

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.¹

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.

Section 1:

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

**Before approaching your pharmacy board,
“get to know” the board members, staff, and
board positions.**

Before approaching your pharmacy board about the issue of refusals in the pharmacy, you should “get to know” your board. Doing so will help you assess how likely the board is to take action on the issue and what form the action could take. You can get to know your board in different ways, including learning about board and staff members and looking for comments on the board website, in board newsletters, or in the press. Attempting to learn more about your state’s pharmacy board does not have to be a daunting task. This section will walk you through each of these steps.

Learning About Board Members

To get to know your board, start by learning about the board members.

The pharmacy board’s website is the best place to start. On most pharmacy board websites, there is a link for “Board Members.” There you should find the names of board members, their position, and their occupation. Some board websites also will provide background information on the members of the board, including their outside memberships/affiliations and activities and who appointed them, which can be helpful in determining how receptive they may be to the issue.

If information on pharmacy board membership is not available on the website, you should call the board office. Once you have the names of board members, you can try a basic internet search or ask others about their background and orientation.

TIP:

A comprehensive list of all boards of pharmacy within the United States, complete with websites and contact information, can be found on the website of the National Association of Boards of Pharmacy, <http://www.nabp.net/>.

Learning About Staff

In addition to learning about members of the board, it is important to have a sense of the professional staff working for the board. While background information for staff may not be readily available on the board website, it is worth trying to gather information, by performing a basic internet search or asking about them in the community. This is because staff are usually the ones handling the day-to-day operations of the board, such as drafting regulations or policies or assessing comments from the public about an issue. Legal counsel for the board are in a particularly important position when it comes to issuing interpretations of existing law or drafting new rules or regulations. Staff therefore may have an influence in where the board comes down on the issue of pharmacist refusals. For example, in Wyoming, a board member who read about a refusal incident wondered whether the board could discipline a refusing pharmacist. This prompted *staff* to draft a regulation governing refusals.² Similarly, in your state, it may be the staff with whom you would work on the issue—by bringing it to a staff member’s attention, suggesting or editing language for a regulation or policy, or urging staff to issue an interpretation of existing law.

Researching Board Positions that Relate to Refusals

You also should do research into board actions and positions that may relate to refusals. Look for:

- any information on the topic of refusals to provide drugs, whether it is contraception or any other drug
- information on any conduct that a pharmacist might engage in during a refusal, such as harassment or violations of confidentiality
- any duties pharmacists owe to the patient

Finding this information will help inform you about the board’s past positions on related conduct and give you insight into how the board could come out on the issue of refusing to provide contraception. It also can help bolster arguments to the board when asking it to act on the issue. For example, you could find that the board has developed guidelines for pharmacists on patient confidentiality. If you are filing a complaint about a refusing pharmacist who yelled at the woman or spoke loudly about emergency contraception and her need for it in front of other customers, you can refer to those guidelines when making a case that the pharmacist has violated the standard of practice.

Website

Start by looking at the board’s website. Look at all sections of the website, to see if anything relevant to the issue of refusals appears on any of the pages. For example, the North Carolina board of pharmacy posted its statement on “conscience clauses” under “Pharmacist FAQs” on its website.³

You also should try the site’s “search” function. Try searching with the words “refusal” (and variations like “refuse”), “conscience,” “EC” and “Plan B.” Those words should lead you to any position the board has taken on the issue of refusals in the pharmacy. Conducting that search on the Texas pharmacy board website, for example, yielded a statement about pharmacists refusing to provide Plan B®.⁴

In addition, try to think of other words that could come up in a refusal situation. Search for words like “transfer,” “confidentiality,” “harass” and “fraud” in order to find other guidelines or positions that could be useful.

If there is a way to search board meeting minutes on the website, you should do so. You might come across minutes from a pharmacy board meeting in which refusals or a related issue were discussed. For example, searches of the Maryland Board of Pharmacy minutes yielded a discussion on “conscience clauses” at its October 20, 1999 meeting, which illuminates the positions of various members of the

board on the topic.⁵ Such discussions can give insight into board members' positions on the subject and whether the board as a whole has made a decision about rulemaking or policy guidance development on the subject.

Newsletters

State board of pharmacy newsletters contain information for pharmacists about their state's pharmacy laws and regulations. In the newsletters, boards also publish reports of pharmacist or pharmacy discipline for rule violations. Boards also may use the newsletter to discuss "hot topics," like pharmacist refusals.

You should search the state board of pharmacy's newsletters for anything related to refusals to provide drugs. A few state boards of pharmacy have published information about refusals in their newsletters. For example, the Delaware pharmacy board published its 2006 policy guidance on refusals in its newsletter.⁶ Even if you do not find a direct policy guidance or statement on refusals, you might find another refusal-related discussion that can give you insight into the board's position. For example, the Arizona pharmacy board in its April 2006 newsletter explained its position on a refusal-related bill pending in the state legislature.⁷

TIP:

Newsletters are also the place you would find any reports of discipline of pharmacists for refusing to fill a prescription.

Just as you should search websites for information on conduct beyond actual refusals, such as harassment of customers or violations of confidentiality, you should search newsletters for the same types of things. Knowing where the board stands on this conduct can be helpful as you move forward on refusals to provide contraception. For example, the Alabama pharmacy board in May 2001 discussed a case in another state, in which a pharmacist was sued by a patient for refusing to fill prescriptions for drugs other than contraception. The Alabama pharmacy board took the case as an opportunity to outline points regarding refusals, such as the fact that "Refusals should never be based on bias or prejudice toward the patient . . ." and "It is always a drastic step to refuse medication to a patient. . . ."⁸ These kinds of statements can be very helpful in bolstering a request to the board to take action on the issue of refusals.

TIP:

You can find newsletters for most states at the National Association of Boards of Pharmacy website, <http://www.nabp.net/>. You also can search your state's board of pharmacy website or contact the board for copies of recent issues.

Press

You should conduct a general basic internet search, or if you can, a Lexis Nexis or Westlaw News search in order to see if you can find any quotes from board or staff members in the press on the subject of refusals. When something related to refusals happens in a state—such as a refusal incident or fight in the legislature over a bill—reporters often seek comment from the state pharmacy board members or staff.

Statements in the press may give an indication of where the board will come out on this issue if asked to put forward a rule or adjudicate a complaint. For example, after a refusal to dispense birth control happened in New Hampshire, the *Foster's Sunday Citizen* ran a story on the topic. The paper interviewed the executive director of the New Hampshire Board of Pharmacy, who explained that although pharmacists in that state can refuse to fill prescriptions, the pharmacist must refer the customer to another pharmacist or pharmacy that can help.⁹ Press reports also could indicate that the board may believe there is a need for a rule addressing the issue. One press report in Ohio quoted the executive director of the pharmacy board as saying that refusals based on personal beliefs are not spelled out in state law, and "this is the problem."¹⁰

TIP:

Attend board meetings. This can be a good way to get a sense of board member and staff positions on women's reproductive health.

TIP:

Try to establish and strengthen a relationship with members of the board in advance of a specific refusal problem.

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.

Section 3:

Actions You Can Encourage Your Pharmacy Board to Take

**Your board has many options to ensure women
are not denied access to contraception at the
pharmacy.**

Your pharmacy board has a variety of responsibilities and powers. There are many options at its disposal to make sure women are not denied access to contraception at the pharmacy. These include:

- Initiating rulemaking
- Developing position statements or policy guidance
- Adjudicating complaints and imposing sanctions

This section will walk you through each of these options and help you to decide what is most appropriate for you to pursue with your board.

Rulemaking

Rulemaking is the process by which an administrative law—known as a regulation or rule—is created. State pharmacy boards pass rules to “fill in” existing laws, govern the practice of pharmacy, and provide specific guidance for pharmacists and pharmacies. Regulations and rules have the force of law.

What is the Goal with Rulemaking?

If rulemaking is the appropriate option for your state, you should try to get a rule that ensures a woman access to contraception in the pharmacy and that protects women in the event that a pharmacist refuses to dispense a medication. Appendix B describes the ideal elements that should be included in such a “duty to dispense” rule.

In the event that your pharmacy board is not willing to pass a rule focused on refusals or has a rule or policy that permits refusals, you could seek other rules that would protect patients in other ways, such as non-discrimination or stocking provisions. These other rulemaking “asks” are reviewed in Section 6.

How Do I Learn About My State Board’s Rulemaking Powers?

