. They educate consumers. Boards assure compliance with state pharmacy laws and regulations and investigate any violations. Punishment for violations of pharmacy laws and regulations can include fines, suspensions, licensing conditions, or other discipline.

Because of all they can do, pharmacy boards wield enormous power over pharmacies and pharmacists licensed in the state. Pharmacists must abide by rules and policies adopted by the board, or face discipline. Turning to state pharmacy boards is therefore one of the best ways to address the growing problem of refusals in the pharmacy. The boards are often easier to approach and act more quickly than the legislature. In addition, state pharmacy boards may view it as their duty to get involved, since they are responsible for regulating the practice of pharmacy in the state. In fact, state pharmacy boards, not state legislatures, have been at the forefront of the issue. So far, pharmacy boards in 12 states have taken action to ensure patient access to medication at the pharmacy, while only 2 state legislatures have done so.<sup>1</sup>

Your state pharmacy board can become involved in the issue of pharmacist refusals in a number of ways. It can pass new regulations or policies to protect women's access to contraception in the pharmacy; interpret existing laws or regulations in a patient-protective manner; review complaints of refusals and impose discipline; and enforce existing proactive laws or policies. Each of these options, and others, will be explored in more depth in the sections that follow.

### Pros

- \* Pharmacy boards have considerable authority over pharmacists and pharmacies. This means that pharmacists must take rules and policies adopted by the pharmacy board very seriously.
- \* The board may believe that it is more suited to take up this issue and therefore can be more likely to do so than the legislature or another state official.
- \* Pharmacy boards are usually easier to approach and can act more quickly on a topic than state legislators.
- \* There are many options available to pharmacy boards that want to take action on the issue of refusals.

### Cons

- \* Pharmacy boards may be hesitant to tackle issues they view as controversial, preferring to leave that to the legislature.
- \* You are likely to encounter ideological differences among pharmacy board members just as you would among legislators.
- \* Pharmacists may resist action by the pharmacy board on this topic more actively than they would resist action by the legislature.
- \* Pharmacists are more likely to oppose any act that could be construed as limiting their practice.

## A Guide to the Toolkit

This toolkit is intended to serve as a guide for advocates to work with the state board of pharmacy on the issue of refusals in the pharmacy. As an advocate, you can play a key role in fostering pharmacy board action. You can approach the pharmacy board to encourage it to create a policy or regulation that protects women's access to contraception at the pharmacy. If that is not possible, you may be able to get the board to take disciplinary measures against refusing pharmacists or put in place other patient-protective provisions. You also can work with the pharmacy board on other measures that improve women's access to contraception at the pharmacy. The toolkit will explain how to achieve these goals.

This toolkit is organized into six basic sections.

### Section 1: Assessing Whether Your State Pharmacy Board is Likely to Take a Position on the Issue of Refusals in the Pharmacy

This section focuses on how you can obtain more information on the pharmacy board in your state and how you can assess whether your board might be open to taking action on the refusal issue.

### Section 2: What to Do if You Have a Non-Receptive Board

After assessing the board, you might decide that it is not interested in working with you on this issue. It may even be hostile. Yet a non-receptive board does not rule out action on the issue. This section describes actions you can take when faced with a board that does not seem interested in working with advocates or that may be hostile to the issue.

### Section 3: Actions You Can Encourage Your Pharmacy Board to Take

This section of the toolkit will focus on the powers of the pharmacy board in acting to ensure patient access to medication at the pharmacy. This section explores three options: (1) administrative rulemaking; (2) issuing policy or interpretive guidance; (3) investigating and resolving complaints. This section explains these options in depth, offering the pros and cons of each to help you decide which might be best for your state.

### Section 4: Methods and Tips for Approaching Your Board

This section will walk you through different methods for approaching the pharmacy board in your state. These include building a broad coalition, gathering evidence of a problem, presenting persuasive arguments to the board, and using the media.

### Section 5: What to Do After You Have a Law, Rule, or Policy on Refusals in the Pharmacy

If you are successful in convincing the state pharmacy board to pass a rule or policy to protect patient access to medication, your work with the pharmacy board is not over. This section details additional action steps possible once a rule or policy is in place. This section also is relevant to advocates in states where the legislature has passed a law governing the issue.

### Section 6: Other Things You Can Ask Your Board to Do

This section walks you through options that are not focused directly on refusals, but would protect patient access to contraception. These options should be considered by advocates in states where pharmacy boards are friendly but reluctant to directly take on the issue of refusals. These options also are relevant to those states where a law, rule, or policy is in place, but advocates want to continue working with the board to improve patient protections.

### Appendices:

Appendix A provides a list of states that have taken a position on pharmacist refusals, with details on the position and how it was passed, whether by the pharmacy board or state legislature.

Appendix B explains the elements of a model "duty to dispense" rule or policy.

Appendix C is a sample complaint to the pharmacy board in the event of a refusal.

Appendix D is a list and description of resources.

## Pharmacy Board Action on Refusals

**Step 1: Is your pharmacy board likely to act in a proactive way? Section 1 will help you assess your pharmacy board to find out.**

If **no**, proceed to Step 2.

If **yes**, proceed to Step 3.

**Step 2: If you have a non-receptive board, see Section 2 for advice on monitoring pharmacy board action, working to get new members on the board, and approaching other state officials.**

**Step 3: What should you ask your board to do? Section 3 will help you decide what kind of pharmacy board action is most appropriate for your state. Is it:**

- Passing a new regulation?
- Passing a policy or interpretive guidance?
- Responding to a complaint?

Once you have figured out which action you would like to pursue, go to Step 4.

**Step 4: How should you approach the board and convince it to take action? See Section 4 for advice on steps to take before reaching out to the board, including coalition building, finding evidence of refusals, developing your best arguments, and using the media.**

**Step 5: What happens after you get a law, rule, or policy ensuring that patients can obtain their medication at the pharmacy? Your work is not over. Section 5 explains what steps you can take to guarantee continued patient protection.**

**Step 6: What else can you do with the board? Section 6 explains other “asks” that are not directly related to refusals, but will go far in protecting patient access to contraception.**