

When Negligence Becomes Deliberate

When pharmacists actively obstruct access to birth control, what are the appropriate legal measures to take in protecting the patient's rights to basic health care while respecting a pharmacist's rights to free speech? In an article published in the American Journal of Law & Medicine, Diana Syndert argues for a law that makes Medicare reimbursement for pharmacies conditional upon indiscriminate service for patients seeking to have their prescriptions filled. In many cases across the country, strongly opinionated members of Pharmacists for Life International take the extra step in barring women from obtaining birth control by confiscating prescriptions or deleting refill orders directly against a patient's wishes. Especially since the Obama administration recently determined that contraception is not considered abortion, such acts should be considered as symbolic speech, if not downright sexual discrimination, rather than as exercise of religion, and be treated as such by the law.

Pharmacies are places of public accommodation that receive government funds, so laws permitting a pharmacist to refuse to provide birth control for women constitute legislative approval of a specific religious belief and therefore violate the First Amendment's Establishment Clause. While the First Amendment permits accommodation of religious interests, Syndert argues that pharmacist refusal constitutes religiously motivated expressive conduct much more appropriately than religious exercise, because the pharmacist communicates an explicit opinion to each female patient he refuses. In this light, free speech in privately owned places of public accommodation is subject to time, place and manner restrictions.

A time, place and manner restriction still allows opponents of birth control to protest or express disagreement through other venues, including right outside of a pharmacy. The Supreme Court ruled that health care professionals receiving federal funds can be subject to restrictions on their freedom of speech, especially since the Supreme Court found the government's interest in eradicating discrimination to be more important than the Free Exercise interest. Title VII of the Civil Rights Act of 1964 protects women against pregnancy-based discrimination and is the basis for the mandate for employers to provide contraceptive coverage in health plans. Upon these bases, refusing to provide birth control to women is an act of discrimination against women's sex-specific ability to become pregnant. Freedom of access to pharmaceuticals for women is all the more important because birth control can only be provided via pharmacies, unlike condoms that can be purchased at gas stations.

Currently, several states along with the American Pharmacists' Association endorse a transfer-oriented policy that allows pharmacists to refuse to fill a prescription so long as he steps aside to allow someone else to fill it. However, such measures do nothing to deter the constituents of Pharmacists for Life International. Pharmacies depend heavily on federal funding in the form of Medicare, and thus the federal government has the authority to set conditions for reimbursement. The federal government also has the responsibility to prevent such conscience clauses and "rights to refuse" from getting out of hand. Conscience clauses include religious beliefs but may not be used to push political agendas. The

differentiation of free speech versus religious practice will have far reaching effects outside of just pharmacies. **Can doctors refuse to provide healthcare for patients with sexually transmitted diseases due to beliefs against premarital sex? Can an obstetrician withhold information about fetal anomalies for fear that the mother will consider an abortion?** There have been cases where medical practitioners refused to adhere to the correct standard of care for pregnant women with medical complications because of their religious or personal beliefs. In those cases, nurses, doctors and pharmacists place the life of the mother in danger in a stand against abortion. These beliefs result in serious injuries against patients and need to be dealt without the protection of a "right to refuse."