The process for administrative agency rulemaking is usually available within your state’s Administrative Procedures Act. A state Administrative Procedures Act (APA) lays out the process by which agencies take action. These laws should be available on your state legislative website, the pharmacy board website, or through a legal research engine such as Lexis Nexis or Westlaw. You also can do a basic internet search with the state name and “administrative procedures act.” The APA explains when a rule can be initiated and the process by which it moves from proposed to final rule. You also should check the laws and rules governing your state’s pharmacy board, for additional information about rulemaking specific to the board of pharmacy.

How Can Advocates Initiate Rulemaking?

There is a role for advocates in initiating rulemaking with the board of pharmacy. First, advocates can approach the board about the need for a rule on the issue of pharmacist refusals. It is important to note, however, that pharmacy boards have been resistant to initiate

Pros

- * A rule or regulation has the force of law. The pharmacy board has a responsibility to enforce laws governing the practice of pharmacy. Pharmacies and pharmacists must abide or face disciplinary proceedings.
- * The rulemaking process allows public comment by individuals and organizations. Not only does this give advocates a chance to shape the rule, but also gives advocates a chance to educate and rally the public so that their voice is heard.
- * It may be difficult to convince the pharmacy board it needs to initiate rulemaking. State pharmacy boards have been resistant to pursuing rulemaking on refusals unless there is proof that refusals are occurring. Advocates may need to first file a complaint or bring some other evidence of the problem to the pharmacy board.

Cons

- * Rulemaking involves numerous steps, including drafting and public comment, so the end result could be quite different from the original proposal. A proactive refusal rule could turn into one that permits refusals without patient protections.
- * The rulemaking process can take a very long time.
- * Depending on the state, the legislature or governor may have final say on a rule.
- * The other side has a chance to weigh in, so it is important for proponents of a rule to ensure they are well-organized and prepared to respond.
- * If there is a lot of attention and controversy over a proposed rule, the pharmacy board could get nervous and drop it altogether.

TIP:

Contact NWLC! The National Women’s Law Center can help you find the laws governing rulemaking in your state.

rulemaking unless there is a demonstrated need for the board to address the issue. Section 4 provides tips for bringing evidence to the board about refusals and arguments you can marshal to convince the board to undertake rulemaking.

Second, citizens—including individuals or associations—may be able to formally request that the pharmacy board develop new rules. This is through a petition or “petition rulemaking.” For example, in Virginia, any “person”²¹ may petition the board of pharmacy at any time to develop a new rule or to amend an existing one.²² Similarly, in Montana, an “interested person” may petition for the adoption, amendment or repeal of rules.²³ Although it will vary by state, each state that allows petition rulemaking will have a process by which the board must consider the petition and respond. Some state procedures provide guidance for the board in its consideration of a petition. For example, the New Hampshire Pharmacy Board specifically bases its decisions on whether a petition for a rule is consistent with established standards for the practice of pharmacy and licensees of the board, whether it lacks rulemaking authority, or whether it is contrary to legislative intent.²⁴

What is the Rulemaking Process?

Once rulemaking has been initiated a series of stages ensue. These stages vary by state but typically consist of: (1) notice to the public that a regulation is being considered or changed; (2) proposal of the regulation; (3) a comment period and/or a hearing, and (4) release of the final regulation and publishing. The typical life cycle for creation of a rule can vary. In Virginia, for example, the regulatory process for rulemaking lasts about eighteen months.²⁵

Notice to the Public

The first stage of rulemaking usually is notice to the public. This stage serves to alert the public to the fact that the board is considering a new rule or an amendment to an existing rule. The board usually will need to explain why it decided to initiate rulemaking on this subject and how the public can get involved. In Washington, for example, agencies are required to prepare a statement for the public at least 30 days prior to initiating proposed rulemaking. Among other things, the notice must discuss “why rules on this subject may be needed and what they might accomplish” and specify “the process by which interested parties can effectively participate in the decision to adopt a new rule and formulation of a proposed rule before its publication.”²⁶

Text of Rule Published

The second stage provides the public with the full text of the rule and more details about it. Idaho, for example, requires that the agency publish notice of proposed rulemaking in the register, which must include a statement describing the rule, the fiscal impact, the text of the proposed rule, the location, date, and time of any public hearings, the manner in which persons may make written comments on the proposed rule, and the deadline for public comments.²⁷

TIP:

You might be able to submit written comments on-line. Virginia, for example, has a website that allows you to submit on-line comments about regulatory changes. <http://www.townhall.state.va.us/>

Public Comment and Hearings

The next stage is the public comment and hearing stage, in which the public can have a voice in shaping the rule and expressing support or disapproval. Usually public comment takes the form of written comments, but states also may allow public hearings. Some states require hearings only if there are requests from the public for one. For example, the Utah Administrative Procedures Act requires a public hearing if ten interested persons or an interested association with more than 10 members requests one in writing within 15 days of the proposed rule’s publication.²⁸

Rule Finalized

The last stage occurs when the final text is prepared and published. Note that some states require the legislature or the governor to approve rules before they become final. In Oklahoma, for example, the governor has 45 days after receiving a rule to approve or disapprove it; if the governor disapproves a rule, it does not become effective, unless approved by the legislature.²⁹

Examples of State Pharmacy Boards that Have Engaged in Rulemaking on the Refusal Issue and the Role Advocates Played

- In August 2005, the **Wyoming** Board of Pharmacy gave notice of intended rulemaking on the issue of pharmacist refusals and asked for public comment. The rule would have allowed pharmacists to refuse to dispense prescriptions based on personal beliefs without adequate patient protections. Advocates learned of the rule and organized. The board received more than 100 letters objecting to the rule

TIP:

It is critical to know ahead of time whether your state’s rulemaking process allows the legislature or governor to reject the rule. You don’t want to put in the work of getting a patient-protective rule approved by the board without a sense of what your governor or legislature is likely to do. Check your state law!

and not a single letter in support.³² Twenty people testified against the rule at the Board's public hearing. At its October 2005 board meeting, the Wyoming Board of Pharmacy rejected the proposal. In doing so, the Board referred to the overwhelmingly negative public comments received from advocates and state groups.

- In September 2005, the **Nevada** Board of Pharmacy began exploring rulemaking on the issue of pharmacist refusals. It initially proposed a draft rule that would have permitted pharmacists to refuse, without adequate patient protections. Advocates, state legislators, and other interested persons got involved, providing oral testimony at board meetings, submitting written testimony to the board, suggesting new language to board staff, and urging the board to amend or drop its proposal. In December 2005, the Nevada board of pharmacy agreed to abandon its proposal, specifically citing the negative public response.³³ Instead, the board adopted a rule permitting a pharmacist to decline to fill a prescription only for professional reasons.³⁴
- After seeking views of the Washington State Pharmacy Association and advocates, in April 2006, the Washington Board of Pharmacy formally decided to pursue rulemaking on the issue of pharmacist refusals. At a subsequent board meeting, it adopted a rule giving significant leeway to pharmacists to refuse to fill prescriptions. Washington Governor Christine Gregoire sent a letter to the pharmacy board strongly opposing the draft rule and urging the board to develop different rules.³⁵ The state board then received nearly 2,500 letters, calls, and emails about the draft rule, with all but 33 opposing them.³⁶ The board eventually adopted a compromise rule, modeled after one submitted to the board by the key stakeholders, including the governor, representatives from the state pharmacy association, a leading pharmacist from the state's school of pharmacy, Planned Parenthood of Western Washington, and the Northwest Women's Law Center.³⁷ The board held public hearings on the compromise rule, which requires pharmacies to deliver medication to consumers. The rule was formally adopted in April 2007.³⁸
- Advocates monitoring the **Iowa** state register learned in March 2007 that the Iowa Board of Pharmacy was considering adopting a rule on pharmacist refusals. The rule would have allowed pharmacists to refuse, without sufficient patient protections. Advocates organized and, after receiving over 300 comments objecting to the rule, the board withdrew the proposal.³⁹

Emergency Rulemaking

Most states allow "emergency" rulemaking, which is a way to bypass the regular lengthy rulemaking process. Emergency rules become effective almost immediately. However, many states have a high threshold for what they consider an "emergency." New Hampshire is typical in requiring the agency to find "that an imminent peril to the public health or safety requires the adoption of a rule with less notice than is required."³⁰ Some states may be even more limited. Montana, for example, says, "An emergency rule may be adopted only in circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare that cannot be averted or remedied by any other administrative act."³¹

Most states allow for challenges to the rules, either before the rule is in place—such as a challenge to the "emergency" justification—or after-the fact.

