

Findings



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Conscience Clause Protection

Should Pharmacists Have the Right to Choose?

By Alysse ElHage



few years ago, pharmacist James Morgan was fired after refusing to fill a prescription for the controversial drug, Plan B (also known as emergency contra-

*ception or the “Morning-After Pill”). Morgan, who worked for Kerr Drugs in Wake Forest, N.C. at the time, cited his religious beliefs as the reason for his unwillingness to dispense the drug to a married couple that requested it. He told *The News and Observer*, “This was a line I couldn’t cross. I’m passionate about my Lord Jesus. I would never do anything to hurt or harm anyone.” His decision to act according to his deeply held religious convictions ultimately cost him his job.¹*

Under current North Carolina law, a physician or nurse has the right—on moral, ethical or religious grounds—to refuse to perform or be involved in a procedure that causes an abortion. The law also protects hospitals and other health care institutions in the Tar Heel state from being forced to perform abortions.² But pharmacists in North Carolina do not have the same rights, under the law, to follow the dictates of their conscience. Depending on the policies of their employer, pharmacists can be forced to dispense medications that violate their religious beliefs, such as emergency contraception (hereafter, “EC”), or be forced to refer the customer to another pharmacist or nearby pharmacy where she can obtain the drug. Refusing to dispense EC and to refer a customer to another pharmacist who will do so—even for moral, religious or ethical reasons—could mean the loss of a job.

Do pharmacists have a constitutional right to refuse to dispense medications that violate their moral, religious and

ethical beliefs? This paper will explore that question, and discuss why EC—and the issue of abortion—is at the center of the debate over pharmacist conscience clauses nationwide.

A Nationwide Battle

In March 2006, Wal-Mart announced that it would begin stocking and dispensing Plan B in all of its more than 3,700 pharmacies nationwide. Prior to this decision, Wal-Mart was one of the largest national retail chains in the U.S. that did

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not carry EC.³ The company also said it would maintain its “conscientious objection” policy, which allows pharmacists “who do not feel comfortable dispensing a prescription to refer customers to another pharmacist or pharmacy.”⁴ The retail giant’s decision to stock and dispense Plan B is the latest victory for abortion advocacy groups and their allies in a national campaign to gain easier access to EC pills for women.

Pharmacists across the country are under mounting pressure from abortion advocacy groups, such as Planned Parenthood and NARAL Pro-Choice America, to dispense EC, regardless of their personal moral, ethical and religious beliefs about contraceptive drugs. At the federal level, EC proponents are pushing Congress to pass legislation that would require all pharmacies to ensure that EC and legal birth control drugs are dispensed to customers in a timely manner.⁵ Bills dealing with EC have increased at the state

level as well, with some states considering legislation that would allow pharmacists to refuse to dispense EC on moral or ethical grounds, and other states considering bills that would force pharmacists to fill any legal birth control prescription.⁶ In North Carolina, legislation has been introduced to expand the state’s conscience clause law to include pharmacists.⁷ In other states, efforts are underway to pass legislation that would allow pharmacists to dispense EC without a doctor’s prescription—eight states currently allow pharmacists to do so under certain conditions.⁸

As a result of efforts by abortion advocates to increase access to EC, a growing number of pharmacists with conscientious objections to dispensing the drug are losing their jobs. In addition to what happened to James Morgan in North Carolina, five Walgreen pharmacists in Illinois were fired in 2005, after Governor Rod Blagojevich issued an emergency rule, ordering all pharmacists in the state to dispense EC. In January 2006, Heather Williams, a Missouri pharmacist who worked for Target for five years, was fired for objecting to dispensing EC after the company was threatened with a boycott from Planned Parenthood.⁹

A Closer Look at the Drug

The debate over conscience clause protection for pharmacists involves whether or not they should be allowed to refuse to dispense certain drugs—mainly contraceptives—for moral, ethical and religious reasons. Because of this, it is important to look closely at the form of contraception that is causing the most controversy. Hailed by advocates as a “second chance” for women whose regular birth control methods fail, EC refers to a method of contraception that can reduce the risk of pregnancy after sexual intercourse, either through the use of hormonal birth control

pills, or by inserting an intrauterine device (IUD).¹⁰ The focus of this paper is on EC pills that contain higher doses of the hormones found in regular birth control pills. Plan B is the market name of the most widely used form of EC and was approved for prescription use by the Food and Drug Administration (FDA) in 1999.¹¹

