

## SOUNDING BOARD

## The Limits of Conscientious Objection — May Pharmacists Refuse to Fill Prescriptions for Emergency Contraception?

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Health policy decisions are often controversial, and the recent determination by the Food and Drug Administration (FDA) not to grant over-the-counter status to the emergency contraceptive Plan B was no exception. Some physicians decried the decision as a troubling clash of science, politics, and morality.<sup>1</sup> Other practitioners, citing safety, heralded the agency's prudence.<sup>2</sup> Public sentiment mirrored both views. Regardless, the decision preserved a major barrier to the acquisition of emergency contraception — the need to obtain and fill a prescription within a narrow window of efficacy. Six states have lowered that hurdle by allowing pharmacists to dispense emergency contraception without a prescription.<sup>3-8</sup> In those states, patients can simply bypass physicians. But the FDA's decision means that patients cannot avoid pharmacists. Because emergency contraception remains behind the counter, pharmacists can block access to it. And some have done just that.

Across the country, some pharmacists have refused to honor valid prescriptions for emergency contraception. In Texas, a pharmacist, citing personal moral grounds, rejected a rape survivor's prescription for emergency contraception.<sup>9</sup> A pharmacist in rural Missouri also refused to sell such a drug,<sup>10</sup> and in Ohio, Kmart fired a pharmacist for obstructing access to emergency and other birth control.<sup>11</sup> This fall, a New Hampshire pharmacist refused to fill a prescription for emergency contraception or to direct the patron elsewhere for help. Instead, he berated the 21-year-old single mother, who then, in her words, "pulled the car over in the parking lot and just cried."<sup>12</sup> Although the total number of incidents is unknown, reports of pharmacists who refused to dispense emergency contraception date back to 1991<sup>13</sup> and show no sign of abating.

Though nearly all states offer some level of legal protection for health care professionals who refuse to provide certain reproductive services, only

Arkansas, Mississippi, and South Dakota explicitly protect pharmacists who refuse to dispense emergency and other contraception.<sup>14</sup> But that list may grow. In past years, legislators from nearly two dozen states have taken "conscientious objection" — an idea that grew out of wartime tension between religious freedom and national obligation<sup>15</sup> and was co-opted into the reproductive-rights debate of the 1970s<sup>16</sup> — and applied it to pharmacists. One proposed law offers pharmacists immunity from civil lawsuits, criminal liability, professional sanctions, and employment repercussions.<sup>17</sup> Another bill, which was not passed, would have protected pharmacists who refused to transfer prescriptions.<sup>18</sup>

This issue raises important questions about individual rights and public health. Who prevails when the needs of patients and the morals of providers collide? Should pharmacists have a right to reject prescriptions for emergency contraception? The contours of conscientious objection remain unclear. This article elucidates those boundaries and offers a balanced solution to a complex problem. Because the future of over-the-counter emergency contraception is in flux, this issue remains salient for physicians and their patients.

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### ARGUMENTS IN FAVOR OF A PHARMACIST'S RIGHT TO OBJECT

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#### PHARMACISTS CAN AND SHOULD EXERCISE INDEPENDENT JUDGMENT

Pharmacists, like physicians, are professionals. They complete a graduate program to gain expertise, obtain a state license to practice, and join a professional organization with its own code of ethics. Society relies on pharmacists to instruct patients on the appropriate use of medications and to ensure the safety of drugs prescribed in combination. Courts have held that pharmacists, like other professionals, owe their customers a duty of care.<sup>19</sup> In short, pharmacists are not automatons

completing tasks; they are integral members of the health care team. Thus, it seems inappropriate and condescending to question a pharmacist's right to exercise personal judgment in refusing to fill certain prescriptions.

**PROFESSIONALS SHOULD NOT FORSAKE THEIR MORALS AS A CONDITION OF EMPLOYMENT**

Society does not require professionals to abandon their morals. Lawyers, for example, choose clients and issues to represent. Choice is also the norm in the health care setting. Except in emergency departments, physicians may select their patients and procedures. Ethics and law allow physicians, nurses, and physician assistants to refuse to participate in abortions and other reproductive services.<sup>14,20</sup> Although some observers argue that active participation in an abortion is distinct from passively dispensing emergency contraception, others believe that making such a distinction between active and passive participation is meaningless, because both forms link the provider to the final outcome in the chain of causation.