Emergency rules are temporary, staying in effect only for a short period of time. After that, an agency must proceed with the regular rulemaking process in order to adopt a permanent rule on the subject.

Issuing Declaratory Rulings or Policy Guidance

Pharmacy boards also have the power to issue informal statements or declarations that interpret their existing laws and regulations and set out guidelines for pharmacies and pharmacists. While these **do not** have the force of law, they provide guidance about the standard of practice. They cannot be the basis for disciplinary proceedings, but can be used to inform disciplinary actions for violations of other laws.

If the pharmacy board in your state is resistant to undertaking formal rulemaking or you anticipate problems with the rulemaking process, a statement or guidance from the pharmacy board might be a better option. It also could lay a foundation for a continued effort to create a rule. For example, the Delaware Board of Pharmacy first issued a policy, and then adopted a rule on the issue.⁴⁰

TIP:

Once guidelines are in place, you might find that you do not need a rule. In New York, after the pharmacy board passed guidelines on the issue of refusals, it designed a process for self-monitoring and responding to refusal incidents. Family Planning Advocates of New York State has not found a need to pursue rulemaking or a more formal complaint process with the board. The profession has acted to resolve isolated incidents and educate other pharmacists so that problems do not arise repeatedly.

What is the Basis for these “Statements” or “Guidance”?

On the topic of refusals in the pharmacy, boards have issued two types of informal statements.

The first is an interpretation of existing law. This was the approach taken by the Massachusetts Board of Pharmacy, which responded to a letter asking about pharmacists’ responsibilities to dispense medication. The pharmacy board issued a letter explaining that existing law requires pharmacists to fill valid prescriptions.⁴¹

The second type consists of position statements issued by boards that do not rest on interpretations of existing law. These usually note that there is no provision in existing law governing the issue of refusals, but that the pharmacy board feels it is necessary to provide guidelines for pharmacists and pharmacies who may find themselves in such a circumstance. These position statements then detail practice guidelines for pharmacists and pharmacies in refusal situations. For example, the New York State Board of Pharmacy issued practice guidelines to supervising pharmacists on the question of refusals, laying out the board’s general analysis.⁴²

How Can Advocates Play a Role?

Advocates can ask or petition the board of pharmacy to issue policy guidelines or a statement about the problem of refusals. This can be done informally, through conversations or meetings with pharmacy board members or staff. It also can be done more formally. In Massachusetts, the board’s letter was issued in response to a written inquiry from Planned Parenthood of Massachusetts, Inc.

Other states have formal mechanisms for soliciting statements. For example, Oklahoma has a procedure whereby any person affected by the pharmacy rules can ask for an interpretation of a rule or its application.⁴³

Advocates also can play a role in changing or clarifying existing position statements. In Oregon, for example, advocates were confused by elements of the Oregon Board of Pharmacy’s position statement on refusals. A broad coalition worked successfully with the board to clarify and make the position statement more protective of patient’s rights to access medication.

Examples of Pharmacy Board Statements

Eight pharmacy boards have issued interpretations or policy guidance on refusals in the pharmacy. Appendix A contains details about the content of their statements, as well as citations to the documents.

- The **Alabama** Board of Pharmacy published a statement in its February 2007 newsletter explaining its position on refusals and Plan B®.

Pros

- * Issuing declaratory rulings or policy statements is a quick way for boards to offer guidance to pharmacies and pharmacists without having to go through the rulemaking process.
- * Even though they do not have the force of law, policy statements lay out the board’s expectations and can inform disciplinary proceedings.
- * Statements can easily be changed and updated.
- * Working with the pharmacy board on a policy statement could lay the groundwork for a rule.
- * If the board is willing to intervene constructively with pharmacists who do not follow guidelines, there may be no need for a rule.

Cons

- * Policy statements and guidance do not have the force of law.
- * The guidelines cannot be used as the basis for a charge of professional misconduct.
- * The development of policy statements can take place behind closed doors, without public awareness or input.
- * Boards may be resistant to issue a statement unless they have proof of a problem.
- * Most policy statements issued so far on the subject of refusals are more permissive of refusals than the rules that have been adopted.

It is important to note that just as some boards may be resistant to initiating formal rulemaking, boards may not want to develop a position statement on the topic of refusals. The National Women’s Law Center asked the pharmacy board in one state to issue a position statement on refusals after a woman was refused EC. The Board declined to issue a position statement, stating that it wanted to avoid creating “the appearance of impropriety or bias” in case a complaint on this topic ever comes before the board.

TIP:

Be aware that even if you play a role in getting the pharmacy board to draft guidelines, it might not be an open process. Family Planning Advocates of New York State found that although they were able to convince the New York State Board of Pharmacy to draft guidelines governing refusals, the board drew up the guidelines and passed them behind closed doors, without public input.

- In its March 2006 newsletter, the **Delaware** State Board of Pharmacy published its position on pharmacist refusals.
- In 2004 the **Massachusetts** Board of Pharmacy provided an interpretation of existing state law on refusals, in response to a written inquiry.
- On November 21, 2005 the **New York** State Board of Pharmacy issued a letter to supervising pharmacists that details its analysis of refusals in the pharmacy, in response to questions raised about the issue. The guidelines are available on the board's website, under "Current Issues in Pharmacy."
- The **North Carolina** Pharmacy Board published a policy statement in its January 2005 newsletter about the issue of refusals in the pharmacy. It is now available on the board's website, under "Pharmacist FAQs."
- The **Oregon** Board of Pharmacy published a position statement on refusals in its November 2005 newsletter. The board then clarified it in June 2006. The statement is available on the board's website, under "Position Statements."
- The **Pennsylvania** Board of Pharmacy adopted a statement of policy in October 2007.
- The **Texas** State Board of Pharmacy posted a statement on its website about EC and refusals.

Respond to Complaints

Another tool for pushing pharmacy boards to address the problem of pharmacist refusals is filing a formal complaint. Each pharmacy board has a process by which consumers can file complaints specifying violations of pharmacy laws and rules.

What is the Goal of Filing a Complaint?

The complaint process will not result in any monetary gain for the consumer, but rather could result in sanctions against the pharmacy or pharmacist.

Possible board actions in response to a complaint include:

- Monetary fines against the pharmacy or pharmacist
- License suspension or revocation
- Mandatory education and training programs
- Conditions or restrictions on the pharmacist's or pharmacy's license, including a change in pharmacy procedures

Sanctions will redress the harm to the victim who filed the complaint, and help prevent future problems from that pharmacist or pharmacy. The discipline also could have a deterrent effect among other pharmacists or pharmacies in the state. Disciplinary results are made public by the pharmacy board—usually in the board's newsletter—so other pharmacies and pharmacists will be put on notice.

Although the pharmacy board only investigates and deals with the specific complaint before it, filing a complaint in the case of a refusal also could show the pharmacy board that there is a problem not fully addressed by current law. This could convince the board that it should adopt a policy or rule addressing refusals. For example, a complaint to the board after a refusal in North Carolina eventually led the board to adopt its refusal policy.

Pros

- * Complaints are fairly easy to submit.
- * Pharmacy boards have to investigate and respond to complaints that are filed.
- * Complaints may result in discipline of the refusing pharmacist or pharmacy.
- * Complaints are a great way to get consumers involved.
- * Complaints can establish the need for more patient protection.
- * Complaints can serve as a springboard to developing a position statement or rulemaking.

Cons

- * Refusal victims may be unwilling to file a complaint.
- * It can take a long time to resolve a complaint.
- * The complaint process is not usually transparent or open to the public.
- * A complaint itself will not result in a policy or rule on the issue. Pharmacy boards limit their investigation and resolution to the specific incident identified in the complaint.
- * A pharmacy board may decide there was no violation of law and not impose discipline on the pharmacist or pharmacy, especially if there is not strong language in existing pharmacy laws and rules.

TIP:

If your state already has a good rule in place governing refusals, the complaint process can be useful in demonstrating to the pharmacy board the need for continued and vigorous enforcement.

TIP:

For more information about state pharmacy board complaint processes, contact MergerWatch. They surveyed each state pharmacy board's website for information on the complaint process. <http://www.mergerwatch.org/>

It's important to remember that a complaint could yield nothing, which you should think about when deciding whether to file one. In one state, the National Women's Law Center worked with local advocates to file a complaint after a refusal. There was not strong law, but advocates felt it was important to try to push the pharmacy board on this issue. The pharmacy board adjudicated the complaint, but found that the pharmacist met the acceptable standard of care and no discipline was imposed. The complaint also did not spur the pharmacy board to take further action.