EC is not the same as the chemical abortion drug, RU-486, also known as the “Abortion Pill,” which causes the abortion of an unborn child up to 49 days after the last menstrual cycle. The RU-486 process involves taking two drugs, mifepristone and misoprostol, which prevent the hormone progesterone from offering nourishment to the developing child, and then induce uterine contractions to expel the child from the woman’s body.¹² Another important distinction is that women obtain RU-486 directly from their doctors, while in most states EC pills are dispensed by pharmacists with a doctor’s prescription.¹³

How It Works: Plan B consists of two tablets containing the hormone progesterone. The first pill is taken within 72 hours of intercourse, and the second is taken 12 hours after the first. According to the FDA, Plan B works in one of three ways:

1. To prevent ovulation;
2. To prevent fertilization;
3. To prevent implantation (“if fertilization does occur, Plan B may prevent a fertilized egg from attaching to the wall of the womb”).¹⁴

Plan B is most effective when taken within 72 hours of sexual intercourse.¹⁵

Contraception or Abortion?

Perhaps the most contentious issue in the debate over EC has to do with whether or not it can cause an early abortion. The question of abortion hinges on the definition of pregnancy, or when life begins. The American College of Obstetricians and Gynecologists defines pregnancy as beginning after implantation.¹⁶ Abortion advocates and their allies use this definition of pregnancy to argue that EC does not cause an abortion because it works *before* implantation is complete.

The pro-life position is that life begins at fertilization, when the male’s sperm successfully unites with the female’s egg to produce a genetically complete human being in the earliest stage of development.¹⁷ According to a study by the Alan Guttmacher Institute, 18 states have passed laws that define pregnancy as beginning at fertilization or conception.¹⁸ In addition, nearly half of Americans in a 2003 *Newsweek* poll said they believe that life begins at fertilization.¹⁹ Plan

B’s manufacturer and the FDA state that one of the ways EC works is to prevent implantation.²⁰

For some pharmacists who are pro-life, contraceptives that work to prevent implantation are abortifacient drugs, and dispensing such drugs to women makes them complicit in the possible murder of a developing unborn child. This is why some pharmacists object to making referrals to other pharmacists who will dispense EC. In their view, this is similar to forcing a doctor who does not perform abortions to refer a woman to a clinic or doctor’s office where she can get an abortion. According to Pharmacists for Life International, making a referral to another pharmacist who will dispense EC and other contraceptives is “material cooperation” in a morally objectionable act.²¹

Sexual Risk-Taking, STDs and Women’s Health

Although abortion gets the most attention in the media, it is not the only concern about EC. Some pro-life groups, such as Concerned Women for America, the Christian Medical and Dental Association, and the American Association of Pro-Life Obstetricians and Gynecologists, have raised important questions about the possible misuse of the drug, particularly by young people, who may rely too heavily on EC instead of using their regular birth control methods. The fear is that easy access to EC could lead to greater promiscuity and eventually to an increase in sexually transmitted diseases (STDs).

The marketing techniques that are being used to sell EC to the public highlight the potential problems. EC is heavily marketed to young people, particularly college students and—in some parts of the country—to teenagers, as a second chance to avoid the possible consequences of last night’s mistake. For example:

- An ad created by Women’s Capital Corporation, the maker of Plan B, featured a picture of 13 young men with the caption: “So many men. So many reasons to have back up contraception.” The ad ran in 30 college newspapers nationwide in 2002.²²
- A brochure created by the Pharmacy Access Partnership for adolescents in California states: “You can prevent unplanned pregnancy—even after sex!” The brochure encourages teens to “have EC on hand before an accident happens.”²³

In countries where EC has been easily available for years, such as the United Kingdom (UK), the rates of some STDs

have increased, especially among young people.²⁴ In one study of EC users in the UK, four out of 12 women said the fact that they could obtain EC from a pharmacy influenced their decision to have unprotected sex.²⁵

Health Effects of Repeat Use. Another concern among some pro-life groups has to do with the unknown negative health effects from long-term repeat use of EC. Regular birth control pills, which contain lower doses of the hormones found in EC, can cause a number of negative side effects, ranging from weight gain to depression. Some oral contraceptives have also been linked to more serious health risks for women, including blood clots, heart attack, and stroke.²⁶

Conscience Clauses

The availability of EC has highlighted the need to expand conscience clause laws to include pharmacists who have moral, ethical and religious objections to dispensing certain forms of birth control. Conscience clause protection for health care providers can be traced to the legalization of abortion in the United States, when many states, including North Carolina, enacted laws to protect doctors, nurses and hospitals with moral objections to abortion from being forced to perform or participate in them.²⁷

North Carolina’s law states:

*“Nothing in this section shall require a physician licensed to practice medicine in North Carolina or any nurse who shall state an objection to abortion on moral, ethical or religious grounds, to perform or participate in medical procedures which result in an abortion....Nothing in this section shall require a hospital or other health care institution to perform an abortion or to provide abortion services.”*²⁸

