

Beyond the Issue of Pharmacist Refusals: Pharmacies That Won't Sell Emergency Contraception

By Cynthia Dailard

In recent months, incidents of pharmacists refusing to fill prescriptions for emergency contraception have attracted significant media attention. Lawmakers at the state and federal levels have responded with a raft of proposals designed to protect consumers. Typically, these proposals address the related questions of whether pharmacists should be allowed to refuse to fill valid prescriptions on moral or religious grounds, and, if so, what obligation the pharmacy has to the public when its pharmacist refuses.

But focusing on the pharmacists' role and addressing the pharmacy's responsibility to consumers only when a pharmacist refuses to fill prescriptions sidesteps a related but discrete problem that women may encounter: pharmacies that, as a matter of policy, refuse to sell emergency contraception, even when they sell ordinary birth control pills. Policymakers working to ensure that women and couples have access to emergency contraception should consider tackling both halves of this pressing problem.

The Advancing Right to Refuse

"A rising number of pharmacists are refusing to dispense prescriptions for birth control and morning-after pills, saying it is against their beliefs." So declared an article appearing in *The Economist* in April. Whether, in fact, such refusals have become increasingly common or simply more visible in the press and the public eye is unclear. What is clear, however, is that incidents of pharmacists refusing to fill prescriptions for emergency

contraception and, occasionally, other methods of birth control have been documented in more than a dozen states, according to Planned Parenthood Federation of America and the National Women's Law Center, which are both spearheading efforts to collect such stories. In some of these cases, pharmacists have gone to such extreme lengths as refusing to fill prescriptions for rape victims; refusing to transfer the prescription to another pharmacy or even to return it to the woman so she could take it elsewhere; and giving women religious lectures and chastising them for being "irresponsible."

In fact, the issue of pharmacists refusing to fill birth control prescriptions is not new. The American Pharmacists Association adopted a policy as early as 1998 in which it both "recognizes the individual pharmacist's right to exercise conscientious refusal and supports the establishment of systems to ensure patient access to legally prescribed therapy without compromising the pharmacist's right of conscientious refusal." However, the increasing demand for emergency contraception and ongoing efforts by many antiabortion activists to mischaracterize the drug as an abortifacient (see box, page 11) have helped bolster a movement to give pharmacists the right to refuse to fill birth control and other prescriptions to which they object on moral or religious grounds.

These efforts are making headway. Currently, four states—Arkansas, Georgia, Mississippi and South Dakota—have laws or policies on the books that explicitly allow phar-

macists to refuse to dispense contraceptives. Similar legislation was introduced in nine other states this year, although none became law. A bill passed by the Arizona legislature was vetoed in April by Gov. Janet Napolitano (D). According to the governor's veto statement, "Pharmacies and other health care service providers have no right to interfere in the lawful personal medical decisions made by patients and their doctors."

Pushing Back

Countering this general trend are legislators in six states who this year introduced bills, one of which has already been enacted, designed to ensure that consumers seeking medications are not disadvantaged by pharmacists who refuse to fill their prescriptions. These measures vary somewhat in approach. Legislation introduced in New Jersey, West Virginia and Wisconsin, for example, stipulates that pharmacists must fill a valid prescription presented to them unless it is contraindicated; a pharmacist refusing to do so may be disciplined by the state's pharmacy examining board. (The Wisconsin bill uniquely applies only to birth control prescriptions.) Even without such a law in place, a Wisconsin pharmacist who refused to fill or transfer to another pharmacy a birth control prescription was in fact disciplined by the state's pharmacy review board in April for unprofessional conduct.

Measures in the remaining three states—California, Missouri and Nevada—implicitly or explicitly allow a pharmacist to decline to fill a prescription on moral or religious grounds, but nonetheless include certain protections for consumers. For example, Nevada's new law, signed by the governor in June, requires that a refusing pharmacist transfer the prescription to another pharmacy at a patient's request. The bills in California and Missouri require refusing pharmacists to have notified their employer, in advance,

Emergency Contraception vs. Birth Control Pills: A False Distinction

Those who oppose the use of emergency contraception typically attempt to distinguish it from ordinary birth control pills because it is taken after sex, rather than before; in their mind, therefore, it must necessarily act after a pregnancy has been established, rather than before.