What Role Can Advocates Play?

Advocates can work with refusal victims to file complaints with the state pharmacy board. They can assist victims in drafting complaints, alleging violations, and asking for discipline. Advocates are not generally permitted to file a complaint on behalf of an individual. Only a few states seem to permit another individual—such as a health care provider—to file on behalf of the victim.

What is the Complaint Process?

The complaint process will vary from state to state. The best place to start is your pharmacy board website, which may have step-by-step instructions and forms available. Various pharmacy boards will give a consumer the option of filing electronically, by mail, or even by phone. A typical complaint will ask for the complainant's name and contact information, details about the pharmacy, including the name, location, and pharmacist's name if known. Most forms then provide a blank space where you can include a detailed description of the refusal incident. See Appendix C for the text of a complaint that was filed after a refusal to dispense EC.

Note that anonymous complaints are accepted in a few states, but this can hamper the process. The Maryland Board of Pharmacy, for example, notes that although a complaint can be made anonymously, "this may prevent the Board from effectively investigating and resolving the complaint."⁴⁴

TIP:

Before filing a complaint, take notice of any possible deadlines, time limits, or procedural requirements.

TIP:

Pay attention to which agency or department handles complaints for pharmacists and pharmacies. For example, in Montana it is the Department of Business Standards; in New York, the Office of Professions within the Department of Education; and in Rhode Island the Board of Medical Licensure receives the complaint before forwarding it to the pharmacy board.

What Happens After A Complaint Is Filed?

After the complaint is filed, the board investigates the incident. The investigation phase can be lengthy and in some states may take over a year to resolve. Investigations sometimes include interviews with the complainant, the licensee, or other appropriate individuals, as well as on-site visits to the pharmacy to make observations.

After the investigation, the board may make a ruling or it may hold a hearing. In some states, a hearing is mandatory; in others, the board decides whether to hold a hearing; and in others one of the parties must request a hearing.

Although it is not necessary, it is helpful to refer to the law or regulation that you believe the pharmacist or pharmacy has violated. Although most states do not have laws or policies specifically governing refusals, there are many provisions that exist in state pharmacy laws and regulations that could be violated in a refusal situation. The National Women's Law Center's legal guide to refusals in the pharmacy, *Don't Take "No" For an Answer*, explains other provisions that could be relevant, depending on the particular situation and laws of your state. It is available at <http://www.nwlc.org>. The National Women's Law Center also is available to assist you in finding the laws, regulations, and policies in your state that could be used in a complaint.

Depending on the state, the board also could file a complaint before a state Administrative Law Judge (ALJ). The ALJ then makes a finding as to whether there has been a violation and recommends an appropriate remedy. The board may then be able to accept, reject, or amend the ALJ's decision.

Can Board Decisions be Appealed?

Appeal of a board decision resolving a complaint varies by state and is generally governed by the state's Administrative Procedures Act. In some states, it is possible to appeal a decision and have a case referred to the attorney general of a state, an administrative law judge, or state court.

TIP:

Remember that the process for complaint resolution is state-specific. You should check your state's pharmacy laws and rules, as well as the state Administrative Procedures Act. The National Women's Law Center is available for help in finding these laws and rules.

Examples of Complaints on Refusals

Using the complaint process to discipline a pharmacist in the absence of a specific law governing refusals.

- A complaint was brought against a pharmacist in **Wisconsin** for refusing to transfer a prescription for contraception. Although there was no specific law in Wisconsin governing the issue of refusals, an administrative law judge (ALJ) found that the pharmacist violated existing regulations prohibiting unprofessional conduct. The ALJ recommended that the pharmacist be required, as a condition of retaining his license, to file a plan specifying "the steps he will take to ensure that a patient's access to medication is not impeded by his declination(s)." The pharmacist also was charged the cost of the disciplinary proceedings.⁴⁵ The Wisconsin Pharmacy Board unanimously accepted these recommendations and approved the sanctions against the pharmacist.

Using the complaint process to push the board on rulemaking.

- In **Washington** state, advocates worked with individuals to file 9 complaints against a pharmacy that refused to stock EC.⁴⁶ The complaints alleged a violation of Washington's existing stocking rule, which requires that a pharmacy "maintain at all times a representative assortment of drugs in order to meet the pharmaceutical needs of its patients."⁴⁷ According to advocates in the state, this helped to pressure the pharmacy board, which ultimately adopted a rule guaranteeing access to medication at the pharmacy.

Using the complaint process to change pharmacy policy state- and nation-wide.

- Advocates in **Massachusetts** helped three women file complaints to the state pharmacy board after they were refused EC at Wal-Mart. The complaint alleged that Wal-Mart's refusal to stock EC violated existing Massachusetts pharmacy law.⁴⁸ The Massachusetts Pharmacy Board responded quickly, finding that the Wal-Mart policy violated state law and ordered Wal-Mart to stock and dispense EC.⁴⁹ This led to a change at all Wal-Marts in Massachusetts and helped build momentum for a national effort, which was successful in getting Wal-Mart to change its policy nationwide.

Section 4:

Methods and Tips for Approaching Your Board

**Prepare before approaching your board
by building coalitions, gathering evidence,
developing your arguments, and creating a
media strategy.**

Before approaching the board on the issue of refusals, it is important to prepare. You should build a broad coalition of advocates and allies, gather evidence of refusal incidents in the state, marshal your arguments, and think about how you can use the media to push your case. Most importantly, remember that this should not be an adversarial process. Rather, you should try to work with the board to address a problem that falls under its purview. Do not assume that board members will be hostile to the issue. Try not to put them in a defensive position. Instead, approach them in as non-confrontational a way as possible.

Tips on Building a Broad Coalition in Your State

If you are contemplating approaching the pharmacy board about refusals, it helps to build a broad coalition first. Obviously, you should get traditional reproductive rights and women's rights groups on your side. But think about non-traditional partners, who will recognize that refusals are bad not just for women, but for public health generally.

Find Non-traditional Partners

Think of other groups who represent individuals that might be affected by refusals. The press has mentioned refusals not only in the context of birth control, but also for HIV/AIDS drugs, drugs to treat attention deficit disorder, and cancer drugs. For example, in Wyoming, the AIDS Coalition joined reproductive and women's rights advocates in fighting against a permissive refusal policy. More voices broaden the scope of the problem. These other groups also might carry more weight with the board and have contacts that you do not have.

Partner with Pharmacist and Pharmacy Associations

You should reach out to the state pharmacist or pharmacy association. It is likely that the association already has a good working relationship with the board and can facilitate your introduction. For example, in New York, the executive director of the Pharmacists Society of the State of New York introduced Family Planning Advocates of New York State to the executive secretary of the New York State Board of Pharmacy, which began their ongoing relationship.

The importance of reaching out to state pharmacy or pharmacist associations cannot be overstated. These associations often are very influential with the state board of pharmacy. They may play an active role in selecting pharmacy board members, influencing state policy, and shaping the views of members on a particular topic. For example, before taking on the topic of refusals, the Washington state pharmacy board asked the state pharmacy association for its views. Later, they formed part of a working group that developed the rule finally accepted by the board. The influence of these associations with the board means that having them on your side on this issue can greatly increase your ability to get the pharmacy board's attention and action.

It is therefore a good idea to learn about the state pharmacists or pharmacy association just as you looked into the state board of pharmacy. As with the board, you should learn about the executive staff. You should also check the association's website. You can frequently find a link to these associations on the state pharmacy board website.

Try to figure out whether the association has taken a position on the refusal issue; some already have. For example, the Minnesota Pharmacists Association has an Issue Brief on the topic of refusals, which lays out a position supporting a pharmacist's ability to refuse while at the same time protecting patient access to legally valid prescriptions.⁵⁰

You also might be able to find out the position of the state pharmacist or pharmacy association in the press. Just as reporters seek statements from pharmacy board members or staff when a refusal incident or fight in the legislature over the issue occurs, they also often turn to these associations for comment. For example, the executive director of the Maryland Pharmacists Association explained to a reporter that the association adopted a resolution in 1999 saying that pharmacists should not be forced to fill prescriptions that conflict with their personal beliefs, but that all legal prescriptions should be filled. He explained that pharmacists with strong objections to dispensing EC "should try to work someplace where it won't be an issue, like a Catholic hospital or nursing home," rather than in a community pharmacy.⁵¹

TIP:

Partnerships with state pharmacy associations can be useful beyond the specific issue of approaching a board to work on refusals. For example, the Southwest Women's Law Center has established a good working relationship with the New Mexico Pharmacists Association. Recently, both groups served on an advisory committee to the New Mexico Health Policy Commission to study the availability of emergency contraception throughout New Mexico and make recommendations for the legislature to increase access.