Pharmacists are governed by state laws, which vary nationwide, and by state pharmacy boards, which are responsible for licensing pharmacists.²⁹ In response to the debate over EC, some state pharmacy boards have enacted conscience clause policies for pharmacists. North Carolina’s Board of Pharmacy issued such a policy in the spring of 2005. It states:

“A pharmacist has the right to avoid being complicit in behavior that is inconsistent with his or her morals or ethics. It is unacceptable, however, for pharmacists to impose their moral or ethical beliefs on the patients they serve. Pharmacists who object to providing a medication for a patient on this basis alone, therefore, should

take proactive measures so as not to obstruct a patient's right to obtain such medication....Board of Pharmacy staff interprets this policy to mean that if a pharmacist refuses to fill a prescription for emergency contraception then that pharmacist has an obligation to get the patient and the prescription to a pharmacist who will dispense that prescription in a timely manner.”³⁰

Drug Store Policies. Absent federal or state laws specifically protecting pharmacists, whether a pharmacist loses his or her job over refusing to dispense certain medications depends on the internal policies of the drug store where he or she works. Some national pharmacy chains, such as Wal-Mart and Target, have policies that allow employees with conscientious objections to dispensing certain drugs to refer the customer to another pharmacist at the store or to another pharmacy (in cases where there is only one pharmacist on duty).³¹ However, these companies are under enormous pressure from EC advocacy groups, such as Planned Parenthood, to modify their policies. In fact, Planned Parenthood—which opposes any policy that may require a customer to go to another pharmacy or to come back to the store at a later time to fill a prescription for EC—has launched a campaign against both companies.³²

Accommodation, Not Discrimination

According to Planned Parenthood, “Denying women their rights to timely access to health care [by refusing to dispense EC] is an act of discrimination...”³³ EC proponents argue that because of the time-sensitive nature of how the drug works—it should be taken within 72 hours to be most effective at preventing pregnancy—pharmacists who refuse to dispense EC pills are interfering with a woman’s right to access health care in a timely manner. There are several problems with this argument.

First, a pharmacist who refuses to dispense EC on religious grounds is not blocking a woman’s access to the drug. EC pills are widely available in most areas of the country. If one pharmacy will not fill an EC prescription, or does not stock the drug, there is usually another pharmacy nearby that will. Of course, in some rural areas, there may be only one drugstore in town. If that pharmacist objects to dispensing EC, a woman may have to drive to the nearest town to find a drugstore that will fill her prescription. Additionally, there are other methods of preventing pregnancy available to women today—from sexual abstinence before marriage to

using other forms of contraception.

For women in North Carolina, a prescription to EC, and the name and address of a pharmacy that carries the pills are merely a phone call away. North Carolina is one of several states with an EC hotline for consumers called “Dial EC.” Operated by Planned Parenthood of Central North Carolina (PPNC), Dial EC allows women, including minors, to call a toll-free number to obtain an EC prescription. According to the Dial EC web site, when a woman calls the hotline, she is connected to an “emergency contraception specialist,” who conducts a medical assessment to determine if she is pregnant, counsels her on how to use EC, and then gets the prescription approved by a “mid-level clinician” who “checks in twice a day.” If the clinician approves the request, the EC specialist faxes the prescription to a local pharmacy for the woman to pick up.³⁴ According to an evaluation of hotline calls conducted between February 2002 and June 2003, nearly 10,000 EC prescriptions were provided during this time period.³⁵

Second, contrary to what abortion advocates may claim, pregnancy is not a disease, and becoming pregnant is not a life or death issue for the women involved (although, certainly, it is a life-altering condition). Pregnancy is a natural result of sexual intercourse. If a man and woman are not prepared to parent a child, then it is irresponsible for them to have sex in the first place. Furthermore, EC provides no health benefits to women who take it, so the claim that pharmacists who refuse to dispense it on moral or ethical grounds are denying women “access to health care” is completely false.

Rape Victims. Proponents of EC point to victims of rape and incest as another reason to ensure that women have immediate access to the drug. Efforts are underway in many states, including North Carolina, to pressure hospitals, specifically those run by religious organizations, to dispense EC to all sexual assault victims.³⁶ Sexual assault is a horrible crime, and women who are victimized sexually deserve immediate medical attention and counseling for their physical, mental and emotional pain. But a pharmacist (or hospital) who refuses to dispense EC on religious grounds to a woman who has been raped is not denying her the treatment she needs to recover from the sexual assault. Again, pregnancy is not an illness, even if it results from rape. Abortion advocates are using the rape victim argument to shift the focus of the debate to women’s

rights, when the real issue is the rights of pharmacists.

