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THE ORIGINAL LETTER BELOW IDENTIFIED THE WRONG CVS. THE CORRECT ADDRESS IS 500 N. GALLOWAY, SUITE 2, MESQUITE, TX 75419. THE STORE NUMBER IS 7645, AND THE STORE MANAGER IS ABIGAIL SOTO.

January 3, 2012

By Certified Mail

Per Lofberg

*Executive Vice President of CVS Caremark Co.
and President of Caremark Pharmacy Services*

Douglas A. Sgarro

*Executive Vice President and Chief Legal Officer
of CVS Caremark Co.*

CVS Caremark Corporation

One CVS Drive

Woonsocket, RI 02895

Dear Mr. Lofberg and Mr. Sgarro:

We write on behalf of the national American Civil Liberties Union (ACLU) Reproductive Freedom Project and the ACLU of Texas, which is the state affiliate of the national organization. The ACLU advocates in courts, communities, and legislatures across the country for the protection of the rights and liberties set forth in the Bill of Rights and other federal and state law, including the right of men and women to make family planning decisions free from unwarranted interference or intrusion.

We write to express our concern about an incident that occurred at one of your Texas stores involving the denial of emergency contraception ("EC") to a male customer. On behalf of that customer, Jason Melbourne, we request your prompt response as to the steps you will take to investigate the situation discussed below and take necessary corrective action. We also request an apology for Mr. Melbourne's mistreatment. Additionally, we request a copy of your corporate policy for making EC available to your customers. Finally, we have identified inaccurate statements about EC on your website, and request that you promptly correct them.

I. Denial of EC at Mesquite, Texas CVS

On November 26, 2011, Jason Melbourne attempted to purchase emergency contraception from CVS Store # 5990, located on 904 E. Cartwright Road in Mesquite, Texas. The pharmacist, Minni Mathew, refused to sell the product to Mr. Melbourne because he is a man. Ms. Mathew asked Mr. Melbourne who was going to take the drug, and he told her that he was buying it for his wife. Ms. Mathew said that she needed to talk to Mr. Melbourne's wife and see her identification. Mr. Melbourne objected, and asked the basis for Ms. Mathew's claim that his wife needed to be present. She did not cite to any CVS policy or any law, but pointed Mr. Melbourne to the product's packaging, which indicates that it may only be sold over the counter to people 17 years and older. Mr. Melbourne said that he was over 17 years old, and said that the age restriction therefore had no relevance. Mr. Melbourne also explained that his wife was in Rowlett, Texas, over 15 miles away, with their four-year-old and newborn baby. It had been 72 hours since their accident, and he had been to four stores which were out of stock, and which had sent him to this particular CVS.

Mr. Melbourne was understandably quite frustrated. He demanded to know what law allowed CVS to deny him EC, and even went so far as to show Ms. Mathew on his smartphone that she must sell him EC. At that point, the pharmacy technician, a man named Robert who refused to provide his last name, jumped into the dispute and told Mr. Melbourne that they do not sell EC to men because men are using it for rape victims. Mr. Melbourne was very offended by the suggestion that he was trying to buy EC for this purpose. Robert also tried to claim that the generic brand is treated differently than Plan B. Mr. Melbourne asked Robert if levonorgestrel was the ingredient on the box; Robert refused to answer, but Ms. Mathew answered in the affirmative. Mr. Melbourne tried to explain that the brand makes no difference, and the generic product and Plan B are treated the same under the law.

Mr. Melbourne called his wife, and he handed the phone to Ms. Mathew, but that did not satisfy Ms. Mathew. Mr. Melbourne asked Ms. Mathew to contact her supervisor, which she did. After explaining the issue, Ms. Mathew said that her supervisor instructed her to not sell EC to Mr. Melbourne. Luckily, Mr. Melbourne's wife in the meantime called a nearby Walgreens, who had the product in stock. Mr. Melbourne purchased the product there. Because he does not want this to happen to anyone again, Mr. Melbourne contacted the ACLU of Texas. Apparently, this is not an isolated incident, as press reports indicate another man was recently denied EC at a CVS in Houston.¹

II. Applicable Law and Regulations

EC is available for purchase without a prescription at the pharmacy for any individual seventeen years or older with a valid government-issued identification that proves his or her age. The FDA has explicitly said that men may purchase EC.²

¹http://blogs.houstonpress.com/hairballs/2011/12/cvs_refused_man_plan_b.php; <http://digitaltexan.net/2011/top-story/can-texas-pharmacists-refuse-to-sell-morning-after-pill-to-men/article12585/>

²<http://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm109783.htm>

As you know, time is of the essence for a woman who wishes to prevent pregnancy. The effectiveness of EC diminishes with delay: Experts stress that EC is most effective the sooner it is taken, with effectiveness decreasing every 12 hours. Given that EC's effectiveness decreases over time, the sooner a woman can take it, the more effective it will be in preventing pregnancy. It is therefore crucial that a customer can access to EC in a timely manner. Furthermore, men and women who take shared responsibility for making healthy and responsible decisions about their birth control methods should be supported.

III. Remedy

As set forth above, we request a copy of CVS's corporate policy for providing EC and a description of what steps you plan to take to ensure this kind of discrimination does not recur. We also request an apology for Mr. Melbourne.

Additionally, while researching CVS's policy on EC, we encountered a significant error on CVS's website. Your website says that EC is available to individuals 18 years and older, and that a prescription is needed if the purchaser is 17 years old or younger.³ That information is incorrect. In 2009, the FDA lowered the age restriction to 17 years of age.⁴ We ask that you correct this error immediately.

Please contact us at the phone numbers below to discuss the matter further.

Sincerely,


Lisa Graybill
Legal Director, ACLU of Texas



Brigitte Amiri
Senior Staff Attorney, ACLU Reproductive Freedom Project
212-519-7897

cc: Mike Mollina
904 E. Cartwright Road
Mesquite, TX 75419

³<http://www.cvs.com/CVSAApp/promoContent/promoLandingTemplate.jsp?promoLandingId=1031>

⁴<http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2009/ucm149568.htm>