



## Emergency Contraception and Conscience Clause Issue Statement

Religious liberty rights collide at the pharmacy counter when a pharmacist refuses to dispense emergency contraception on the basis of his or her religious beliefs. Emergency contraception is used to prevent, not terminate a pregnancy, and must be taken within 72 hours of unprotected intercourse. Emergency contraception is not the same as RU-486, or Mifeprex, which pharmacists do not play a role in administering. Denying a patient access to emergency contraception based on the personal beliefs of health care providers, compromises the patient's health and her right make health choices based on her own beliefs. The religious liberty of both pharmacists and patients is best protected when pharmacies are held to the same standards as other secular businesses operating in the public square.

### **A pharmacy should not be allowed to religiously refuse to dispense emergency contraception.**

A pharmacy is a state-regulated business operating for the benefit of the general public. It serves people of diverse beliefs. The common community should not bear the burden of the pharmacy owner's religious views. Like all other business, because a pharmacy's primary purpose is not promoting religion, it is not entitled to religious liberty protections. Its principal function of providing important health care services to the public must be carried out in a secular manner.

A religiously based refusal by an entire pharmacy has a greater potential to harm people who do not share those religious beliefs than an individual pharmacist. Pharmacies service the community as important health care providers with the responsibility to supply medication to patients. A woman who cannot obtain contraception at her local pharmacy may not be able to receive it in a timely manner. Emergency contraception is time sensitive, and allowing a pharmacy to religiously refuse to dispense it compromises the women's health and safety. As a public health care provider, pharmacies have a heightened obligation to provide services to all, particularly during emergencies.<sup>i</sup>

The Secular Coalition for America believes pharmacies should not be allowed to use religious refusal as a reason to not dispense emergency contraception.

### **An individual pharmacist's right to religiously refuse to dispense emergency contraception is limited when it endangers the patient, or unduly burdens the pharmacy.**

When an individual pharmacist religiously refuses to dispense emergency contraception, the pharmacy must reasonably accommodate the pharmacist.<sup>ii</sup> This can be done by having another pharmacist on staff fill the prescription. However, the pharmacy is not required to accommodate the pharmacist in ways that endanger the patient,<sup>iii</sup> nor a way which places an undue burden on the pharmacy.<sup>iv</sup> It is considered an undue burden on the pharmacy if the accommodation decreases the services the pharmacy provides

to the public<sup>v</sup> or requires the pharmacy to hire another employee to do the job.<sup>vi</sup> An objecting pharmacist may be limited in small pharmacies where only one pharmacist is on duty at a time. If no other pharmacist available to provide the patient with emergency contraception within the important 72 hour window, the undue burden on the pharmacy and the emergency health situation of the patient outweigh the objecting pharmacist's religious liberty. Basing employment decisions on a pharmacist's refusal to comply in these situations is not unlawful religious discrimination by the employer pharmacy.

The Secular Coalition for America opposes allowing pharmacists to religiously refusal to dispense emergency contraception when it endangers the patient or places an undue burden on the pharmacy.

**“Conscience clause” laws improperly value the religious liberty of the pharmacist over both the religious liberty and the health and safety of the patient.**

The current framework, which adequately protects both the religious liberty of the patient and the pharmacist, is under assault by legislators seeking to uphold the religious liberty rights of one American over another. In state legislatures across the country bills are being passed that explicitly grant pharmacists the right to refuse to dispense drugs related to contraception. Often referred to as “conscience clause” protections, these laws give health care providers the right to refuse to perform certain services that violate personal beliefs or values. Six states passed laws allowing a pharmacist to refuse to dispense emergency contraception drugs,<sup>vii</sup> while four more have broader refusal clauses that include pharmacists.<sup>viii</sup> These laws may subject pharmacy owners to legal liability for requiring objecting pharmacists to dispense emergency contraception in cases of undue burden or endangering the patient. The excessive zeal of legislators to protect one religious liberty at all costs removes the reasoned balancing between the religious liberty rights of all participants, not to mention any consideration of public health and safety or the right to make decisions about one's own body.

The Secular Coalition for America opposes conscience clause laws because they place the religious liberty of the pharmacist over the religious liberty and the health and safety of the patient.

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<sup>i</sup> Shelton v. Univ. of Med. & Dentistry of N.J., 223 F.3d 220, 226 (3d Cir. 2000).

<sup>ii</sup> 42 U.S.C. § 2000e (Part of Title VII of the Civil Rights Act)

<sup>iii</sup> See Shelton, 223 F.3d at 228.

<sup>iv</sup> 42 U.S.C. § 2000e(j)

<sup>v</sup> See Aron v. Quest Diagnostics, Inc., No. Civ.A. 03-2581 JSH, 2005 WL 1541060, at \*7 (D.N.J. June 30, 2005)

<sup>vi</sup> See Brener v. Diagnostic Ctr. Hosp., 671 F.2d 141, 146-47 (5th Cir. 1982)

<sup>vii</sup> Arizona, Arkansas, Georgia, Idaho, Mississippi, and South Dakota

<sup>viii</sup> Colorado, Florida, Illinois, Maine and Tennessee