

**Written Testimony to the Wyoming Board of Pharmacy
Regarding Proposed Amendment to Chapter 4, Section 2 of the
Wyoming Pharmacy Regulations**

The National Women's Law Center ("Center"), based in Washington, D.C., is a nonpartisan, non-profit organization dedicated to improving the lives of women and girls. Through its Pharmacy Refusal Project, 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. The Center is pleased to have the opportunity to submit testimony to the Wyoming Board of Pharmacy ("Board") about its proposed amendment to its Code of Ethics regarding pharmacist refusals.

I. Background

The Center appreciates that the Board is seeking to establish patient protections in advance of a formal complaint about a pharmacist refusal to dispense a prescription for medication based on personal beliefs. As you are aware, the issue of pharmacy refusals often manifests in the context of refusals to dispense prescriptions for contraception, which is used only by women to prevent a condition—pregnancy—experienced only by women. Recent reports of pharmacist refusals to dispense contraception have surfaced across the country, in over a dozen states, ranging from California to Texas to Wisconsin. These refusals have occurred at major drugstore chains like CVS and Walgreens in addition to smaller independent pharmacies, and have affected everyone from rape survivors in search of emergency contraception to married mothers in need of their birth control pills. Active obstruction of women's access to contraception goes beyond even refusal to dispense certain drugs. Pharmacists who refuse to dispense also often have refused to transfer a woman's prescription to another pharmacist or refer her to another pharmacy. Other pharmacists have confiscated prescriptions, misled women about the availability of certain drugs, publicly lectured women about morality, or delayed access to drugs until they are no longer effective.

Pharmacist refusals can have devastating consequences for women's health. Access to contraception is critical to preventing unwanted pregnancies and to enabling women to control the timing and spacing of their pregnancies, with real consequences for maternal and infant health and mortality. Without contraception, the average woman would bear between 12 to 15 children in her lifetime. And for some women, pregnancy can entail great health risks and even life-endangerment. Also, women rely on prescription contraceptives for a range of medical purposes in addition to birth control, such as amenorrhea, dysmenorrhea, and endometriosis. Refusals to fill prescriptions for emergency contraception (EC)—a form of contraception approved by the U.S. Food and Drug Administration and relied upon by women worldwide—are particularly

burdensome, as EC is an extremely time-sensitive drug. Although EC can be effective for up to 72 hours, its efficacy declines dramatically after 12 to 24 hours following contraceptive failure, unprotected sex, or sexual assault. If not secured in a timely manner, the utility of this drug is completely undermined.

Although pharmacist refusals are detrimental to all women, rural and low-income women, as well as survivors of sexual assault, are at particular risk of harm. These women may be unable to travel to another pharmacy to have their prescriptions filled without considerable hardship, and thus some may forgo the drug altogether, resulting in unwanted or medically ill-advised pregnancies. In Wyoming, where inclement weather is present throughout much of the year, and where there are many rural areas, traveling from one pharmacy to another in search of medication may not be possible. In the case of a prescription for EC, a refusal may effectively prevent access to the drug in time for it to be effective—a devastating result in all cases, and in particular for sexual assault survivors.

We appreciate your commitment to instituting a regulation to ensure patient protections in the event of a refusal.

II. Issues to Consider

There are several issues to consider in crafting language to protect patients from pharmacy refusals to dispense prescriptions. The suggestions below stem from the Center's prior experience working with pharmacy boards and legislatures in other states to establish patient-protective policies.

Existing Wyoming Law

Existing Wyoming law already contains provisions that give highest priority to a patient's needs and could even be read to prohibit altogether pharmacist refusals based on personal beliefs.

Chapter 4, Section 2(a) of the Pharmacy Regulations requires that pharmacists “hold the health and safety of patients to be of first consideration” and “render each patient the full measure of ability as an essential health practitioner.” This language suggests that pharmacists may not put their personal beliefs before their professional duty to render appropriate medical care to their patients.

Another part of the Pharmacy Regulations, Chapter 9, Section 4, delineates instances where a pharmacist *should not* fill prescriptions without first addressing certain professional concerns, such as where overutilization, contraindication, or drug-allergy interactions are suspected. By enumerating the *professional* instances where pharmacists

may review and refuse prescriptions, this provision implicitly suggests that pharmacists may not refuse for other reasons, such as personal beliefs.

Rather than formally promulgating a new regulation, the Board could simply issue an interpretation of the existing law that prohibits pharmacist refusals based on their personal beliefs.

Need for Enhanced Patient Protections in Current Proposed Regulation

If the Board wants to recognize a right of refusal, then we suggest that you add some provisions to meet your goal of ensuring adequate patient protections. We discuss the concepts that underlie these suggestions below, and attach suggested language at the end of this testimony.

