

# RELIGIOUS REFUSALS AND REPRODUCTIVE RIGHTS: Accessing Birth Control at the Pharmacy

## FREQUENTLY ASKED QUESTIONS

Each year, millions of women purchase birth control, including emergency contraception (EC), at their local pharmacies. Media reports increasingly include stories of pharmacies and individual pharmacists refusing to sell contraception based on a religious objection. These stories raise questions about a woman's right to access contraception at the pharmacy, as well as the legal obligations and protections that cover pharmacies and pharmacists.

### ● **Protecting a Woman's Right to Contraception**

**Does a pharmacy or pharmacist violate a woman's federal constitutional rights by refusing to satisfy her request to purchase birth control?**

No. A pharmacy's or pharmacist's refusal to sell birth control does not violate a woman's federal constitutional rights. The U.S. Constitution imposes no limitations on nongovernmental institutions like privately owned pharmacies. Even if the refusal takes place in a state-owned pharmacy, a woman has no federal constitutional right to receive contraception. Although the Constitution protects a woman's right to contraception, it does not ensure that women can access reproductive health services.

**Is it sex discrimination when a pharmacy refuses to sell medications that only women need?**

Some states have laws that prevent businesses from discriminating against customers based on their sex. Under these "public accommodation laws," a pharmacy that refuses to satisfy a woman's request for a medication that only women use – such as birth control pills – may be discriminating on the basis of her sex.

**Do women have any recourse if a pharmacy refuses to satisfy her request for birth control?**

If a woman is treated unfairly by her pharmacist or her pharmacy, she can file a complaint with the state board of pharmacy. The board of pharmacy will investigate her complaint, evaluating whether the individual pharmacist or pharmacy acted unprofessionally or otherwise violated the state pharmacy code. All 50 states and the District of Columbia have complaint procedures for consumers. For assistance filing a complaint in any state or exploring other legal options, please contact [rpf@aclu.org](mailto:rpf@aclu.org) or (212) 549-2633.



## Understanding Legal Obligations and Protections in the Pharmacy

### Do pharmacists have a legal duty to fill all lawful and appropriate prescriptions?

The practice of pharmacy is governed by a state's laws, regulations, and board of pharmacy. Each state has a different regulatory scheme.

Only a few state pharmacy codes explicitly require the pharmacist or the pharmacy to fill every lawful and appropriate prescription that is presented. Even if there is no explicit requirement, such a duty may be implied from other professional obligations. For example, one state's pharmacy code requires pharmacists to "engage only in behavior that is in the patient's best interest," while another state's code directs pharmacists to "make their professional services available to the public." Refusing to fill a prescription for contraception may conflict with these professional responsibilities.

### May a pharmacist refuse to transfer a prescription or harass a woman who is requesting birth control?

Pharmacists, like all professionals, must abide by a professional code. These codes, which are generally enforced by the state's pharmacy board, require a pharmacist to act professionally and serve patients' needs and may thus provide relief in some cases for women denied birth control. In Wisconsin, for example, the board of pharmacy reprimanded a pharmacist who, on the basis of his religious beliefs, had refused to refill or transfer a patient's prescription for birth control. The board found that he had departed from the standard of care expected of a pharmacist. To date, the courts have upheld this action.

### As an employer, can a pharmacy require a refusing pharmacist to satisfy all appropriate and legal requests for birth control?

This answer depends on the specific circumstances. Pharmacists with religious objections may have various legal protections.

Title VII of the Civil Rights Act – the federal anti-employment discrimination statute – or similar state law may require the pharmacy to try to accommodate the pharmacist. Title VII applies to employers nationwide that have 15 or more employees. Some states have similar laws that apply to smaller employers. Consistent with these laws, if an employee objects to a job function based on a religious belief, an employer must try to accommodate the employee, for example by shifting work responsibilities or transferring the employee to another job. The employer doesn't have to accommodate the employee if doing so will be burdensome; for example, an accommodation would likely be burdensome if it causes the employer to hire another employee or lose business. So if a pharmacist objects to satisfying requests for certain medications because of his or her religious belief, the pharmacy may have a limited obligation under Title VII or similar state law to see if the employee can be accommodated.

In addition, several states have laws that specifically protect a pharmacist from any liability, such as being fired or disciplined, for refusing to fill prescriptions based on a religious objection. How courts interpret these refusal clauses remains to be seen.



## Addressing Refusals at the Pharmacy in Law and Policy

**If a statewide solution is needed, how can the state effectively address the problem of refusals at the pharmacy?**

In response to reports of women facing refusals at their pharmacies, state legislatures, administrative bodies, and pharmacy boards have considered how best to address the problem. For example, Illinois enacted a regulation that created a duty for pharmacies to fill all valid prescriptions for contraception.

Consistent with the ACLU's commitment to reproductive freedom and religious liberty, a law or regulation should require pharmacies to ensure that any lawful and appropriate request to purchase birth control – either with a prescription or from behind the counter – is satisfied on-site without added delay. If the drug is not in stock, the pharmacy should give the customer the choice of having the pharmacy order the drug, arrange for the drug to be obtained elsewhere, or, if the customer has a prescription, return the prescription to the customer or her representative. The law or regulation should not interfere with a pharmacist's discretion to refuse to fill prescriptions because of adverse health consequences, fraud, suspicions of abuse, a dosing error, or payment issues.

Imposing a mandate on pharmacies, and not individual pharmacists, permits the pharmacy, in many cases, to accommodate the religious beliefs of its employees while preserving the rights of customers to access their medication.

**If a mandate requires pharmacies to satisfy all lawful and appropriate requests to purchase birth control, does it need a refusal clause exempting those pharmacies with a religious objection?**

No. Although the Federal Constitution prevents the government from burdening religious belief or unduly restricting religious practice, it does not relieve an institution or individual with a religious objection from complying with a valid and neutral law of general applicability. Therefore, a pharmacy does not have a federal constitutional right to be exempted from a law or regulation requiring it to satisfy all lawful requests to purchase birth control regardless of religious objections. For this reason, a pharmacy mandate need not include a refusal clause.

The inclusion of a refusal clause in a pharmacy mandate, however, is not unconstitutional. Although the Federal Constitution prevents the government from favoring one religion over another and, in general, from privileging religion over nonreligion, it does not prevent a state from including a refusal clause in any law or regulation requiring the provision of contraceptives.

Though not constitutionally forbidden, protecting a pharmacy's refusal to provide birth control to its customers fails to protect women's health and is bad public policy. The pharmacy is a state-regulated business that supplies medication to the general public and serves people of diverse backgrounds and faiths; it operates in the public world and should play by public rules. For these reasons, the ACLU believes that pharmacy mandates should not include refusal clauses.

**Given its commitment to protecting individual religious belief and access to contraception, how does the ACLU evaluate “pharmacist refusal clause” legislation?**

State legislatures are debating bills that protect a pharmacist from any liability for his or her refusal to provide birth control. Unless they contain specific patient safeguards, the ACLU believes these “pharmacist refusal clauses” fail to strike an appropriate balance between religious liberty and reproductive freedom. The legislation should require the refusing pharmacist to provide complete and accurate information about the medication, treat the patient with respect, arrange for the patient to be helped by another pharmacist at the pharmacy, and provide the birth control when there is no one else who can provide the drug at the pharmacy within the usual time frame. While a pharmacist’s religious objections should be accommodated wherever possible, it is only with these necessary safeguards that we can be sure that women are always able to purchase birth control at the same pharmacy without added delay.

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