Reach Out to Other State Health Professional Groups

Look beyond the state pharmacist association to see if there are other associations or groups of health professionals who would be interested in advocacy on this issue. Physician groups in particular are likely to be receptive, since refusals can interfere with the physician-patient relationship. For example, in Wyoming, reproductive rights advocates were able to secure the interest of the Wyoming Medical Society, which helped broaden the coalition's voice of authority.

TIP:

Encourage physician groups to be respectful and not belittle pharmacists or the practice of pharmacy.

Think about State Administrative Bodies that Could Weigh In

Think about other state agencies that could weigh in to help put pressure on the pharmacy board. Advocates in Washington encouraged the Washington State Human Rights Commission to explain its views on the subject to the board of pharmacy. The Commission sent a letter to the Director of the Board of Pharmacy explaining that allowing refusals is discriminatory, unlawful, and against good public policy and the public interest.⁵² Once the board proposed a draft rule allowing refusals, the Commission sent another letter explaining that the proposed rule violated the Washington Law Against Discrimination and outlining the dangers that it posed to the public health and human rights.⁵³ Check to see if your state has a similar organization. Also think about contacting your state's women's commission.

Reach Out to Pharmacy Schools

Partner with pharmacy schools in your state. Encourage students there to lobby the pharmacy boards for policies that protect the rights and health of patients. Students may have an impact on the board since they are the future of the pharmacy profession. See Appendix D for a website where you can find a list of pharmacy schools in your state.

Bring in National Groups

State advocates report that it can be helpful to ask a national organization, such as the National Women's Law Center, to weigh in with the board. National groups often are seen by state pharmacy boards as neutral experts on this issue. They can provide information about the scope of the problem nationwide, as well as describe pharmacy board action in other states. National groups also can help if you think the process might turn hostile and are worried about damaging your relationship with the board.

Tips on Bringing Proof of a Refusal Problem to the Board

TIP:

Find women with stories of refusals before approaching the board. Boards often say, "This is not a problem." Without actual incidents, it will be difficult to persuade the board otherwise. If you have refusal victims, you can call upon them to testify before the board or file complaints.

Pharmacy boards may be resistant to taking action on the issue of refusals in the pharmacy if there is no evidence that this is a problem in the state. You can gather evidence in a number of ways:

- **Gather stories of women who have faced refusals.** You can do this by searching for refusal incidents in the local press, asking providers or friendly pharmacists if they know of any refusal incidents, or putting the word out via your website or listservs that you are looking to gather stories of women who have been refused contraception at the pharmacy.
- **Survey individual pharmacies.** You should try to find out if pharmacies: (1) stock EC in their pharmacy; (2) permit pharmacists to refuse to dispense drugs, including EC; (3) have a policy on ensuring that prescriptions are filled and drugs are dispensed in general.
- **Check for prior complaints to the board.** Use your state's public records system to see if the board has received complaints about pharmacist refusals in the past.

TIP:

Sample surveys are available from multiple sources. MergerWatch's toolkit on refusals in the pharmacy has a sample survey. You also can find one in the report NARAL Pro-Choice North Carolina released about access to EC in pharmacies in their state. See Appendix D for these and other resources.

Once you have evidence of refusing pharmacists or stories of individuals who have been refused, you can use that to file complaints, encourage the board on rulemaking, or bring media attention to the problem.

Tips on Making Arguments to the Board

When asking the state pharmacy board to take action on the issue of refusals, you should ensure that you have the strongest arguments ready and at your disposal. Some arguments found to be persuasive are listed below:

- **The pharmacy board should regulate the profession with respect to refusals.** Focus on the board's mission and its responsibility to regulate the practice of pharmacy. Appeal to the board that it—not the legislature—should take ownership

of the issue of refusals in the pharmacy.

- **Refusals are bad for public health.** Refusals to provide medication mean that individuals are denied access to prescriptions for which they have an immediate legitimate medical need. This could include contraception, HIV medication, or diabetes supplies. Transfers to other pharmacies can be burdensome, especially for low-income and rural consumers. If your state has many rural areas, it is important to point out that traveling from one pharmacy to another in search of medication may not be possible. Nor does transfer to another pharmacy provide an adequate remedy if that pharmacy is closed, does not accept the patient's insurance, or the patient cannot find transportation. In terms of contraception, refusals deny women basic health care. For some women, pregnancy can entail great health risks and even life-endangerment. And contraception is used to treat medical conditions such as endometriosis, amenorrhea, and dysmenorrhea.
- **Protecting against refusals is consistent with existing pharmacy law in the state.** As explained above, you will have already done searches into existing laws and regulations in your state that could be used to argue for a rule or policy on refusals. Such laws could include prohibitions against sex discrimination, pharmacy patient's bills of rights, unprofessional conduct, and mandatory transfer provisions. The application of these laws to refusals and examples are detailed in the National Women's Law Center's legal guide, *Don't Take "No" For an Answer*, available at www.nwlc.org.

TIP:

It is better to talk about refusals based on "personal" beliefs, rather than refusals based on "religious" beliefs.

- **The trend in states is to protect patients' access to medication at the pharmacy.** Encourage the board to look to measures in other states where pharmacy boards have taken steps to prohibit or limit pharmacist refusals. See Appendix A for a full description of other states' actions thus far.
- **Major pharmacy chains are protecting consumers' access to medication.** Most national pharmacy chains, including Walgreens, Wal-Mart, Rite Aid, and CVS, ensure that patients can access medication in their stores, on demand and without discrimination or delay. A rule or guidance from the pharmacy board protecting patient access to medication would be consistent with these existing policies.
- **Guidance can reduce conflict between employers and employees and the public.** By spelling out the rights and responsibilities of all parties, this will help reduce litigation and unfavorable publicity for the profession.
- **Public opinion is squarely opposed to pharmacist refusals.** Use public opinion polls to show that there is broad support for prohibiting pharmacist refusals and requiring pharmacies to dispense all drugs, including EC.
 - ◊ In a national opinion survey released in July 2007, which was conducted for the National Women's Law Center and Planned Parenthood Federation of America by Peter D. Hart Research Associates, 71% of voters said that pharmacists should not be allowed to refuse to fill prescriptions on moral or religious grounds, including majorities of every voter demographic such as Republicans (56%), Catholics (73%), and evangelical Christians (53%). Even more respondents (73% overall) supported requiring pharmacies to dispense contraception to patients without discrimination or delay.
 - ◊ A poll conducted in May 2007 by Lake Research Partners found that 82% of adults and registered voters believed that "pharmacies should be required to dispense birth control to patients without discrimination or delay."
- **National health care organizations support patient access.** The American Pharmacists Association, National Association of Boards of Pharmacy, American Medical Association, American Pharmacists Association, National Boards of Pharmacy, American Women's Medical Association, and American Public Health Association have issued guidance protective of the patient's right to receive medication.
- **Refusals discriminate against women.** There are strong arguments to be made that refusals constitute sex discrimination. See the Washington Human Rights Commission letters referenced above or the National Women's Law Center's factsheet on this topic (www.nwlc.org).

Tips on Using Media to Influence the Board

Getting media attention to the problem of pharmacist refusals can be a very useful strategy to influence the board. Before approaching the press, however, you should think through when and how to use media attention.

The pharmacy board might want to avoid negative press so it might make sense to wait to approach the media until after you have approached the board. For example, Family Planning Advocates of New York State found that negative national media on refusals in the pharmacy spurred the New York State Board of Pharmacy to work more closely with them, as the board did not want that type of negative press in New York.

TIP:

Think about how media attention will play in your state. Will it help or hurt your cause?

If you think media attention will help, try to get press on the issue of refusals. Approach reporters about doing a story on the issue—note that you will have much better luck if you have a refusal victim whose story they can tell or know of a refusing pharmacist they can interview. You also can encourage media to do surveys, on-line polls, or undercover work to find out pharmacy policies on refusals. The *Coloradoan*, for example, called 21 stores in Fort Collins to see what they would say when asked about EC. The paper then reported the results, as well as quotes from local advocates on the issue.⁵⁴

TIP:

Letters to the editor are another way to keep the issue alive in the press.