**CONSCIENTIOUS OBJECTION IS INTEGRAL TO DEMOCRACY**

More generally, the right to refuse to participate in acts that conflict with personal ethical, moral, or religious convictions is accepted as an essential element of a democratic society. Indeed, Oregon acknowledged this freedom in its Death with Dignity Act,<sup>21</sup> which allows health care providers, including pharmacists, who are disquieted by physician-assisted suicide to refuse involvement without fear of retribution. Also, like the draftee who conscientiously objects to perpetrating acts of death and violence, a pharmacist should have the right not to be complicit in what they believe to be a morally ambiguous endeavor, whether others agree with that position or not. The reproductive-rights movement was built on the ideal of personal choice; denying choice for pharmacists in matters of reproductive rights and abortion seems ironic.

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**ARGUMENTS AGAINST A PHARMACIST'S RIGHT TO OBJECT**

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**PHARMACISTS CHOOSE TO ENTER A PROFESSION BOUND BY FIDUCIARY DUTIES**

Although pharmacists are professionals, professional autonomy has its limits. As experts on the profession of pharmacy explain, "Professionals

are expected to exercise special skill and care to place the interests of their clients above their own immediate interests."<sup>22</sup> When a pharmacist's objection directly and detrimentally affects a patient's health, it follows that the patient should come first. Similarly, principles in the pharmacists' code of ethics weigh against conscientious objection. Given the effect on the patient if a pharmacist refuses to fill a prescription, the code undermines the right to object with such broadly stated objectives as "a pharmacist promotes the good of every patient in a caring, compassionate, and confidential manner," "a pharmacist respects the autonomy and dignity of each patient," and "a pharmacist serves individual, community, and societal needs."<sup>23</sup> Finally, pharmacists understand these fiduciary obligations when they choose their profession. Unlike conscientious objectors to a military draft, for whom choice is limited by definition, pharmacists willingly enter their field and adopt its corresponding obligations.

**EMERGENCY CONTRACEPTION IS NOT AN ABORTIFACIENT**

Although the subject of emergency contraception is controversial, medical associations,<sup>24</sup> government agencies,<sup>25</sup> and many religious groups agree that it is not akin to abortion. Plan B and similar hormones have no effect on an established pregnancy, and they may operate by more than one physiological mechanism, such as by inhibiting ovulation or creating an unfavorable environment for implantation of a blastocyst.<sup>26</sup> This duality allowed the Catholic Health Association to reconcile its religious beliefs with a mandate adopted by Washington State that emergency contraception must be provided to rape survivors.<sup>27</sup> According to the association, a patient and a provider who aim only to prevent conception follow Catholic teachings and state law. Also, whether one believes that pregnancy begins with fertilization or implantation, emergency contraception cannot fit squarely within the concept of abortion because one cannot be sure that conception has occurred.

**PHARMACISTS' OBJECTIONS SIGNIFICANTLY AFFECT PATIENTS' HEALTH**

Although religious and moral freedom is considered sacrosanct, that right should yield when it hinders a patient's ability to obtain timely medical treatment. Courts have held that religious freedom does not give health care providers an unfet-

tered right to object to anything involving birth control, an embryo, or a fetus.<sup>28,29</sup> Even though the Constitution protects people's beliefs, their actions may be regulated.<sup>30</sup> An objection must be balanced with the burden it imposes on others. In some cases, a pharmacist's objection imposes his or her religious beliefs on a patient. Pharmacists may decline to fill prescriptions for emergency contraception because they believe that the drug ends a life. Although the patient may disapprove of abortion, she may not share the pharmacist's beliefs about contraception. If she becomes pregnant, she may then face the question of abortion — a dilemma she might have avoided with the morning-after pill.

Furthermore, the refusal of a pharmacist to fill a prescription may place a disproportionately heavy burden on those with few options, such as a poor teenager living in a rural area that has a lone pharmacy. Whereas the savvy urbanite can drive to another pharmacy, a refusal to fill a prescription for a less advantaged patient may completely bar her access to medication. Finally, although Oregon does have an opt-out provision in its statute regulating assisted suicide, timing is much more important in emergency contraception than in assisted suicide. Plan B is most effective when used within 12 to 24 hours after unprotected intercourse.<sup>31</sup> An unconditional right to refuse is less compelling when the patient requests an intervention that is urgent.