However, such a position fails to appreciate the common way both emergency and “regular” birth control pills work. This is highlighted in a question-and-answer document developed in 2004 by the Food and Drug Administration, which describes Plan B’s method of action: “Plan B works like other birth control pills to prevent pregnancy. Plan B acts primarily by stopping the release of an egg from the ovary (ovulation). It may prevent the union of sperm and egg (fertilization). If fertilization does occur, Plan B may prevent a fertilized egg from attaching to the womb (implantation).”

Similarly, the American College of Obstetricians and Gynecologists explains, “the primary contraceptive effect of all the non-barrier methods, including emergency use of contraceptive pills, is to prevent ovulation and/or fertilization. Additional contraceptive actions for all of these also may affect the process beyond fertilization but prior to pregnancy.”

In short, despite the confusion that opponents have fostered around emergency contraception’s mode of action, how the method works depends more on when during a woman’s monthly menstrual cycle it is taken (and, specifically, when she last ovulated) than on when she had sexual intercourse.

of their moral or religious objections. Two California bills require the pharmacists’ employer to establish adequate protocols designed to ensure that consumers have timely access to prescribed drugs when pharmacists refuse, while the Missouri bill says that employers must reasonably accommodate pharmacists’ objections unless doing so places an “undue hardship” on patients and consumers.

Similar legislation has been introduced in Congress as well. The Access to Legal Pharmaceuticals Act, introduced by Sen. Frank Lautenberg (D-NJ) and Rep. Carolyn Maloney (D-NY), establishes the duties of pharmacies to consumers when individual pharmacists refuse to fill valid prescriptions. According to the bill’s sponsors, the bill “seeks to strike a careful balance” by allowing an individual pharmacist to refuse on moral or religious grounds to dispense contraception, but requiring the pharmacy to ensure that the prescription is

filled in a timely manner by another pharmacist. Comparable legislation was also introduced by Rep. Carolyn McCarthy (D-NY).

The Role of Pharmacies

Clearly, ensuring that pharmacists do not exercise their ability to refuse to fill prescriptions either with the intent or effect of impeding women’s access to obtain emergency contraception, or any other method of birth control, is critical (see related story, page 7). However, public policy initiatives that focus exclusively on the pharmacists’ role—and the pharmacy’s role *only* when a pharmacist refuses—address what fairly could be deemed only half of the problem. This is because there are *pharmacies* that, as a matter of management policy, refuse to sell emergency contraception under any circumstance.

Perhaps the most well-known pharmacy that engages in such a practice is Wal-Mart, the third largest phar-

macy nationwide, according to the National Association of Chain Drug Stores. Wal-Mart has in fact refused to carry emergency contraception since the first dedicated product (Preven) came on the market in 1997. Although a company spokesperson characterized this as a “business decision pure and simple” based on “customer demand, [the company’s] current product mix of birth control pills and the kit’s sale potential,” the company has not changed its policy in the intervening years despite the arrival of a second dedicated product (Plan B), growing public awareness of the drug and, in turn, steadily increasing demand. Should a woman present a prescription for emergency contraception, the company’s policy is “to refer customers to another specific source for this prescription, just as we would for any other requested medication that we do not have available,” according to the company’s policy statement.

The potential reach of this policy, and its impact on women’s ability to access emergency contraception in a timely manner, should not be underestimated. For women living in rural areas, Wal-Mart may be the only pharmacy within miles. Moreover, with almost 4,000 locations nationwide, the retailer is a behemoth by industry standards and still growing: A 2003 projection estimated that it would control 25% of the drug store industry by 2007 and would consume a third of the expected growth in U.S. spending on grocery and drug products during that time period. “Wal-Mart Supercenters will continue to steamroll the competitive landscape,” according to an industry analyst, “put[ting] many entrenched players in jeopardy”—potentially, of course, including current competitors that sell emergency contraception.