Press may spur action by the pharmacy board. In Rhode Island, the press contacted the executive director of the state pharmacy board about a refusal situation. The executive director said that although no complaint was filed regarding the incident, the board would investigate the matter.⁵⁵

You also can approach the editorial board of your local paper. In New Hampshire, for example, the editorial board of the *Concord Monitor* published a story calling for the board of pharmacy to investigate a refusal. The editorial cites patient-protective language in state law and says the board should impose discipline if the pharmacist failed to refer the woman.⁵⁶

Things to Remember When Contacting the Board:

- * Talk by phone with pharmacy board staff rather than using impersonal e-mail.
- * Avoid initiating too many duplicative calls on the same topics.
- * Ask for the executive director or other top-level administrator. If contacts with him/her prove difficult, try dealing with other staff.
- * Treat all staff respectfully and accept information from anyone who is knowledgeable about your issue(s).
- * Before making a call to the pharmacy board office, make a list of specific questions you want to ask. Take detailed notes.
- * Follow up on any pharmacy board actions: e.g., send thank-you notes, check in regarding pending issues, etc.

Section 5:

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

**Even if you succeed in persuading your board
to adopt a rule or policy on refusals, your work
is not over.**

If you are successful in convincing your state board of pharmacy to adopt a rule or policy protecting patients' ability to obtain medication in the pharmacy, your work with the pharmacy board is not over. You still have opportunities to work with the pharmacy board to continue improving patients' experience and interaction with pharmacists. This section is also relevant for advocates in states where the legislature adopted a law on refusals in the pharmacy.

Clarify the Law, Rule, or Policy

If the pharmacy board passes a new rule or guidance on refusals or your state legislature passes a new law, it may be vague or contain language that needs clarification. For example, the California law on refusals says that pharmacies must ensure "timely access" to medications. Advocates in California are in the process of working with the pharmacy board to develop new regulations that define and explain the concept of "timely access."

Educate Others about the Law, Rule, or Policy

Advocates can work with the state pharmacy board to educate pharmacists and consumers about the law, rule, or policy. Advocates also can educate their members and allies, to ensure that individuals who come into contact with potential refusal victims are aware of the rule or policy and how to report problems. Family Planning Advocates of New York State sent their state's guidelines on refusals and the phone number for filing complaints to all clinical members of FPA and instructed them on how to report a problem.

Enforce the Law, Rule, or Policy

There are roles for advocates to play in ensuring that a patient-protective refusal law, rule, or policy is enforced in the state. Advocates can keep the pharmacy board informed of violations. This can be done informally, if there is a good working relationship between your group and the state pharmacy board.

It can also be done formally, using the complaint process. For example, after a law was passed in California prohibiting a pharmacist from obstructing a patient's efforts to receive medication, advocates heard from a young mother who was refused. The pharmacist not only refused to fill her prescription for EC, but also refused to enter the prescription into the system so that it could be transferred.⁵⁷ The National Women's Law Center assisted the woman in filing a complaint with the pharmacy board, alleging a violation of the law. After an investigation, the pharmacy board found that the pharmacist violated California law by refusing to fill or transfer the prescription. The pharmacist was fined \$750.

Codify the Policy Statement

If your board chose to issue a policy statement rather than a formal rule, you can continue in your efforts to get the board to undertake rulemaking.

Keep in Contact with the Board

Continue to stay informed and involved with the pharmacy board. Regularly attend board meetings, keep lines of communication open, and generally monitor its activities.

Undertake Other Activities with the Board

Even with a provision on refusals in place, there are other steps the board can take to help patients access medication and improve patient protections in the pharmacy. Pharmacy boards could pass non-discrimination provisions or codes of ethics. They could pass regulations on stocking or requirements that pharmacies notify consumers about their rights. Boards can play a major role in pharmacist education about EC and in encouraging agreements that allow pharmacists to dispense EC directly to all women without a prescription. These other "asks" are detailed in the next section.

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.

Appendices

**Valuable resources for assessing your state,
drafting model rules or policies, writing a
complaint, and learning more.**

Appendix A

States That Have Taken a Position on Pharmacist Refusals

Most pharmacy boards remain silent on the issue of pharmacist refusals despite continuing occurrences all over the country. As of January 2008, 18 states have explicitly addressed the issue. Seven states ensure women's access to contraception at the pharmacy. Seven states have policies that allow refusals, but prohibit pharmacists from obstructing patient access to medication or from refusing to transfer or refer prescriptions to another pharmacy. Only four states permit refusals without any patient protections. These laws, regulations, and policies are described below.

States Requiring Pharmacies or Pharmacists to Provide Medication

There are currently seven states that ensure access to medication in the pharmacy.

California

In 2005 the California legislature passed a law that prevents pharmacists from obstructing a patient in obtaining a prescription drug. The law permits refusals based on personal beliefs only if the pharmacist has notified the employer in writing and the employer can accommodate the refusal without undue hardship. The pharmacy is responsible for putting in place protocols that ensure the patient will have "timely access" to their prescribed drug. The California law also requires posting a notice to consumers of their rights.⁷³

Illinois

Prompted by a rash of refusal incidents, Governor Blagojevich ordered the Department of Financial and Professional Regulation to issue an emergency regulation on the topic. The rule, which later became permanent, requires retail pharmacies that sell contraceptives to fill prescriptions for birth control, without delay, if in stock.⁷⁴ When a contraceptive is not in stock, the pharmacy must follow the customer's wishes and provide an alternative, order the drug, transfer the prescription to another pharmacy, or return it to the customer.⁷⁵ A later regulation from the Department requires pharmacies to post notice of the original rule, so that patients are informed of their rights.⁷⁶

Maine

A Maine pharmacy regulation passed by the board of pharmacy interprets Maine law to make clear that a pharmacist may refuse to fill a prescription or dispense drugs only for professional reasons.⁷⁷

Massachusetts

The Massachusetts Board of Pharmacy established an explicit requirement for pharmacists to fill prescriptions in 2004 in response to a letter of inquiry from an advocate about the issue.⁷⁸ In the letter, the Board said pharmacists must fill prescriptions, including those for EC, pursuant to a review for contraindications and similar concerns.⁷⁹

Nevada

The Nevada Pharmacy Board passed a rule in 2006 which allows a pharmacist to refuse to fill a prescription on professional grounds.⁸⁰ The general counsel of the pharmacy board has interpreted this rule to mean that refusals based on other considerations, such as personal beliefs, could result in discipline.⁸¹

New Jersey

In November 2007, Governor Corzine of New Jersey signed a bill into law that places a duty on the pharmacy to ensure that drug orders are filled "without delay," even if an individual pharmacist refuses. If the drug is not in stock, the law mandates that the pharmacy order it, transfer the prescription to another pharmacy "reasonably accessible to the patient," or return the prescription, whichever the customer chooses.⁸²

Washington

In April 2007, the Washington State Board of Pharmacy finalized a rule that requires pharmacies to deliver in a timely manner lawfully prescribed drugs and devices as well as drugs approved for restricted distribution, which includes non-prescription EC.⁸³ The rule addresses situations where the drug is out of stock. The board additionally passed rules clarifying that it is unprofessional conduct if a pharmacist or pharmacy destroys an unfilled prescription, refuses to return an unfilled lawful prescription, violates a patient's privacy, discriminates against a patient, or intimidates or harasses a patient.⁸⁴

States Permitting Refusals but Prohibiting Obstruction

Seven state pharmacy boards have issued policy guidance or policies permitting individual pharmacist refusals but prohibiting obstruction or refusals to refer and transfer patients' prescription information.

Alabama

In its February 2007 newsletter, the Alabama board of pharmacy described its position on refusals and Plan B®. It said that Alabama pharmacists have right to refuse but there should be a concerted effort to provide a meaningful referral.⁸⁵

Delaware

In its March 2006 newsletter, the Delaware Board of Pharmacy announced its position on refusals. It said while there is no regulation requiring pharmacists to dispense every prescription, pharmacists cannot interfere with a patient's right to receive medication.⁸⁶ In November 2007, the Delaware Board of Pharmacy codified a rule requiring pharmacists-in-charge to establish protocols to deal with a refusal situation.⁸⁷ The statement and rule operate together; protocols should respect a pharmacist's right to refuse without interfering with the patient's right to receive timely drug therapy.

