



National Women's Law Center Comments on "Notice of Rights Regarding the Dispensing of Contraceptives"

May 24, 2006

The National Women's Law Center, based in Washington, D.C., is a nonpartisan, non-profit organization dedicated to improving the lives of women and girls. The Center has been at the forefront of the issue of pharmacy refusals to dispense contraception, working to protect patient access to prescription contraception in pharmacies throughout the country.

In recognition of the devastating consequences pharmacy refusals can have on women's health, Governor Blagojevich chose to tackle the problem through a rule promulgated by the Department of Financial and Professional Regulation ("Department"). The rule ("existing rule") ensures that pharmacies dispense lawfully prescribed contraceptives without obstruction or delay and explains patient options in cases where the contraceptive is not in stock. The Center submitted written testimony supportive of the existing rule.

Despite the existence of the rule, the Center is troubled by reports from the Department that pharmacists are attempting to circumvent its requirements. The Center therefore is pleased to be able to provide this additional testimony in strong support of the follow-up Proposed Amendment "Notice of Rights Regarding the Dispensing of Contraceptives" 68 Ill. Admin. Code 1330.91 (k) ("proposed rule"). The proposed rule represents the next step necessary to make the existing rule meaningful: providing notice of the pharmacy's and pharmacist's responsibilities and the patient's rights. It effectively addresses the problem of pharmacists disobeying the existing rule and deceiving patients by specifying that pharmacies must dispense contraceptives "without hassle, lectures, or delay"¹ and delineating a patient's options when a contraceptive is out of stock. The proposed rule will ensure that women are notified of their rights when they present a prescription for contraception at the pharmacy and give women information about filing a complaint if there is a violation of the existing rule.

¹ Proposed Notice of Rights Regarding the Dispensing of Contraceptives, to be codified at Ill. Admin. Code tit. 68 § 1330.91(k) (hereinafter Proposed Rule).

I. The Proposed Rule Will Ensure that Pharmacists and Pharmacies Know Their Responsibilities Under the Law

The proposed rule responds to reports of certain Illinois pharmacists who are attempting to evade the existing rule by obstructing access to contraception. While the vast majority of pharmacists fulfill their professional obligations and treat patients with respect, there are pharmacists who so strongly object to the use of contraceptives that they will do whatever they can to keep women from accessing lawful prescriptions. This can mean misleading women about whether contraceptives are in stock, confusing women about the mechanism of certain drugs, subjecting them to moralistic lectures or harassment, or refusing to provide a referral.

These incidents of pharmacists obstructing women's access to prescription contraceptives are not limited to Illinois. For example:

- An Eckerd Drugs pharmacist in North Carolina who refuses to dispense emergency contraception admitted that he lies to customers seeking the drug, telling them that the store does not have the medication in stock.²
- In Wisconsin, the Center is representing a woman who attempted to have a prescription for emergency contraception filled, but was told by the pharmacist that the medication was an abortion pill. The pharmacist also publicly humiliated and harassed the woman, subjecting her to a moralistic lecture in front of other customers. The woman left the pharmacy without her prescription, feeling confused, embarrassed, inconvenienced, and distressed.³
- The Center was contacted by a health care provider in Texas who called a pharmacy to ask for Plan B, the brand name for emergency contraception, for a client. When the woman who answered the pharmacy phone told her that Plan B was not in stock, the provider asked about Micronor, another form of contraceptive that could be used as an emergency contraceptive. The woman replied, "It's not the same thing; what you are asking for is the morning after pill!" and hung up on the provider.⁴

Illinois differs from these states in having a strong existing rule that prohibits this kind of behavior. But as shown from the West Peoria incident, where a pharmacist allegedly lied to a health care provider about the availability of emergency contraception at her pharmacy,⁵ the existing rule by itself has not protected against such behavior in all instances. The proposed rule will counter these kinds of disturbing incidents by ensuring that pharmacies and pharmacists know their responsibilities under the existing rule.

² Keren Rivas, *Many Local Pharmacies Refuse to Fill Prescriptions for Emergency Contraceptive*, TIMES-NEWS (Burlington, NC), Apr. 30, 2005.

³ *Jane Doe v. Walgreen Co.*, No. 06 CV 000007 (Cir. Ct. Civ. Div. Wis.) (amended complaint filed Mar. 10, 2006) (on file with National Women's Law Center)

⁴ Details on file with National Women's Law Center.

⁵ *Ill. Dep't of Financial and Professional Regulation v. Brown*, No. 200610078 (complaint filed Mar. 27, 2006), available at <http://www.idfpr.com/newsrsls/032706BrownOrder.pdf>.

The proposed notice clearly states that pharmacies “must dispense . . . prescribed contraceptives without hassles, lectures, or delay.”⁶ By posting what constitutes unprofessional and unacceptable behavior under the existing rule, it gives notice to pharmacists that they cannot subject women to moralistic lectures or other forms of obstruction. It sends a clear signal to obstructing pharmacists that they will no longer be able to circumvent the existing rule by taking advantage of women who do not know their rights. And it puts pharmacies on notice to ensure that women receive their prescription contraceptives without enduring public lectures, harassment or other forms of humiliating treatment by pharmacists in their employ.

II. The Proposed Rule Will Make the Existing Rule Meaningful by Informing Women of their Rights

Empowering citizens with knowledge of their rights is essential to ensuring the successful implementation of the existing rule. By requiring pharmacies to prominently display an easily understandable notice that explains the existing rule, the proposed rule will mean that patients seeking contraception are aware that the law protects their right to this basic health care. Rather than leaving women helpless when confronted by a pharmacist who refuses to fill a prescription or obstructs women’s access to contraception, the proposed rule will arm women with the knowledge they need to assert their rights and report violations of the existing rule.