A. Duty to Patient

- a. *Referral within Pharmacy*: In order to ensure access to medication, it is important that pharmacies have systems in place to ensure that prescriptions are filled expeditiously and without additional burdens. A provision governing refusals could require that a refusing pharmacist refer the prescription to another pharmacist who can meet the patient's needs, either on call or at the same pharmacy.

We recognize that this in-store referral provision will have the greatest impact on sole proprietors who have personal objections to certain medications. In our view, however, it is precisely in these situations, where there are often a limited number of pharmacies and long distances between pharmacies, that refusals can have the most harmful effect on those seeking medication and therefore should not be allowed. However, others such as Illinois Governor Rod Blagojevich, who recently promulgated a regulation on pharmacy refusals, have chosen to address this issue by allowing pharmacies who do not sell *any form* of prescription contraception to opt out of Illinois' contraception dispensation requirements.

- b. *Confidentiality/Dignity*: To protect patients against public lectures, harassment or other forms of humiliating treatment by pharmacists, a refusal provision could have a requirement that pharmacists treat patients in a non-judgmental manner and keep patient medical care confidential. There is support for this type of provision in Chapter 4, Section 2(g) of the Pharmacy Regulations, which requires that a pharmacist "respect the confidential and personal nature of patient records."

- c. *Misrepresentation*: To protect patients against misrepresentation about whether a drug is in stock or can be obtained in a timely fashion, or other interference with a patient's prescription, a refusal provision could have a prohibition on affirmative misrepresentation or interference by pharmacists. There is support for this type of provision in Chapter 4, Section 2(i) of the Pharmacy Regulations, which requires that a pharmacist "provide information to patients regarding professional services truthfully, accurately and fully and shall avoid misleading patients."

B. Duty to Employer

- a. *Notice*: One issue to consider in drafting a refusal provision is ensuring that the employer is aware of a pharmacist's objection to a particular medication so that the employer can make arrangements to protect patient needs. A provision requiring pharmacists to notify their employers about their objection in writing will allow the employer this latitude.
- b. *Defining Undue Hardship*: Under federal law, employers must accommodate the religious beliefs of their employees only if doing so would not constitute an undue hardship, a standard that is not defined in the law. A provision governing refusals could include a definition of undue hardship that would protect employers against having to hire or retain pharmacists that obstruct access to medication, turn patients away, or act otherwise inappropriately because of their personal beliefs.

C. Out-of-Stock Drugs

Some pharmacists engage in stall tactics when a drug is not in stock and they have personal objections to filling the prescription. To prevent this, a refusal provision could require that pharmacists obtain out-of-stock drugs without delay and according to standard operating procedures.

D. Preserving Pharmacist Duties

Although the Board may wish to limit the reasons that a pharmacist can refuse, any refusal provision should clarify that pharmacists' traditional duties—such as engaging in a Prospective Drug Review—continue to apply in all circumstances.

III. Proposed Language

Below is our suggested language, building on your proposed amendment to Chapter 4, Section 2 of the Wyoming Pharmacy Regulations, that incorporates the concepts and protections discussed above.

- (n) A pharmacist shall not impose his or her personal beliefs on the patients they serve.
- (A) A pharmacist may choose not to dispense a prescription based on personal beliefs only if:
 - (1) the pharmacist has notified his employer, in writing, of any objection to dispensing medication;
 - (2) the employer has determined that accommodating this objection is not an undue hardship;
 - a. For the purposes of this subsection (n), the factors to be taken into account in determining what constitutes an “undue hardship” include:
 - i. The need of the customer to have the prescription filled in a timely manner;
 - ii. The financial cost of implementing such an accommodation; and
 - iii. The effect such an accommodation would have on an employer’s reputation or good will in the community.
 - (3) the patient’s prescription is referred without delay to another pharmacist at the same pharmacy who can dispense the prescription in a timely fashion;
 - (4) the pharmacist treats the patient in a non-judgmental manner and refrains from subjecting the patient to indignity, humiliation or breaches of confidentiality; and
 - (5) the pharmacist does not misrepresent to the patient whether a drug is in stock or can be obtained in a timely fashion through standard ordering procedures or engage in other interference with the intent to prevent a patient from filling a valid prescription.

(B) If a requested drug is out of stock, the pharmacist must ensure that it is obtained without delay, under standard procedures for ordering out-of-stock drugs. However, if the patient prefers, the prescription must be transferred to a pharmacy of the patient's choice or returned to the patient.

(C) Nothing in this subsection (n) shall interfere with a pharmacist's screening for potential drug therapy problems due to overutilization or underutilization, therapeutic duplication, drug-disease contraindications, drug-drug interactions, drug-allergy interactions, or clinical abuse or misuse, pursuant to Chpt. 9, Section 4.

Thank you in advance for your consideration of our suggestions. The National Women's Law Center looks forward to working further with you on this proposed regulation. Please do not hesitate to contact Rachel Laser, Senior Counsel, at (202) 588-5180 if you have any questions.