#### REFUSAL HAS GREAT POTENTIAL FOR ABUSE AND DISCRIMINATION

The limits to conscientious objection remain unclear. Pharmacists are privy to personal information through prescriptions. For instance, a customer who fills prescriptions for zidovudine, didanosine, and indinavir is logically assumed to be infected with the human immunodeficiency virus (HIV). If pharmacists can reject prescriptions that conflict with their morals, someone who believes that HIV-positive people must have engaged in immoral behavior could refuse to fill those prescriptions. Similarly, a pharmacist who does not condone extramarital sex might refuse to fill a sildenafil prescription for an unmarried man. Such objections go beyond "conscientious" to become invasive. Furthermore, because a pharmacist does not know a patient's history on the basis of a given prescription, judgments regarding the acceptability of a prescription may be medically inappropriate. To a woman with Eisenmenger's syndrome, for exam-

ple, pregnancy may mean death. The potential for abuse by pharmacists underscores the need for policies ensuring that patients receive unbiased care.

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#### TOWARD BALANCE

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Compelling arguments can be made both for and against a pharmacist's right to refuse to fill prescriptions for emergency contraception. But even cogent ideas falter when confronted by a dissident moral code. Such is the nature of belief. Even so, most people can agree that we must find a workable and respectful balance between the needs of patients and the morals of pharmacists.

Three possible solutions exist: an absolute right to object, no right to object, or a limited right to object. On balance, the first two options are untenable. An absolute right to conscientious objection respects the autonomy of pharmacists but diminishes their professional obligation to serve patients. It may also greatly affect the health of patients, especially vulnerable ones, and inappropriately brings politics into the pharmacy. Even pharmacists who believe that emergency contraception represents murder and feel compelled to obstruct patients' access to it must recognize that contraception and abortion before fetal viability remain legal nationwide. In our view, state efforts to provide blanket immunity to objecting pharmacists are misguided. Pharmacies should follow the prevailing employment-law standard to make reasonable attempts to accommodate their employees' personal beliefs.<sup>32</sup> Although neutral policies to dispense medications to all customers may conflict with pharmacists' morals, such policies are not necessarily discriminatory, and pharmacies need not shoulder a heightened obligation of absolute accommodation.

Complete restriction of a right to conscientious objection is also problematic. Though pharmacists voluntarily enter their profession and have an obligation to serve patients without judgment, forcing them to abandon their morals imposes a heavy toll. Ethics and law demand that a professional's morality not interfere with the provision of care in life-or-death situations, such as a ruptured ectopic pregnancy.<sup>29</sup> Whereas the hours that elapse between intercourse and the intervention of emergency contraception are crucial, they do not meet that strict test. Also, patients who face an objecting pharmacist do have options, even if they are less preferable than having the prescription immediately

filled. Because of these caveats, it is difficult to demand by law that pharmacists relinquish individual morality to stock and fill prescriptions for emergency contraception.

We are left, then, with the vast middle ground. Although we believe that the most ethical course is to treat patients compassionately — that is, to stock emergency contraception and fill prescriptions for it — the totality of the arguments makes us stop short of advocating a legal duty to do so as a first resort. We stop short for three reasons: because emergency contraception is not an absolute emergency, because other options exist, and because, when possible, the moral beliefs of those delivering care should be considered. However, in a profession that is bound by fiduciary obligations and strives to respect and care for patients, it is unacceptable to leave patients to fend for themselves. As a general rule, pharmacists who cannot or will not dispense a drug have an obligation to meet the needs of their customers by referring them elsewhere. This idea is uncontroversial when it is applied to common medications such as antibiotics and statins; it becomes contentious, but is equally valid, when it is applied to emergency contraception. Therefore, pharmacists who object should, as a matter of ethics and law, provide alternatives for patients.