New York

In November 2005, the New York Board of Pharmacy issued practice guidelines on refusals. The guidelines permit refusals, but prohibit refusing pharmacists from obstructing patient access to drugs. They also make clear that verbal abuse or other harassment of a patient constitutes unprofessional conduct. The guidelines tell pharmacies to assure delivery of services to patients.⁸⁸

North Carolina

In April 2005, the North Carolina Board of Pharmacy issued a policy statement on refusals. It says that although pharmacists have a right to avoid moral or ethical conflicts, they do not have the right to obstruct otherwise legitimate prescription dispensing or delivery. It requires pharmacists to get patients and prescriptions to another pharmacist who will dispense the prescription in a timely manner.⁸⁹

Oregon

The Oregon Board of Pharmacy issued a statement on refusals in November 2005, and clarified it in June 2006. The statement permits pharmacists to refuse, but prohibits interference and clarifies that it is unprofessional conduct for a pharmacist to lecture a patient, violate the patient's privacy or confiscate or tamper with a patient's prescription. The statement requires pharmacies to adopt policies to ensure that patients' needs are met in case of a refusal.⁹⁰

Pennsylvania

In October 2007 the Pennsylvania Board of Pharmacy adopted a statement of policy. It allows pharmacists to refuse to fill a prescription based on personal beliefs, but says the pharmacist cannot interfere. It tells pharmacies to devise guidelines to assure delivery of services to patients in need.⁹¹

Texas

The Texas Board of Pharmacy posted a position statement on its website in late 2006. It says that pharmacists who refuse to fill prescriptions or sell medications (such as non-prescription EC) should refer patients to another pharmacist within the pharmacy or refer the patient to a pharmacy where the patient can obtain the medication.⁹²

States Permitting Refusals

Four states have explicit laws or regulations allowing a pharmacist to refuse to dispense medication without patient protections, such as prohibitions on obstruction or requirements for referrals or transfers.

Arkansas

An Arkansas law from 1973 allows pharmacists to refuse to supply contraceptive procedures, supplies, and information.⁹³

Georgia

A Georgia pharmacy regulation specifies that it will not be considered unprofessional conduct for any pharmacist to refuse to fill any prescription based on ethical or moral beliefs.⁹⁴

Mississippi

A Mississippi law passed in 2004 allows all health care providers, including pharmacists, and all health care institutions, including pharmacies, to refuse to dispense or administer any drug, device, or medication.⁹⁵

South Dakota

A 1998 South Dakota law specifies that pharmacists can refuse to dispense medication if there is "reason to believe" the medication would be used to "cause an abortion."⁹⁶

Appendix B

Elements of a Model “Duty to Dispense” Rule or Policy

The most important element of any rule or policy on refusals is to ultimately guarantee that customers receive their medication in-store, in a timely manner without hassle. Some state pharmacy boards have permitted pharmacists from refusing altogether. It is more likely that your board will want to accommodate refusals. Below are elements of a policy that recognizes the delicate balance between a pharmacist’s personal beliefs and the patient’s right to receive medication in a timely manner and without obstruction.

Burden on the Pharmacy

The best way to guarantee access to medication in the event of a pharmacist refusal is to put the burden on the pharmacy to deliver medication to customers. This type of policy allows patients to have their drugs dispensed at the pharmacies of their choice and still allows accommodation of pharmacists who may have an objection to dispensing certain drugs.

- **On-site Delivery:** The policy should require pharmacies to 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.
- **Advance Notice to the Pharmacy:** The policy should require pharmacists to notify their employers in advance, in writing, about any objections they may have to dispensing certain classes of drugs.
- **Accommodation:** Employers may attempt to accommodate the religious beliefs of their employees after receiving notice. But this accommodation is required by federal law only if doing so would not constitute an “undue hardship,” a standard not defined in law. A provision governing refusals could include a definition of undue hardship that delineates factors to be considered, such as degree of financial costs, impact on the pharmacy’s reputation, and delay to the patient in receiving medication.

Ensuring Access to Non-Prescription EC

Any rule or policy on refusals also should make sure those seeking non-prescription EC receive the same protections as patients seeking prescription medication. This could be accomplished by adding language specific to non-prescription EC. The Washington Board of Pharmacy used “drugs and devices approved by the U.S. Food and Drug Administration for restricted distribution by pharmacies”⁹⁷ to capture non-prescription EC.

Out of Stock Drugs

It is important that the rule or policy govern what happens when a drug is out of stock. The policy should allow the patient to choose what the pharmacist’s subsequent course of action should be. In Illinois, the patient has the option of receiving an alternative, ordering the drug, transferring the prescription to a local pharmacy of their choice, or requesting to have the unfilled prescription returned.⁹⁸

Preserving Pharmacist Duties

The rule or policy also should clarify that a pharmacist must still complete their traditional duties, such as checking for possible drug interactions or contraindications in all circumstances.

Treating Patients with Respect

Refusals to dispense legal prescriptions or medications have sometimes included moralistic lectures, harassment and intimidation, misrepresentation about whether a drug is in stock or the way it works, disclosure of private medical information, and refusals to return prescriptions to patients. Any policy or rule should ensure that pharmacy personnel and pharmacies always treat patients with respect and do not:

- Intimidate, threaten, or harass customers in the delivery of services;
- Interfere with or obstruct the delivery of services;
- Intentionally misrepresent or deceive customers about the availability of medication or its mechanism of action;
- Breach patient confidentiality; or
- Refuse to return a valid, lawful prescription upon customer request.

Some states already have laws protecting against this behavior. The rule or policy could either reference these sections or restate and add to them.

Appendix C

Sample Complaint to the Pharmacy Board in the Event of a Refusal

Contained below is the text of complaint that was filed in one state, with all identifying information removed. It illustrates that what is most important in filing a complaint is for the individual to explain what happened, in his/her own voice. Reference to existing laws or regulations that may have been violated is helpful, but not necessary.

I am a 26 year old married woman with a six month old daughter. I live in [town], a community that does not have a pharmacy. To meet my pharmaceutical needs, I travel 45 minutes to [city].

On the night of Friday, Jan. 27th, 2006, my husband and I experienced a birth control failure. I called my doctor at 8:00 AM on Saturday, Jan. 28th, and he recommended that I obtain Plan B, an emergency contraceptive that is only effective for up to 72 hours.

My physician, [name], called in a prescription for emergency contraception to my regular pharmacy. When I went to pick it up later that afternoon, I learned that my pharmacy was closed. At that point I immediately contacted [physician], who called the prescription in to [pharmacy] at [address] in [city] by leaving a message on the pharmacy's intake line. Around 5 PM, my husband and I went to [pharmacy] to obtain the prescription. The pharmacist on duty, [name], refused to fill the prescription, even though the drug was in stock, as we later learned. He also refused to accept the prescription into the system and transfer it to another pharmacy. [Pharmacist] was the only pharmacist on duty at [pharmacy] at that time. In addition to [pharmacist's] refusal to transfer or fill the prescription, he also berated me and my husband, whom he refused to acknowledge as my husband. He said "if you and your boyfriend were not so irresponsible, you would not have to be dealing with this." We left the pharmacy without the prescription and with no option for having it transferred to another pharmacy.

Immediately upon leaving the pharmacy, we called [physician] to let him know what had happened. [Physician] called [pharmacist] to try to understand why he would not fill the prescription and to encourage him to transfer it elsewhere. [Pharmacist] steadfastly refused to either transfer the prescription or fill it. At that point, I called [pharmacist] again myself to better understand why he would not fill or transfer the prescription, and he refused to budge. Because it was close to 8:00 PM by this time, and our pharmacy options were rapidly decreasing, [physician] called [pharmacist] once more to try to convince him to dispense the prescription, but he refused once more.

When we returned home, we called the pharmacy and asked to speak to the manager. We explained what had happened to [name], the on-duty supervisor. [On-duty supervisor] in turn called her manager for guidance. [On-duty supervisor] then called us back to say that we needed to call the corporate office, because the refusal was a "legal issue." [On-duty supervisor] refused to give me the name of the pharmacist that had refused my prescription. I did not hear back from [pharmacy] until almost a month later, when a representative from the corporate office called to tell me that I had to wait until the Regional Pharmacy Manager, [name], returned from vacation in order to "settle" this matter. The corporate office released [pharmacist's] name at that time. When [Regional Pharmacy Manager] finally called on Feb. 22nd, he admitted that [pharmacist] did not comply with the law or with [pharmacy's] corporate policy, but did not offer any other explanation or remedy.