This problem is not just limited to major chains. At the extreme other end of the spectrum are those independently owned and operated phar-

macies that refuse to stock and dispense emergency contraception, even when they stock other birth control pills. Even today, with the large-scale chains increasingly penetrating the drug store marketplace, these independent pharmacies constitute 42% of the nation's more than 57,000 drug stores. On average, they employ 2.5 pharmacists, including the owner. While no data exist to suggest that refusal to stock and dispense emergency contraception is a major problem in independent pharmacies nationwide, it can present a major problem for women who rely on those pharmacies that fail to carry the drug, particularly those who live in rural and geographically isolated areas who may not have easy access to an alternative source of care.

Policy Options

Public policies have the potential to target the pharmacy in its own right, and a variety of options already exist. A New York City policy, for example, addresses this problem in the most limited fashion, by simply requiring pharmacies that do not sell emergency contraception to post a notice to that effect. More ambitious is the Pharmacy Consumer Protection Act, introduced at the federal level by Sen. Barbara Boxer (D-CA), which would require pharmacies accepting federal Medicare and Medicaid funding to fill all valid prescriptions “without unnecessary delay or other interference, consistent with the normal timeframe for filing prescriptions.” Yet even here a pharmacy is not required to keep a drug in stock but only to order it at the patient's request. And, of course, time is of the essence when use of emergency contraception is concerned. The drug is effective in preventing pregnancy for several days following unprotected sex, yet its effectiveness decreases even after the first 24 hours. Therefore, the window that women have to obtain the drug to ensure its maximum effectiveness is small.

An Illinois rule, filed in April and due to become permanent in the coming months, adopts another approach. The rule was issued by Gov. Rod Blagojevich (D) in response to pharmacists refusing to fill the prescriptions of two Chicago women for emergency contraception. It requires pharmacies that stock and dispense birth control to fill prescriptions for birth control, including emergency contraception, “without delay” or risk losing their license. The governor also established a toll-free hotline for state residents to report refusals. According to the governor's statement, “Pharmacies have an obligation to carry out the health care needs of their customers. Filling prescriptions for birth control is about protecting a woman's right to have access to medicine her doctor says she needs. Nothing more. Nothing less.” In response to the rule, however, two pharmacists and a pharmacy owner have filed lawsuits contending that the rule violates their rights under state law by requiring them to violate their ethical and religious beliefs. In turn, the governor's spokesperson has stated, “They've chosen to be in the field of providing contraceptives. They don't have the right to pick and choose who they're going to serve.”

A possible variant on this approach would require pharmacies to stock and dispense emergency contraception provided that they stock and dispense ordinary birth control pills. Such an approach has the potential to be a powerful public relations tool for educating policymakers—and the public—that emergency contraception and ordinary birth control pills share the same mechanism of action, and that there is no rational basis for pharmacist practice or pharmacy policy that single out emergency contraception for less favorable treatment. Seeking comparable treatment of emergency contraception and other birth control pills also echoes the “parity” model that proved so successful for efforts to advance public

policies designed to improve contraceptive coverage in private insurance. While it is admittedly conceivable that some small independent pharmacies could object so strenuously to selling emergency contraception that they might stop selling birth control entirely, market forces would make such events unlikely.

Notably, the American Medical Association recently weighed in strongly on this issue, adopting a resolution in June expressing support for legislation that requires individual pharmacists or pharmacies to fill valid prescriptions (or provide timely referrals to another appropriate pharmacy). It also resolved to enter into discussions with relevant professional organizations and trade associations, including the American Pharmacists Association, the National Association of Chain Drug Stores and the National Community Pharmacists Association, to guarantee that “a patient's right to obtain legal prescriptions will be protected.”

Ultimately, the need to ensure that pharmacies carry and stock emergency contraception will only intensify should the Food and Drug Administration (FDA) ever approve the sale of emergency contraception as an over-the-counter drug (“FDA Rejects Expert Panel Recommendation, Blocks OTC Switch for Plan B Emergency Contraception,” *TGR*, June 2004, page 13). Public policy initiatives that solely define the potential problem at hand as pharmacists refusing to fill birth control prescriptions will lose much of their saliency at that point in time. Policymakers seeking to ensure access to emergency contraception both now and in the future should ultimately consider the respective roles of pharmacist practice and pharmacy policy as two sides of the same coin. ☉

This article was supported in part by grants from the Prospect Hill Foundation and the Compton Foundation. The conclusions and opinions expressed in this article, however, are those of the author and the Guttmacher Institute.