A woman subjected to a pharmacy refusal who is unaware of her rights under the existing rule might leave the pharmacy without a necessary contraceptive drug or the resources she needs to find it elsewhere. This could leave a woman in the position of facing an unwanted pregnancy. For example, the Center is working with a woman in California, a state that, like Illinois, has a law requiring pharmacies to ensure that prescriptions for contraception are filled in a timely manner. The woman attempted to have a prescription for emergency contraception filled but the pharmacist on duty refused to fill or transfer the prescription.

Although the woman protested the refusal to the store manager, the manager was unhelpful and said nothing about her rights or the pharmacy’s duties under the California law. Unaware of her rights, the woman left the pharmacy without the drug and with no option to have her prescription transferred elsewhere. It was only when she contacted the Center that she learned of her rights under the California law and information on filing a complaint. Had she been aware of her rights and the pharmacy’s responsibilities at the time of the refusal, she would have demanded that the pharmacy follow the law and she would have left with the drug or her prescription transferred elsewhere. Instead, she left feeling confused, angry and despondent, since she was unable to get her prescription filled and was potentially facing an unwanted pregnancy.⁷ If the proposed rule is adopted, a woman facing a similar refusal in Illinois will know to demand her right that

⁶ Proposed Rule, *supra* note 1.

⁷ Complaint to California Pharmacy Board (filed Feb. 23, 2006) (on file with National Women’s Law Center).

the pharmacy “dispense [her] prescribed contraceptive without . . . delay, consistent with the normal timeframe for filling any other prescription.”⁸

In addition to knowing their rights when confronted with a pharmacist refusal, women will also know that pharmacists who revert to lectures, harassment or other obstructionist tactics are acting unprofessionally. Because the notice spells out women’s rights to have their contraceptive prescriptions filled without “hassles” or “lectures,”⁹ this will allow women to more easily assert their right to be free from such behavior. And with notice of information regarding filing a complaint, women who do face unprofessional conduct will know how to report the behavior to the Department so that appropriate action can be taken. Even if a pharmacist attempts to lie about whether a contraceptive is in stock, the proposed rule ensures that women know they can ask the pharmacy to “cooperate with [their] doctor to determine a suitable alternative, order the contraceptive, or transfer the prescription to another pharmacy of [their] choice.”¹⁰ Without the rule, the patient may not know that there are additional steps the pharmacy must take to get the patient her medication. The proposed rule also ensures that women know they have to right to demand the return of their prescription slip “at any time prior to dispensing.”¹¹

The proposed rule will equip women with the tools they need to get their legally prescribed birth control without delay or hassle or to make a formal complaint if that does not happen. Ensuring that women have notice of the existing rule and their rights will help guarantee that women seeking to prevent pregnancy have every opportunity to do so.

III. The Proposed Rule Will Reduce Conflict and is not a Substantial Burden on Pharmacies

The proposed rule has the further benefit of reducing conflict between employers and employees and the public by spelling out the rights and responsibilities of all parties, thereby lessening the possibility of lawsuits.

Pharmacies will be aware that women know of the pharmacy’s duty to fill prescriptions without “hassles, lectures or delay”¹² and the options available to them when a contraceptive is out of stock. Pharmacists will be aware of their responsibility to follow the rule and avoid obstruction. This will encourage pharmacists who might have an objection to providing contraceptives to notify their employers in advance so that the pharmacy can make arrangement to ensure compliance with the existing rule. Advance awareness of objections by pharmacists will further the existing rule’s purpose—putting a burden on the pharmacy, rather than the pharmacist, to ensure that contraceptive prescriptions are filled without delay. This is consistent with standards of the American Pharmacist Association and other commentators and organizations, which suggest that the interests of pharmacists and patients can be balanced by requiring a transfer and

⁸ Proposed Rule, *supra* note 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

referral process. It counters claims by Pharmacists for Life International that pharmacists who refuse to dispense emergency contraception can effectively abandon a patient because they have no obligation to refer a patient or transfer the prescription.¹³ The proposed rule continues to allow pharmacies to accommodate individual pharmacists' beliefs, as required by Title VII,¹⁴ while ensuring that the patient is not abandoned or neglected. This should, in turn, reduce lawsuits by pharmacists asserting a right to refuse.

The proposed rule also will lead to less conflict between the public and pharmacists and pharmacies. When pharmacists and pharmacies are notified of their responsibilities, leading them to obey the rule, women seeking prescription contraceptives should have a standard visit to the pharmacy. There should be no harassment, deception, or unnecessary delay. Rather, women will receive the professional treatment and respect they have come to expect of pharmacists and pharmacies. This should, in turn, reduce lawsuits brought by women who are harmed by refusals and only later learn of the violation of their rights.

Finally, complying with the proposed rule does not impose a substantial burden on pharmacies. Pharmacies are simply required to post visible notice of the existing rule and information on filing a complaint, following a template created by the Department. Notice posting requires minimal staff time and pharmacy space and does not impinge upon the business of the pharmacy. The benefits gained by the proposed rule clearly outweigh the minor burden imposed on pharmacies.

IV. Conclusion

The National Women's Law Center strongly supports the proposed rule. The proposed rule will give meaningful effect to the existing rule by preventing pharmacists from avoiding compliance and deceiving patients and by arming patients with knowledge about their rights. It is a balanced measure that benefits the public without burdening pharmacies' business or impinging upon individual pharmacists' beliefs. The proposed rule works to avoid conflict by spelling out the rights and responsibilities of all parties in a clear and understandable way. The Center commends Governor Blagojevich and the Department for taking steps to further the goal of the existing rule – to ensure women's access to prescription contraceptives without delay or hassle.

¹³ See Pharmacists for Life International, at <http://www.pfli.org/>.

¹⁴ Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.