I believe that [Pharmacy], as well as the pharmacist who refused to fill or transfer my prescription for emergency contraception, are in violation of [reference to section of law]. This provision states that no pharmacist may "obstruct a patient in obtaining a prescription drug or device that has been legally prescribed or ordered." By refusing to transfer my prescription to another pharmacy, this pharmacist obstructed my ability to get the drug filled elsewhere. Although [section of law] permits pharmacists to refuse to dispense drugs, it does not permit pharmacists to refuse to transfer a prescription based on their personal beliefs or to lecture patients about "responsibility." In addition, this provision specifically requires pharmacy employers to establish protocols in the event of a refusal to ensure timely access to prescribed drugs.

Because of the actions of [Pharmacy] and [pharmacist], I was unable to fill my prescription for Plan B at the time that it would have been most effective, and therefore was denied timely medical care as prescribed by my doctor. Although I was eventually able to get my prescription filled (after the 72 hour timeframe), I still do not know whether I will face an unplanned pregnancy as a result of this incident. I respectfully request that the State Board of Pharmacy take disciplinary measures against both [Pharmacy] as well as the pharmacist who refused to transfer my prescription.

Appendix D

Resources

National Women's Law Center

The Pharmacy Refusal Project website provides up-to-date and detailed information related to the issue, including a map of state laws, pharmacy board policies, and rules on the issue, a legal guide, and a toll-free number to call for assistance in the event of a refusal.

<http://www.nwlc.org/>

American Civil Liberties Union

Religious Refusals and Reproductive Rights: Accessing Birth Control at the Pharmacy. The ACLU's guide to refusals provides a framework for evaluating the appropriateness of religiously motivated refusals to provide reproductive health services.

http://www.aclu.org/images/asset_upload_file576_29402.pdf

American Pharmacists Association

Emergency Contraception: The Pivotal Role of the Pharmacist. A special report for pharmacists, containing the latest information on emergency contraception and related issues, intended to educate the pharmacist so that s/he is able to provide better patient care.

http://www.cecacy.com/apha/ce_monographs/emergency_contraception/apha_emergency_contraception_print.pdf

Family Planning Advocates of New York State

The Education Fund of Family Planning Advocates of New York State has created fact sheets for consumers and for pharmacists and pharmacy staff on the provision of Plan B®.

<http://www.edfundfpa.org/resources/#ec>

NARAL Pro-Choice America

Who Decides? NARAL's state-specific pages can help you keep abreast of refusal-related laws and bills in your state.

http://www.prochoiceamerica.org/choice-action-center/in_your_state/

NARAL Pro-Choice North Carolina Foundation

Access to Emergency Contraception in North Carolina Pharmacies. Includes a copy of the survey used to assess availability of EC in North Carolina pharmacies, as well as pharmacists' knowledge and attitudes concerning EC.

<http://www.prochoicenorthcarolina.org/assets/files/ecaccessfinal.pdf>

National Association of Boards of Pharmacy

Hosts a list of all state pharmacy boards, as well as newsletters of 34 state pharmacy boards. NABP also publishes an annual Survey of Pharmacy Law, which provides summary data about issues in pharmacy across all 50 states, including board membership, discipline of pharmacist licenses, prescribing and dispensing authority, and patient counseling requirements. There is a fee charged for access to the Survey.

<http://www.nabp.net/>

MergerWatch

Protecting Women's Rights at the Pharmacy Counter: Advocacy Strategies from States and Localities. MergerWatch's pharmacy refusal toolkit includes advocacy tips, a sample survey, and letters to the editor.

http://www.mergerwatch.org/pdfs/bp_pharm_toolkit.pdf

Pharmacy Access Partnership

Contains information about state policies that permit pharmacists to provide EC to women of all ages without a prescription, as well as an analysis of which states could be friendly to similar policies.

<http://www.go2ec.org/>

Planned Parenthood Federation of America

Fill My Pills Now! PPFA's campaign website on refusals in the pharmacy includes a scorecard of retail pharmacies' policies on the issue.

<http://www.saveroe.com/campaigns/fillmypillsnow>

USPharmD

List of pharmacy schools, by state.

<http://www.uspharmd.com/school/>

Endnotes

- 1 See Appendix A for more details.
- 2 Associated Press, *Public Comment Overwhelmingly Against Proposed Pharmacy Rule*, BILLINGS GAZETTE, Oct. 4, 2005.
- 3 See Appendix A for more details.
- 4 See Appendix A for more details.
- 5 Maryland Board of Pharmacy, Public Minutes—October 20, 1999, *available at* <http://www.dhmd.state.md.us/pharmacyboard/msword/19991020.doc>.
- 6 See Appendix A for more details.
- 7 *Refusal to Dispense Prescriptions*, ARIZONA STATE BOARD OF PHARMACY NEWS (Ariz. State Bd. of Pharmacy, Glendale, Ariz.), Apr. 2006, at 1, *available at* <http://www.azpharmacy.gov/pdfs/0406AZNWSLTR.pdf>.
- 8 *No Damages from Refusal to Dispense*, ALABAMA STATE BOARD OF PHARMACY NEWS (Ala. State Bd. of Pharmacy, Birmingham, Ala.), May 2001, at 4, *available at* <http://www.nabp.net/ftpfiles/newsletters/AL/AL052001.pdf>.
- 9 Victoria Guay & Bethany Gordon, *Free to Choose? Pharmacists Refuse to Dispense Some Drugs on Moral Grounds*, FOSTER'S SUNDAY CITIZEN (N.H.), Sept. 26, 2004 (quoting Paul Boisseau, executive director of the New Hampshire Board of Pharmacy).
- 10 Rebecca Meiser, *Bitter Pill: Ohio Doctors and Pharmacists are Looking Out for You. Unless You Need the Morning-After Pill*, CLEVELAND SCENE, July 13, 2005 (quoting Bill Winsley, executive director of Ohio's Board of Pharmacy).
- 11 Tony Leys, *Pharmacy Panel Drops Morality Proposal*, DES MOINES REG., Mar. 29, 2007.
- 12 Welcome to the Maryland Register online, <http://www.dsd.state.md.us/mdregister/> (last visited Jan. 18, 2008).
- 13 MONT. CODE ANN. § 2-15-1733 (2007).
- 14 See, e.g., Office of the Governor, Commonwealth of Virginia, Application for Gubernatorial Appointment, <http://www.commonwealth.virginia.gov/StateGovernment/Appointments/Pre-AppointmentApplication-fillable.pdf> (last visited Jan. 18, 2008).
- 15 MD. CODE ANN., HEALTH OCC. § 12-202(a) (2007).
- 16 See, e.g., VA. CODE ANN. § 54.1-3305 (2007) (requiring board membership to consist of 2 citizen members and 8 licensed pharmacists).
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- 68 The Madison ordinance states:
- NOTICE: This pharmacy does not stock / is out of Emergency Contraception (EC). EC, sometimes called the 'morning after pill,' is a safe and legal high dose of oral contraception that must be taken as soon as possible within 120 hours of unprotected intercourse to prevent pregnancy. You do not need a prescription to obtain EC if you are 18 or older; if you are under 18, you must get a doctor's prescription. The nearest location where EC is known to be available is [name of pharmacy], [address of pharmacy], or the pharmacist here will refer you to another pharmacy that is known to have the medication in stock.
- City of Madison, Legislative File No. 04663 (Dec. 8, 2006).
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- IF YOU USE CONTRACEPTIVES KNOW YOUR RIGHTS. If this pharmacy dispenses prescription contraceptives, then you have the following rights under Illinois law:
- The pharmacy must dispense your prescribed contraceptives without delay, consistent with the normal timeframe for filling any other prescription.
- When your contraceptive is out of stock, you have the following options: the pharmacy must cooperate with your doctor to determine a suitable alternative, order the contraceptive, or transfer the prescription to another pharmacy of your choice.
- You can instruct the pharmacy to return the prescription slip to you at any time prior to dispensing.
- You may file a complaint with the Department of Financial and Professional Regulation-Division of Professional Regulation through the Department's website <http://www.idfpr.com>.
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- 78 Letter from President James T. DeVita, The Commonwealth of Massachusetts Board of Registration in Pharmacy, to Dianne Luby, President/CEO, Planned Parenthood League of Massachusetts, Inc. (May 6, 2004) (on file with the National Women's Law Center).
- 79 See MASS. GEN. LAWS ch. 94C, § 19(a) (2007).
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