Asking a woman to go somewhere else to obtain EC is not a matter of discrimination. It is about respecting and accommodating the religious convictions of pro-life pharmacists.

A Right of Conscience

Pharmacists should not be forced to leave their religious convictions at home when they go to work. Like every American, they have a constitutional right to follow the dictates of their moral and ethical convictions in all areas of their lives, including their jobs. Since a pharmacist’s job involves dispensing drugs, forcing pro-life pharmacists to be involved in dispensing contraceptives that they believe cause abortion is a violation of one of their most fundamental rights as American citizens and as human beings. The right to religious expression is guaranteed under the U.S. and North Carolina Constitutions and protected under Title VII of the Civil Rights Act of 1964.

The First Amendment to the U.S. Constitution guarantees the right to religious freedom for every American.³⁷ Freedom of religion is also protected under our state constitution, which specifically addresses an individual’s right of conscience. Article 1, Section 13 of the North Carolina Constitution states: “All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.”³⁸

The right of conscience is also protected under Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination on the basis of a number of characteristics, including religion. Title VII requires employers “to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship.”³⁹

In addition to their right to religious expression, pharmacists should also have the right to consider the health implications of the drugs they dispense. Pharmacists are already expected to monitor the health interests of their customers and to inform customers about possible side effects or drug interactions. When a pharmacist has a concern about the potential negative impact of a drug on a customer, or that the drug is being misused, such as through repeat use of EC, he or she should have the freedom to exercise discretion as to whether or not to dispense it—without the fear of losing a job.

Conclusion

The first line in the “Oath of a Pharmacist,” developed by the American Pharmaceutical Association Academy of Students and the American Association of Colleges of Pharmacy, states: “I will consider the welfare of humanity and relief of human suffering my primary concerns.”⁴⁰ Pharmacists today are being asked to dispense drugs that go beyond the purpose of healing disease or easing pain — such as those used to assist in or stop reproduction, enhance sexual performance, and assist in suicide. As technology continues to advance, more pharmacists who entered the profession to ease human suffering and promote the well-being of society will undoubtedly find themselves facing moral and ethical dilemmas about dispensing some legal medications. In a free and democratic society, it is unfair to force these pharmacists to choose between their profession and their religious convictions.

Pharmacists in North Carolina who object to dispensing certain drugs, such as EC, on moral, ethical and religious grounds should have their right of conscience protected. These individuals should not be forced to be complicit in acts that violate their deeply held religious beliefs. In a nation and state founded on the principles of religious freedom, the so-called reproductive rights of some women should not override the pharmacist’s constitutional right to freely exercise his or her religious, moral and ethical convictions.