Pharmacists who object to filling prescriptions for emergency contraception should arrange for another pharmacist to provide this service to customers promptly. Pharmacies that stock emergency contraception should ensure, to the extent possible, that at least one nonobjecting pharmacist is on duty at all times. Pharmacies that do not stock emergency contraception should give clear notice and refer patients elsewhere. At the very least, there should be a prominently displayed sign that says, “We do not provide emergency contraception. Please call Planned Parenthood at 800-230-PLAN (7526) or visit the Emergency Contraception Web site at [www.not-2-late.com](http://www.not-2-late.com) for assistance.” However, a direct referral to a local pharmacy or pharmacist who is willing to fill the prescription is preferable. Objecting pharmacists should also redirect prescriptions for emergency contraception that are received by telephone to another pharmacy known to fill such prescriptions. In rural areas, objecting pharmacists should provide referrals within a reasonable radius.

Notably, the American Pharmacists Association has endorsed referrals, explaining that “providing alternative mechanisms for patients . . . ensures

patient access to drug products, without requiring the pharmacist or the patient to abide by personal decisions other than their own.”<sup>33</sup> A referral may also represent a break in causation between the pharmacist and distributing emergency contraception, a separation that the objecting pharmacist presumably seeks. And, in deference to the law’s normative value, the rule of referral also conveys the importance of professional responsibility to patients. In areas of the country where referrals are logistically impractical, professional obligation may dictate providing emergency contraception, and a legal mandate may be appropriate if ethical obligations are unpersuasive.

Inevitably, some pharmacists will disregard our guidelines, and physicians — all physicians — should be prepared to fill gaps in care. They should identify pharmacies that will fill patients’ prescriptions and encourage patients to keep emergency contraception at home. They should be prepared to dispense emergency contraception or instruct patients to mimic it with other birth-control pills. In Wisconsin, family-planning clinics recently began dispensing emergency contraception, and the state set up a toll-free hotline to help patients find physicians who will prescribe it.<sup>34</sup> Emergency departments should stock emergency contraception and make it available to rape survivors, if not all patients.

In the final analysis, education remains critical. Pharmacists may have misconceptions about emergency contraception. In one survey, a majority of pharmacists mistakenly agreed with the statement that repeated use of emergency contraception is medically risky.<sup>35</sup> Medical misunderstandings that lead pharmacists to refuse to fill prescriptions for emergency contraception are unacceptable. Patients, too, may misunderstand or be unaware of emergency contraception.<sup>36</sup> Physicians should teach patients about this option before the need arises, since patients may understand their choices better when they are not under stress. Physicians should discuss emergency contraception during office visits, offer prescriptions in advance of need, and provide education through pamphlets or the Internet. Web sites such as [www.not-2-late.com](http://www.not-2-late.com) allow users to search for physicians who prescribe emergency contraception by ZIP Code, area code, or address, and Planned Parenthood offers extensive educational information at [www.plannedparenthood.org/library/birthcontrol/ec.html](http://www.plannedparenthood.org/library/birthcontrol/ec.html), including details about off-label use of many birth-control pills for emergency contraception.

Our principle of a compassionate duty of care should apply to all health care professionals. In a secular society, they must be prepared to limit the reach of their personal objection. Objecting pharmacists may choose to find employment opportunities that comport with their morals — in a religious community, for example — but when they pledge to serve the public, it is unreasonable to expect those in need of health care to acquiesce to their personal convictions. Similarly, physicians who refuse to write prescriptions for emergency contraception should follow the rules of notice and referral for the reason previously articulated: the beliefs of health care providers should not trump patient care. It is difficult enough to be faced with the consequences of rape or of an unplanned pregnancy; health care providers should not make the situation measurably worse.

Former Supreme Court Chief Justice Charles Evans Hughes called the quintessentially American custom of respect for conscience a “happy tradition”<sup>37</sup> — happier, perhaps, when left in the setting of a draft objection than when pitting one person’s beliefs against another’s reproductive health. Ideally, conflicts about emergency contraception will be rare, but they will occur. In July, 11 nurses in Alabama resigned rather than provide emergency contraception in state clinics.<sup>38</sup> As patients understand their birth-control options, conflicts at the pharmacy counter and in the clinic may become more common. When professionals’ definitions of liberty infringe on those they choose to serve, a respectful balance must be struck. We offer one solution. Even those who challenge this division of burdens and benefits should agree with our touchstone — although health professionals may have a right to object, they should not have a right to obstruct.

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