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Endnotes

1. Shimron, Yonat. “Birth Control Advance Stirs Intense Battle,” *The News and Observer*, April 22, 2005.
2. N.C.G.A § 14-45.1(e).
3. Kaisernetwork.org, “Wal-Mart to Stock EC Plan B at All Pharmacies Nationwide,” *Kaiser Daily Women’s Health Policy*, March 6, 2006.
4. “Wal-Mart to Carry Plan B Emergency Contraception,” Wal-Mart News Releases, March 6, 2006.
5. National Women’s Political Caucus, “Support the Access to Legal Pharmaceuticals Act,” Action Alerts.
6. National Conference of State Legislatures (NCSL), “Pharmacist Conscience Clauses: Laws and Legislation,” March 2006, as accessed at: www.ncsl.org/programs/health/conscienceclauses.htm
7. N.C. General Assembly, House Bill 1407, “An Act to Extend Conscience Protection,” 2005.
8. Guttmacher Institute, “Emergency Contraception,” *State Policies in Brief*, March 1, 2006.
9. Americans United for Life, “Target Fires Pharmacist in Missouri over EC; AUL Files EEOC Complaint,” AUL Press Release, January 26, 2006.
10. Planned Parenthood Federation of America, *Emergency Contraception*, Fact Sheet, January 2006, pg. 1.
11. Kaiser Family Foundation, “Emergency Contraception,” *Fact Sheet: Women’s Health Policy Facts*, November 2005, pg. 1.
12. N.C. Family Policy Council, “Two More RU-486 Deaths, FDA Issues Advisory,” *Family Policy Facts*, March 24, 2006.
13. Op. Cit. National Conference of State Legislatures.
14. Food and Drug Administration (FDA), “FDA’s Decision Regarding Plan B: Questions and Answers,” as found at: www.fda.gov/cder/drug/infopage/planB/planBQandA.htm
15. Op. Cit. Kaiser Family Foundation, pg. 1.
16. Gold, Rachel Benson. “The Implications of Defining When a Woman is Pregnant,” *The Guttmacher Report on Public Policy*, May 2005, pg. 8.
17. Earll, Carrie Gordan, “Emergency Contraception (Morning After Pill),” *Bioethics/Sanctity of Human Life Quick Facts*, Focus on Social Issues, Updated January. 19, 2006.
18. Op. Cit. Gold, pg. 7-8.
19. “Newsweek Poll Shows Majority of Americans Believe Life Begins at Conception,” *LifeSite*, 06/02/03, Cited in: Wright, Wendy. “The Morning-After Pill: Why the FDA Was Right,” *Concerned Women for America Report*, pg. 6.
20. Op. Cit. Duramed (Plan B), “How Plan B Works;” Also: Op. Cit. Food and Drug Administration.
21. Pharmacists for Life International, “Why a Conscience Clause is a Must NOW,” www.pfli.org.
22. Women’s Capital Corporation (Plan B), “So Many Men” poster, EC Outreach Materials: National/International Outreach Materials, Go2EC.org, as accessed at: www.GO2EC.org/ECOutreachMaterials.htm.
23. Pharmacy Access Partnership, “EC Promotional Opportunities,” Teen Card, as accessed at: www.pharmacyaccess.org/ECPromotionalOpps.htm.
24. Op. Cit. Wright, “The Morning-After Pill: Why the FDA Was Right,” pgs. 6&7. Also: Letter to the Food and Drug Administration about Plan B, Gary L. Yingling, J.D. and Rebecca L. Dandeker, J.D. (on behalf of Concerned Women for America, Family Research Council, Christian Medical and Dental Association and the American Association of Pro-Life Obstetricians and Gynecologists), Nov. 1, 2005, pgs. 20-21 (Connection Between Plan B and STDs).
25. P. Bissell, R. Harness and A. Anderson, “The sale of emergency hormonal contraception in community pharmacies in the UK: The views of users,” *International Journal of Pharmacy Practice*, Suppl. (2002), pg. R47. Cited in: Wright, Wendy, Carol Denner, R.N., & Jill Stanek, R.N., “The Morning-After Pill: Why the FDA Was Right,” *Concerned Women for America*, pg. 8.
26. “Birth Control Methods,” National Women’s Health Information Center, U.S. Department of Health and Human Services, Office on Women’s Health, pg. 8, www.womenshealth.gov.
27. Op. Cit. National Conference of State Legislatures.
28. N.C.G.A § 14-45.1(e) & (f).
29. National Women’s Law Center, “Pharmacy Refusals 101,” Updated 11/29/05, pg. 2.
30. North Carolina Board of Pharmacy, “Conscience Concerns in Pharmacists Decisions,” as accessed at: www.ncbop.org/NDConscienceClause.htm.
31. Op. Cit. Wal-Mart News Release. Also: SaveRoe.com, “Target Gets PPFPA Thumbs Down,” as accessed at: www.saveroe.com/fillmypillsnow/targetthumbsdown.
32. Ibid. Also: SaveRoe.com, “Planned Parenthood Pharmacy Policy,” as accessed at: www.saveroe.com/fillmypillsnow/pharmacypolicy.
33. Planned Parenthood Federation of America, “Refusal Clauses: A Threat to Reproductive Rights,” Fact Sheet, December 2004, pg. 1.
34. Dial EC, “For the Medical Provider/Pharmacist: Details About How Dial EC Works”, as found at: www.dialec.org/about/med.html.
35. Pharmacy Access Partnership, Go2EC.org, “North Carolina State Profile, EC Pharmacy Update,” as found at: www.GO2EC.org/ProfileNorthCarolina.htm.
36. N.C. Women United, “Coalition Says NC Hospitals Should Provide Compassionate Care to Rape Victims,” Press Release, March 1, 2005.
37. The Constitution of the United States, The Bill of Rights, First Amendment.
38. The Constitution of North Carolina, Article 1, Section 13, Religious Liberty.
39. The U.S. Equal Employment Opportunity Commission, “Federal Laws Prohibiting Job Discrimination Questions and Answers: Federal Equal Employment Opportunity (EEO) Laws,” as accessed at: www.eeoc.gov/facts/qanda.html.
40. American Association of Colleges of Pharmacy, “Oath of a Pharmacist,” Developed by: American Pharmaceutical Association Academy of Students of Pharmacy/American Association of Colleges of Pharmacy Council of Deans (APhA-ASP/AACP-COD) Task Force on Professionalism, June 26, 1994, www.aacp.org.

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